



# Income and Corporation Taxes Act 1970

## 1970 CHAPTER 10

An Act to consolidate certain of the enactments relating to income tax and corporation tax, including certain enactments relating also to other taxes. [12th March 1970]

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

### PART I

#### CHARGE OF INCOME TAX, AND GENERAL PROVISIONS RELATING ONLY TO INCOME TAX

#### CHAPTER I

##### THE CHARGE, AND DATES FOR PAYMENT

#### **1 The charge**

Where any Act enacts that income tax shall be charged for any year at any rates, then, subject to the provisions of the Income Tax Acts, the tax at those rates shall be charged for that year in respect of all property, profits or gains respectively described or comprised in the Schedules contained in the following sections of this Act—

- Schedule A—Section 67(1),
- Schedule B—Section 91,
- Schedule C—Section 93,
- Schedule D—Section 108,
- Schedule E—Section 181(1), and
- Schedule F—Section 232(1),

and in accordance with the provisions of the Income Tax Acts respectively applicable to those Schedules.

## **2 Fractions of a pound, and yearly assessments**

- (1) The due proportion of income tax shall be charged for every fractional part of one pound, but no tax shall be charged of a lower denomination than one penny.
- (2) Every assessment and charge to income tax shall be made for a year commencing on the 6th April and ending on the following 5th April.

## **3 Effect of charging at a standard rate, and at higher rates for larger incomes**

- (1) Where any Act provides that income tax shall be charged for any year at a standard rate and, in the case of an individual whose total income exceeds a stated amount, at a rate or rates exceeding the standard rate in respect of any part or parts of his income in excess of that amount, then, subject to the provisions of the Income Tax Acts—
  - (a) the Income Tax Acts, in so far as they relate to the tax at the standard rate, shall have effect as if income tax were charged for that year at the standard rate only, and, in the case of an individual whose total income exceeds the stated amount, the amount of the income tax charged at the standard rate shall, so far as that income tax is borne by him in respect of his income, be deemed to be an instalment at the standard rate of the amount of income tax for which he is chargeable for that year, and
  - (b) where the amount of income tax payable by an individual for that year in respect of his total income is greater than the amount which would have been payable by him in respect thereof if income tax had been chargeable at the standard rate only, the difference between those two amounts (in the Income Tax Acts referred to as " surtax ") shall be computed, assessed, charged, collected and paid as a deferred instalment of income tax according to the provisions of the Income Tax Acts relating to surtax.
- (2) Where, for a year for which income tax is charged in the manner specified in subsection (1) above, a person is required to be assessed and charged with income tax in respect of any property, profits or gains out of which he makes any payment in respect of—
  - (a) any annuity or other annual payment (not being interest), or
  - (b) any royalty or other sum in respect of the user of a patent, or
  - (c) any rent, royalty or other payment which, by section 156 or 157 of this Act (mining etc. rents and royalties) is declared to be subject to deduction of tax under Part II of this Act as if it were a royalty or other sum paid in respect of the user of a patent,he shall, in respect of so much of the property, profits or gains as is equal to the said payment, and may be deducted in computing his total income, be charged at the standard rate only.
- (3) All the provisions of the Income Tax Acts relating to persons who are to be chargeable to income tax at the standard rate, and to assessments to, and the collection and recovery of, such tax shall, so far as they are applicable, apply to the charge, assessment, collection and recovery of surtax.

## **4 Dates for payment**

- (1) Subject to the provisions of the Income Tax Acts, and, in particular, to subsection (2) below and section 204 of this Act (pay as you earn), income tax, other than surtax, contained in an assessment for any year shall be payable on or before the 1st January

in that year, except that tax included in an assessment for any year which is made on or after the 1st January shall be deemed to be due and payable on the day next after the day on which the assessment is made.

- (2) Income tax under Schedule D charged for any year on any individual or firm in respect of the profits or gains of any trade, profession or vocation shall, instead of being payable on or before the 1st January in that year or on such other date as is specified in subsection (1) above, be payable in two equal instalments, the first on or before the 1st January in that year or on such other day as aforesaid, and the second on or before the following 1st July, and the provisions of the Income Tax Acts as to the recovery of income tax shall apply to each instalment of the tax in the same manner as they apply to the whole amount of the tax:

Provided that, where the assessment is not made until after the said following 1st July, this subsection shall not have effect, and the tax shall be due and payable as provided in subsection (1) above.

- (3) Surtax shall be due and payable as a deferred instalment of income tax on or before the 1st January next after the end of the year of assessment for which it is payable, except that surtax, or any part of any surtax, included in an assessment which is made on or after the said 1st January shall be deemed to be due and payable on the day next following the day on which the assessment is made.

## CHAPTER II

### PERSONAL RELIEFS

#### *The reliefs*

#### **5 General**

An individual who makes a claim in that behalf shall be entitled to such relief as is specified in sections 6 to 22 below, subject however to the provisions of sections 23 to 27.

#### **6 Relief for small incomes**

- (1) Subject to subsection (3) below, the claimant, if he proves that his total income for the year of assessment does not exceed £450, shall be entitled to a deduction from the amount of income tax with which he is chargeable equal to income tax at the standard rate on two-ninths of the amount of that income.
- (2) Subject as aforesaid, a claimant not entitled to relief under subsection (1) above, if he proves that his total income does not exceed £710, shall be entitled to have the amount of the income tax payable in respect of his total income reduced, where necessary, so as not to exceed a sum equal to the aggregate of the two following amounts, that is to say, the amount of the income tax which would have been payable if his total income had amounted to, but had not exceeded, £450 and one-half of the amount by which his total income exceeds £450.
- (3) A claimant shall not be entitled to relief under this section if he is entitled to relief under subsection (2) of section 9 below, and any relief under this section shall be in substitution for, and not in addition to, relief under subsection (1) of that section.

## 7 Relief for persons over sixty-five with small incomes

The claimant, if he proves that at any time within the year of assessment either he or his wife living with him was of the age of sixty-five years or upwards—

- (a) shall be entitled to exemption from income tax if he also proves either—
  - (i) that his total income for that year does not exceed £425, or
  - (ii) that he would be entitled to the higher (or married person's) relief under section 8(1) below, and his total income for the year does not exceed £680, and
- (b) shall be entitled, if he is not exempt under paragraph (a) above by reason only of his total income for the year exceeding £425 or £680, as the case may be, and the excess is less than £265, to have the income tax payable in respect of his total income reduced, where necessary, to an amount equal to nine-twentieths of that excess.

## 8 Personal relief

- (1) Subject to the provisions of this section and to section 15 below, the claimant shall be entitled—
  - (a) if he proves—
    - (i) that for the year of assessment he has his wife living with him, or
    - (ii) that his wife is wholly maintained by him during the year of assessment, and that he is not entitled in computing the amount of his income for that year for income tax purposes to make any deduction in respect of the sums paid for the maintenance of his wife,
 to a deduction from the amount of income tax with which he is chargeable equal to income tax at the standard rate on £375 ;
  - (b) in any other case, to a deduction from the amount of income tax with which he is chargeable equal to income tax at the standard rate on £255.
- (2) If the total income of the claimant includes any earned income of his wife, the deduction to be allowed under this section shall be increased by an amount equal to income tax at the standard rate on seven-ninths of the amount of that earned income or on £255, whichever is the less.

For the purposes of this subsection—

- (a) any earned income of the claimant's wife arising in respect of any pension, superannuation or other allowance, deferred pay or compensation for loss of office, given in respect of his past services in any office or employment, shall be deemed not to be earned income of his wife, and
  - (b) no payment on account of an allowance under the Family Allowances Act 1965 or the Family Allowances Act (Northern Ireland) 1966, and, except in the case of a retirement pension payable to the wife by virtue of her own insurance, no payment of benefit under the National Insurance Act 1965 or the National Insurance Act (Northern Ireland) 1966, shall be treated as earned income.
- (3) Subsection (1) above shall have effect in relation to any claim by a man who becomes married in the year of assessment for which the claim is made, and has not previously in that year been entitled to relief under paragraph (a) of that subsection, as if the sum specified in that paragraph were reduced by £10 for each month of the year ending before the date of the marriage.

In this subsection "month" means a month beginning with the 6th day of a month of the calendar year.

## **9 Earned income and old age reliefs**

- (1) The claimant shall be entitled to a deduction from the amount of income tax with which he is chargeable equal to income tax at the standard rate on—
  - (a) two-ninths of the amount (up to a maximum of £4,005) of the claimant's earned income, plus
  - (b) one-ninth of the amount (up to a maximum of £5,940) of any excess of his earned income over £4,005.
- (2) The claimant, if he proves that at any time within the year of assessment either he or, in the case of a married man, his wife living with him was of the age of sixty-five years or upwards, and that his total income for the year of assessment does not exceed £1,000, shall be entitled to a deduction from the amount of income tax with which he is chargeable equal to income tax at the standard rate on two-ninths of the amount of that income.
- (3) If the claimant would be entitled to relief under subsection (2) above but for the fact that his total income exceeds £1,000, he shall be entitled to have the amount of the income tax payable in respect of his total income reduced, where necessary, SO as not to exceed a sum equal to the aggregate of the two following amounts, that is to say, the amount of the income tax which would have been payable if his total income had amounted to, but had not exceeded, £1,000 and eleven-twentieths of the amount by which his total income exceeds £1,000.
- (4) Any relief under subsection (2) or subsection (3) above shall be in substitution for, and not in addition to, the relief under subsection (1) above.

## **10 Children**

- (1) If the claimant proves—
  - (a) that there is living at any time within the year of assessment a child of his with respect to whom one of the conditions in subsection (2) below is fulfilled, or
  - (b) that for the year of assessment he has the custody of, and maintains at his own expense, a child (other than a child of his) with respect to whom one of those conditions is fulfilled,

he shall, subject to the provisions of this section and section 11 below, be entitled in respect of each such child to a deduction from the amount of income tax with which he is chargeable equal to income tax at the standard rate on the appropriate amount for the child.

In this provision "child" includes a stepchild and an illegitimate child whose parents have married each other after his birth.

- (2) The conditions referred to in subsection (1) above are—
  - (a) that the child is born in, or is under the age of sixteen years at the commencement of, the year of assessment referred to in that subsection, or
  - (b) that the child is over the age of sixteen years at the commencement of that year of assessment, but is receiving full-time instruction at any university, college, school or other educational establishment.

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

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- (3) The appropriate amount for the child shall vary according to the age of the child at the commencement of the year of assessment, and, subject to subsection (5) below—
- (a) for a child shown by the claimant to have been then over the age of sixteen, shall be £165, and
  - (b) for a child not so shown, but shown by the claimant to have been then over the age of eleven, shall be £140, and
  - (c) in any other case shall be £115.

- (4) The reference in subsection (2)(b) above to a child receiving full-time instruction at an educational establishment shall include a reference to a child undergoing training by any person (hereinafter referred to as " the employer ") for any trade, profession or vocation in such circumstances that the child is required to devote the whole of his time to the training for a period of not less than two years.

For the purpose of a claim in respect of a child undergoing training, the inspector may require the employer to furnish particulars with respect to the training of the child in such form as may be prescribed by the Board.

- (5) In the case of a child who is entitled in his own right to an income exceeding £115 a year, the appropriate amount for the child shall be reduced by the amount of the excess, and accordingly no relief shall be allowed under this section where the excess is equal to or greater than the amount which apart from this subsection would be the appropriate amount for the child:

Provided that, in calculating the income of the child for the purpose of this subsection, no account shall be taken of any income falling under Chapter V of this Part of this Act to be treated as income of a parent of the child, or of any income to which the child is entitled as the holder of a scholarship, bursary, or other similar educational endowment.

- (6) If any question arises as to whether any person is entitled to relief under this section in respect of a child who is over the age of sixteen years, as being a child who is receiving full-time instruction at an educational establishment, the Board may consult the Secretary of State for Education and Science.

In the application of this subsection to Scotland and Northern Ireland, the Secretary of State and the Ministry of Education for Northern Ireland shall respectively be substituted for the Secretary of State for Education and Science.

- (7) Notwithstanding anything in section 9 of the Family Law Reform Act 1969 or any corresponding enactment of the Parliament of Northern Ireland or any rule of law in Scotland, for the purposes of this section a child whose birthday falls on 6th April shall be taken to be over the age of eleven at the commencement of the year which begins with his eleventh birthday, and over the age of sixteen at the commencement of the year which begins with his sixteenth birthday.

## **11 Double claim for children**

- (1) The provisions of this section shall have effect where, for any year of assessment, two or more individuals are, or would but for the provisions of this section be, entitled to relief under section 10 above in respect of the same child.
- (2) The relief to be granted to each of the individuals shall be computed as if the reference in subsection (1) of that section to the appropriate amount for the child were a reference

to the part of the appropriate amount for the child which is apportioned to that individual under subsection (3) below.

- (3) The appropriate amount for the child shall be apportioned between the individuals in question in such proportion as they agree, or, in default of agreement, in proportion to the amount or value of the provision made by them respectively (otherwise than by way of payments deductible in computing their respective total incomes) for the child's maintenance and education for the year of assessment.
- (4) Any apportionment under this section shall be made by such body of General Commissioners, being the General Commissioners for a division in which one of the individuals resides, as the Board may direct, or, if none of the individuals resides in Great Britain, by the Special Commissioners.
- (5) Where a claim is made under the said section 10, and it appears that, if the claim is allowed, an apportionment will be necessary under this section, the Board may if they think fit direct that the claim itself shall be dealt with by any specified body of Commissioners which could under this section be directed to make the apportionment, and that the same Commissioners shall also make any apportionment which proves to be necessary; and where a direction is given under this subsection no other body of Commissioners shall have jurisdiction to determine the claim.
- (6) The Commissioners making any apportionment under this section shall hear and determine the case in like manner as an appeal, but any individual who is, or but for the provisions of this section would be, entitled to relief in respect of the child shall be entitled to appear and be heard by the Commissioners, or to make representations to them in writing.

## 12 Widower's or widow's housekeeper

- (1) If the claimant proves that he is a widower and that for the year of assessment a person, being a female relative of his or of his deceased wife, is resident with him in the capacity of a housekeeper, or that he has no female relative of his own or of his deceased wife who is able and willing to act in such capacity and that he has employed some other female person to reside with him for the purpose, he shall be entitled to a deduction from the amount of income tax with which he is chargeable equal to income tax at the standard rate on £75 in respect of that female relative or female person:

Provided that—

- (i) no relief shall be allowed under this section unless the claimant proves that no other individual is entitled to relief in respect of the female relative under the provisions of this Chapter, or, if any other individual is so entitled, that the other individual has relinquished his claim thereto, and
  - (ii) no relief shall be allowed under this section where the female relative is a married woman living with her husband, and the husband has claimed and been allowed the higher relief under section 8(1) above, and
  - (iii) not more than one deduction of tax shall be allowed under this section to any claimant for any year.
- (2) This section shall apply to a claimant being a widow as it applies to a claimant being a widower, with the substitution of " her deceased husband " for " his deceased wife ".

### **13 Relative taking charge of unmarried person's young brother or sister**

If the claimant proves—

- (a) that he is unmarried, and that he has living with him either his mother, being a widow or a person living apart from her husband, or some other female relative, for the purpose of having the charge and care of any brother or sister of his, being a child in respect of whom relief is allowed under this Chapter, and that he maintains the mother or other relative at his own expense, and
- (b) that neither he nor any other individual is entitled to relief in respect of the same person under any of the other provisions of this Chapter, or, if any other individual is entitled to any such relief, that the other individual has relinquished his claim thereto,

he shall be entitled to a deduction from the amount of income tax with which he is chargeable equal to income tax at the standard rate on £75.

### **14 Additional relief for widows and others in respect of children**

(1) This section applies—

- (a) to widows, widowers and other persons who are not entitled for the year of assessment to the higher (married persons) relief under section 8(1) above, except that it does not apply to a woman who is not a widow unless throughout the year of assessment she was either in full-time employment or engaged full-time in some trade, profession or vocation or totally incapacitated by physical or mental infirmity, and
- (b) to any married man who is entitled for the year of assessment to the higher relief aforesaid but whose wife was throughout that year totally incapacitated by physical or mental infirmity.

(2) Subject to subsection (3) below, if the claimant, being a person to whom this section applies, proves in the case of a year of assessment—

- (a) that he is entitled to relief under section 10 above in respect of a child resident with him, and
- (b) that he is not entitled to any relief under section 13 above, and either that no other individual is entitled to such relief in respect of the charge and care of that child or that his claim thereto has been relinquished,

he shall be entitled to a deduction from the amount of income tax with which he is chargeable equal to income tax at the standard rate on £100.

(3) Where more than one individual is entitled to relief under this section in connection with the same child, the £100 mentioned in subsection (2) above shall be apportioned between them in such proportions as may be agreed between them, or, in default of agreement, in accordance with such apportionment as may be adopted in relation to that child under section 11 above.

### **15 Claims under ss. 12 to 14 for year of marriage**

A man who becomes married during a year of assessment may by notice in writing to the inspector elect that his marriage be disregarded for the purposes of any claim for that year under section 12, 13 or 14 above, and, in that case, the marriage shall also be disregarded for the purpose of any claim for that year under section 8 above.



## 16 Dependent relatives

- (1) If the claimant proves that he maintains at his own expense—
- (a) any relative of his or of his wife who is incapacitated by old age or infirmity from maintaining himself, or
  - (b) his or his wife's mother who, whether or not in capacitated, is either widowed, or living apart from her husband, or a single woman in consequence of dissolution or annulment of marriage,

being (whether falling under paragraph (a) or paragraph (b) above) a person whose total income does not exceed £320 a year, he shall be entitled in respect of each such person whom he so maintains to a deduction from the amount of income tax with which he is chargeable equal to income tax at the standard rate on £75:

Provided that, in the case of any person so maintained whose total income exceeds £245 a year, this subsection shall have effect with the substitution for the reference to £75 of a reference to £75 diminished by the amount of the excess.

- (2) Where the claimant under subsection (1) above is a woman—
- (a) the references in that subsection to the claimant's wife shall be construed as references to the claimant's husband, and
  - (b) unless she is a married woman living with her husband, for the reference in that subsection to £320 there shall be substituted a reference to £355, and for references to £75 references to £110.
- (3) Subject to subsection (4) below, where two or more persons jointly maintain any such person as is mentioned in subsection (1) above, the £75 mentioned in that subsection, or, as the case may be, the lesser amount mentioned in the proviso to that subsection, shall be apportioned between them in proportion to the amount or value of their respective contributions towards the maintenance of that person.

The apportionment under this subsection may be effected as the persons entitled to claim the relief agree, and, subject to any such agreement, subsections (4) and (5) of section 11 above shall apply to an apportionment under this subsection, and as if, in the said subsection (5), the reference to a claim under section 10 above were a reference to a claim under this section.

- (4) Where, without subsection (2)(b) above, the claimant's relief would fall to be reduced by any proportion under subsection (3) above, any increase in the claimant's relief attributable to the said subsection (2)(b) shall be reduced by the same proportion; and accordingly, subsection (3) above shall be read without reference to the modifications made by the said subsection (2)(b).
- (5) No person shall be entitled to less relief under the Income Tax Acts than he would be entitled to if no relief were available under subsection (1) above in respect of the maintenance of a person whose total income exceeds £50 a year, and if that subsection did not include a reference to the mother living apart from her husband or being a single woman in consequence of dissolution or annulment of marriage.

## 17 Claimant depending on services of a daughter

If the claimant, by reason of old age or infirmity, is compelled to depend upon the services of a daughter resident with and maintained by him, he shall be entitled to a deduction from the amount of income tax with which he is chargeable equal to income tax at the standard rate on £40.

## 18 Relief for blind persons

- (1) Subject to subsection (5) below, if the claimant proves—
- (a) that he is a married man who for the year of assessment has his wife living with him, and that one of them was, and the other was not, throughout the year a registered blind person, or
  - (b) that, not being such a married man, he was throughout the year a registered blind person,
- and also proves that the amounts of any tax-free disability payments receivable in the year by him, or, as the case may be, by his wife living with him, are such that seven-ninths of the aggregate thereof is less than £100, he shall be entitled to a deduction from the amount of income tax with which he is chargeable equal to income tax at the standard rate on an amount equal to £100 reduced by seven-ninths of the aggregate of any such payments so receivable.
- (2) Subject to subsection (5) below, if the claimant proves—
- (a) that he is a married man who for the year of assessment has his wife living with him, and
  - (b) that throughout the year both he and his wife were registered blind persons, and
  - (c) that the amounts of any tax-free disability payments receivable in the year (whether by him or his wife) are such that seven-ninths of the aggregate thereof is less than £200,
- he shall be entitled to a deduction from the amount of income tax with which he is chargeable equal to income tax at the standard rate on an amount equal to £200 reduced by seven-ninths of the aggregate of any such payments so receivable.
- (3) Where a person is a registered blind person during part only of the year of assessment, that person, or as the case may be that person's husband, shall be entitled to relief under subsection (1) or (2) above in any case in which he would have been entitled to such relief if that person had been such a registered blind person throughout the year, but the amount of relief granted by virtue of this subsection shall be calculated in accordance with subsection (4) below.
- (4) For the purpose of calculating the amount of relief for the purposes of subsection (3) above, this section shall have effect as if—
- (a) for references in subsections (1) and (2) above to the amounts of any tax-free disability payments receivable by a person in the year of assessment there were substituted references to the amounts of any such payments receivable by him in the part of the year during which he was a registered blind person, and
  - (b) for references in subsection (1) above to £100 there were substituted references to that proportion of £100 which the period in the year of assessment during which the person in question was a registered blind person bears to one year, and
  - (c) for references in subsection (2) above to £200 there were substituted references to that proportion of £200 which the sum of the periods in the year of assessment during which each of the persons in question was such a registered blind person bears to two years.
- (5) Unless a claimant who is entitled to relief for the year of assessment under section 17 above in respect of the services of a daughter relinquishes his claim to that relief, he shall not be allowed relief under this section for that year.

(6) In this section—

" registered blind person " means a person registered as a blind person in a register compiled under section 29 of the National Assistance Act 1948 or under any corresponding enactment for the time being in force in Northern Ireland;

" tax-free disability payment " means a periodical payment receivable by a person on account of his blindness and not falling to be treated as income for the purposes of income tax.

## **19 Premiums under post-1916 life policies etc.**

(1) Subject to the provisions of this section and of section 21 below, and subject also to section 227(11) of this Act (retirement annuity premiums), if the claimant has paid any such premium as is specified in subsection (2) below, he shall be entitled to a deduction from the amount of income tax with which he is chargeable equal to income tax at two-fifths of the standard rate on the amount of the premium:

Provided that if, in any year of assessment, the total premiums in respect of which relief falls to be granted under this section do not exceed £25, the relief under this section shall be a deduction equal to income tax at the standard rate on £10 or on the full amount of the premiums, whichever is the less.

(2) The premiums referred to in subsection (1) above are any premiums paid by the claimant under a policy of insurance or contract for a deferred annuity where—

(a) the insurance or contract was made after 22nd June 1916—

(i) with any insurance company legally established within Her Majesty's dominions, any other country mentioned in section 1(3) of the British Nationality Act 1948 or the Republic of Ireland, or lawfully carrying on business in the United Kingdom, or

(ii) with underwriters, being members of Lloyd's or of any other association of underwriters approved by the Board of Trade or the Ministry of Commerce for Northern Ireland, who comply with the requirements set forth in Schedule 1 to the Insurance Companies Act 1958 or, as the case may be, Schedule 1 to the Insurance Companies Act (Northern Ireland) 1968, or

(iii) with a registered friendly society, or

(iv) in the case of a deferred annuity, with the National Debt Commissioners, and

(b) the insurance or, as the case may be, the deferred annuity is on the life of the claimant or on the life of his wife, and

(c) the insurance or contract was made by him.

(3) No relief under this section shall—

(a) be given except in respect of premiums payable under policies for securing a capital sum on death, whether in conjunction with any other benefit or not, or

(b) be given in respect of premiums payable during the period of deferment in respect of a policy of deferred assurance:

Provided that this subsection shall not affect premiums payable—

(i) under policies or contracts made in connection with any superannuation or bona fide pension scheme for the benefit of the employees of any employer, or

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

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of persons engaged in any particular trade, profession, vocation or business, or for the benefit of the wife or widow of any such employee or person or of his children or other dependants, or

- (ii) under policies taken out by teachers in the schools known in the year 1918 as secondary schools, pending the establishment of a superannuation or pension scheme for those teachers.

- (4) Relief shall not be granted under this section in respect of premiums payable under any policy of life insurance issued in respect of an insurance made after 19th March 1968 unless the policy is a qualifying policy within the meaning of Part I of Schedule 1 to this Act:

Provided that this subsection shall not apply—

- (a) to any policy of life insurance having as its sole object the provision on an individual's death or disability of a sum substantially the same as any amount then outstanding under a mortgage of his residence, or of any premises occupied by him for the purposes of a business, being a mortgage the principal amount secured by which is repayable by instalments payable annually or at shorter regular intervals, or
- (b) to any policy of life insurance issued in connection with a sponsored superannuation scheme as defined in section 226(11) of this Act, if one-half at least of the cost of the scheme is borne by the person or persons under whom the relevant offices or employments are held.

In the application of the above proviso to Scotland, for any reference to a mortgage there shall be substituted a reference to a heritable security within the meaning of the Conveyancing (Scotland) Act 1924 (but including a security constituted by *ex facie* absolute disposition or assignation).

- (5) A policy of life insurance issued in respect of an insurance made on or before 19th March 1968 shall be treated for the purposes of subsection (4) above as issued in respect of one made after that date if varied after that date so as to increase the benefits secured, or to extend the term of the insurance:

Provided that a variation effected before the end of the year 1968 shall be disregarded for the purposes of this subsection if its only effect was to bring into conformity with paragraph 2 of Schedule 1 to this Act (qualifying conditions for endowment policies) a policy previously conforming therewith except as respects the amount guaranteed on death, and no increase was made in the premiums payable under the policy.

- (6) The provisions of Part II of Schedule 1 to this Act shall have effect with respect to the certification of policies which are qualifying policies within the meaning of Part I of that Schedule.
- (7) Where a premium is paid by a wife out of her separate income in respect of an insurance on her own life or the life of her husband, or a contract for any deferred annuity on her own life or the life of her husband, the same relief shall be given as if the premium were a premium paid by her husband for an insurance on his own life, or for a contract for a deferred annuity on his own life, and this section shall apply accordingly.
- (8) Any reference in any provision of the Income Tax Acts (and, in particular, in section 22 below) to an amount income tax on which falls to be deducted under this or the preceding sections of this Chapter shall, in relation to a premium on which, by virtue of

this section, a deduction falls to be made at two-fifths of the standard rate, be construed as a reference to two-fifths of the amount of that premium.

## **20 Premiums under pre-1916 life policies etc., and certain other payments**

- (1) Subject to the provisions of this section and of section 21 below, and subject also to sections 210, 219(3) and 227(11) of this Act (retirement annuity premiums, and contributions under Superannuation Acts, National Insurance Acts etc.), if the claimant—
- (a) has paid any such premium as is specified in subsection (2) below, or
  - (b) is under any Act of Parliament, or under the terms or conditions of his employment, liable to the payment of any sum, or to the deduction from his salary or stipend of any sum, for the purpose of securing, a deferred annuity to his widow or provision for his children after his death,
- he shall be entitled to a deduction from the amount of income tax with which he is chargeable equal to income tax at the appropriate rate on the amount of the premium paid by him or on the amount of the sum paid by him or deducted from his salary or stipend.
- (2) The premiums referred to in subsection (1)(a) above are any premiums paid by a person under a policy of insurance or contract for a deferred annuity where—
- (a) the insurance or contract was made on or before 22nd June 1916—
    - (i) with any insurance company legally established within the Crown's dominions, or lawfully carrying on business in the United Kingdom, or
    - (ii) with a registered friendly society, or
    - (iii) in the case of a deferred annuity, with the National Debt Commissioners, and
  - (b) the insurance or, as the case may be, the deferred annuity is on the life of that person or on the life of his wife, and
  - (c) the insurance or contract was made by him.
- (3) For the purposes of this section, " the appropriate rate " means—
- (a) where the total income of the claimant does not exceed £1,000, half the standard rate of income tax,
  - (b) where the total income of the claimant exceeds £1,000 but does not exceed £2,000, three-fourths of the standard rate of income tax,
  - (c) where the total income of the claimant exceeds £2,000, the standard rate of income tax:

Provided that, in relation to the premiums referred to in subsection (1)(a) above, this subsection shall, as respects any year for which the standard rate exceeds 35 per cent. have effect as if the standard rate were 35 per cent.

- (4) No relief under subsection (1) above shall be given in respect of the amount, if any, by which the premiums or other sums in respect of which relief is claimed exceed the claimant's taxable income, that is to say, his total income less any amount on which he is entitled to relief by virtue of sections 6(1), 8, 9(1), 9(2) or 10 to 19 above.
- (5) Where the income tax ultimately payable by any person after deducting the relief under this section is greater than the amount of income tax at the standard rate which would be payable if the total income of that person exceeded £1,000 or £2,000, as the

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case may be, the relief under this section shall be increased by a sum representing the amount by which income tax at one-fourth of the standard rate on the amount of the premiums or payment in respect of which the relief is given exceeds the amount of the income tax at the standard rate on the amount by which the total income falls short of £1,000 or £2,000, as the case may be:

Provided that, in relation to the premiums referred to in subsection (1)(a) above, this subsection shall, as respects a year for which the standard rate of income tax exceeds 35 per cent., have effect as if the two last references therein to the standard rate were references to a rate of 35 per cent.

- (6) Where a premium is paid by a wife out of her separate income in respect of an insurance on her own life or the life of her husband, or a contract for any deferred annuity on her own life or the life of her husband, the same relief shall be given as if the premium were a premium paid by her husband for an insurance on his own life, or for a contract for a deferred annuity on his own life, and this section shall apply accordingly.

## **21 Limits on relief under ss. 19 and 20**

- (1) The aggregate of the premiums or other sums in respect of which relief is given to any person under sections 19 and 20 above shall not exceed one-sixth of that person's total income.
- (2) No relief under either of the said sections in respect of a premium or other payment payable on a policy for securing a capital sum on death (whether in conjunction with any other benefit or not) shall exceed the amount of the income tax calculated at the appropriate rate on an amount equal to 7 per cent. of the actual capital sum assured, and, in calculating any such capital sum, no account shall be taken of any sum payable on the happening of any other contingency, or of the value of any premiums agreed to be returned, or of any benefit by way of bonus or otherwise which is to be or may be received either before or after death, either by the person paying the premium or by any other person, and which is not the sum actually assured.
- (3) The aggregate of the relief given under the said sections in respect of premiums or sums payable for securing any benefits other than those mentioned in subsection (2) above shall not exceed the amount of the income tax calculated at the appropriate rate on £100.
- (4) In subsections (2) and (3) above, " the appropriate rate "—
- (a) in relation to premiums to which the said section 19 applies, means two-fifths of the standard rate, and
  - (b) in relation to other premiums or payments, has the same meaning as in the said section 20,
- and the said subsections (2) and (3) shall not apply to premiums falling within the proviso to subsection (1) of the said section 19.
- (5) War insurance premiums shall not be taken into account in calculating the limits of one-sixth of total income or of 7 per cent. or of £100 mentioned in this section.

In this subsection " war insurance premiums " means any additional premium or other sum paid in order to extend an existing life insurance policy to risks arising from war or war service abroad, and any part of any premium or other sum paid in respect of

a life insurance policy covering those risks, or either of them, which appears to the inspector to be attributable to those risks, or either of them.

## 22 Reduced rate relief

- (1) Subject to the provisions of this section, the claimant shall be entitled to have the amount of the income tax which remains chargeable on him in respect of his total income after making any deductions to which he is entitled under sections 6(1), 8, 9(1), 9(2) and 10 to 19 above reduced by a further deduction of the amount shown in the following Table, in which "the relevant amount" means the amount of the total income less the aggregate of the amounts income tax on which falls to be deducted under the provisions aforesaid.

TABLE

Where the relevant amount does not exceed £260	a deduction equal to 11-25 per cent, of the relevant amount;
exceeds £260	the same deduction as if the relevant amount were £260.

- (2) Where the income of an individual includes both earned income of his wife and other income available for relief under subsection (1) above, the further deduction under the said subsection (1) shall (where necessary) be increased so as to equal the sum of—
- the deduction which would be made if the relevant amount referred to in the above Table were equal to the amount of the earned income of the wife available for relief under the said subsection (1), and
  - the deduction which would be made if the relevant amount so referred to were equal to the other income available for relief under the said subsection (1).
- (3) References in this section to the earned income of the wife available for relief under subsection (1) above shall be construed as references to her earned income less—
- so much of any amount which falls to be deducted under any of the provisions of the Income Tax Acts as could not have been deducted but for the existence of the earned income of the wife, and
  - so much of the amounts income tax on which falls to be deducted under the provisions mentioned in the said subsection (1) as could not have been taken into account but for the existence of the earned income of the wife.
- (4) References in this section to the income available for relief under subsection (1) above, other than earned income of the wife, shall be construed as references to the man's total income other than earned income of the wife, less the total of the amounts income tax on which falls to be deducted under the provisions mentioned in the said subsection (1), other than so much of those amounts as falls to be deducted from the earned income of the wife in ascertaining the earned income of the wife available for relief under that subsection.
- (5) For the purposes of this section—
- any earned income of an individual's wife arising in respect of any pension, superannuation or other allowance, deferred pay or compensation for loss of office, given in respect of his past services in any office or employment shall be deemed not to be earned income of his wife, and

- (b) no payment on account of an allowance under the Family Allowances Act 1965 or the Family Allowances Act (Northern Ireland) 1966, and, except in the case of a retirement pension payable to the wife by virtue of her own insurance, no payment of benefit under the National Insurance Act 1965 or the National Insurance Act (Northern Ireland) 1966, shall be treated as earned income of an individual's wife.

*Supplemental*

**23 Meaning of " relative "**

In this Chapter " relative " includes any person of whom the person claiming a relief had the custody and whom he maintained at his own expense while that person was under the age of sixteen years.

**24 Reduction in reliefs on account of family allowances**

- (1) Where for any year of assessment an individual is assessable to income tax in respect of payments on account of an allowance or allowances under the Family Allowances Act 1965 or the Family Allowances Act (Northern Ireland) 1966, the total deductions from tax to which, apart from this section, the individual (or, if the individual is a wife assessable in respect of the payments by virtue of an application for separate assessment under section 38(1) below, she and her husband together) would be entitled for the year under sections 8 and 10 to 19 above shall be reduced, for each allowance if more than one, by an amount equal to income tax at the standard rate on £42 or, if the payments in question are payments for a part only of the year, by a proportionate part of that amount.
- (2) The allowances referred to in subsection (1) above shall be treated as including any allowance payable to an individual in the service of the Crown in lieu of an allowance under either of the enactments there specified.
- (3) The said subsection (1) shall not apply in the case of any payments if the individual assessable in respect thereof is entitled in the year—
  - (a) to a widow's allowance, widowed mother's allowance, retirement pension or child's special allowance under the National Insurance Act 1965 or the National Insurance Act (Northern Ireland) 1966, or
  - (b) to an allowance under section 21 of the National Insurance (Industrial Injuries) Act 1965 or section 21 of the National Insurance (Industrial Injuries) Act (Northern Ireland) 1966 (allowances in respect of children of deceased), or
  - (c) to an allowance granted by the Secretary of State for Social Services under a Royal Warrant, Order in Council or order administered by him to widows of members of the armed forces.
- (4) The said subsection (1) shall not affect the construction of any reference in the Income Tax Acts to the deduction allowable under any particular provision of those referred to in that subsection.

**25 No relief to be given in respect of charges on income**

A claimant shall not be entitled to relief under sections 5 to 19 and 22 of this Chapter in respect of any income the income tax on which he is entitled to charge against any



other person, or to deduct, retain or satisfy out of any payment which he is liable to make to any other person.

## 26 Partners

The following persons having joint interests, that is to say—

- (a) coparceners, joint tenants, or tenants in common of the profits of any property, and
- (b) joint tenants, or tenants of land or tenements in partnership, being in the actual and joint occupation thereof in partnership, who are entitled to the profits thereof in shares, and
- (c) partners carrying on a trade, profession or vocation together who are entitled to the profits thereof in shares,

may claim any relief under sections 5 to 19 and 22 of this Chapter according to their respective shares and interests, and any such claims which are proved may be dealt with in the same manner as in the case of several interests:

Provided that the income of a partner from a partnership carrying on any trade, profession or vocation shall be deemed to be the share to which he is entitled during the year to which the claim relates in the partnership profits, such profits being estimated according to the provisions of the Income Tax Acts.

## 27 Non-residents

- (1) Subject to the provisions of this section, no relief under this Chapter shall be given in the case of any individual who is not resident in the United Kingdom.
- (2) Subsection (1) above shall not apply in the case of any individual who satisfies the Board that he or she—
  - (a) is a British subject or a citizen of the Republic of Ireland, or
  - (b) is a person who is or has been employed in the service of the Crown, or who is employed in the service of any missionary society or in the service of any territory under Her Majesty's protection, or
  - (c) is resident in the Isle of Man or the Channel Islands, or
  - (d) has previously resided within the United Kingdom, and is resident abroad for the sake of his or her health, or the health of a member of his or her family resident with him or her, or
  - (e) is a widow whose late husband was in the service of the Crown:

Provided that no such relief as aforesaid shall be given so as to reduce the amount of the income tax other than surtax payable by that individual below the amount which results from applying the fraction

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

to the amount which would be payable by him by way of income tax other than surtax if the tax were chargeable on his total income from all sources (including income which is not subject to income tax charged in the United Kingdom), where—

A is the amount of his income subject to income tax charged in the United Kingdom, and

B is the amount of his total income.

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- (3) For the purposes of the proviso to subsection (2) above as it applies to an individual whose income includes income eligible for double taxation relief—
- (a) in computing the amount of the income tax payable by the individual, the tax chargeable in respect of the income eligible for double taxation relief shall be disregarded,
  - (b) in computing the amount of his income subject to income tax charged in the United Kingdom, the income eligible for double taxation relief shall be disregarded, and
  - (c) in computing his total income from all sources, including income which is not subject to income tax charged in the United Kingdom, income eligible for double taxation relief shall be included, and the income tax which would be chargeable on that total income shall be computed without regard to the double taxation relief available in respect of the income eligible for double taxation relief,

and accordingly, where this subsection applies, the amount of the tax chargeable in respect of the income eligible for double taxation relief shall not be affected by subsection (2) above:

Provided that this subsection shall not operate so as to make the tax payable by an individual for a year of assessment higher than it would have been if the double taxation relief had not been available.

- (4) In subsection (3) above " income eligible for double taxation relief" means any dividends, interest, royalties or other profits which are chargeable to income tax but in respect of which relief (other than credit) is available under an Order in Council under section 497 of this Act (double taxation agreements), or under section 31 of the Finance Act 1966 (transitory provisions for company dividends paid to non-residents), so as to limit the rate of income tax so chargeable (but not so as to confer an exemption and make it income which is not subject to income tax charged in the United Kingdom).
- (5) Any claim which an individual is entitled to make by virtue of subsection (2) above shall be made to the Board.

## CHAPTER III

### SURTAX

#### *General reliefs*

## 28 Earned income and other personal reliefs

- (1) Subject to subsection (2) below, for the purpose of charging surtax for any year of assessment there shall be deducted from an individual's total income—
- (a) the amount income tax on which at the standard rate for that year is equal to the deduction which he is entitled to be allowed for that year under section 9(1) above (earned income relief), and
  - (b) where a deduction falls to be made under paragraph (a) above and the earned income of the individual in question, reduced by the amount of that deduction,

exceeds £2,000, whichever is the less of the following amounts, that is to say, the amount of the excess and £2,000, and

- (c) the amount income tax on which at the standard rate for the year is equal to the deductions which he is entitled to be allowed for that year from income tax other than surtax under sections 8(1), 10 and 12 to 18 above, after subtracting from those deductions the amount of the deduction which a single person may be allowed for that year under the said section 8(1).
- (2) Where an individual not resident in the United Kingdom is entitled to a deduction for any year under subsection (1) above, the deduction shall be reduced in the proportion in which the proviso to section 27(2) above reduces any relief given him for that year under Chapter II of this Part of this Act.

## **29 Relief on death in year for which rates increased**

The amount of surtax payable in respect of the total income of an individual for the year of assessment in which he dies shall not exceed the amount of surtax which would have been payable if income tax had been chargeable for that year at the same rates as for the year preceding that year, and all such adjustments and repayments of tax shall be made as may be required in order to give effect to the provisions of this section.

### *Special provisions as to accrual of income*

## **30 Provisions for preventing avoidance of surtax by sales cum dividend, etc.**

- (1) Any individual upon whom notice is served by the Board requiring him to furnish a statement of and particulars relating to any assets in which, at any time during the period specified in the notice, he has had any beneficial interest, and in respect of which, within such period, either no income was received by him or the income received by him was less than the sum to which the income would have amounted if the income from such assets had accrued from day to day and been apportioned accordingly, shall, whether an assessment to surtax in respect of his total income has or has not been made for the relevant year or years of assessment, furnish such a statement and such particulars in the form and within the time (not being less than twenty-eight days) required by the notice.
- (2) The Board may serve further notices whenever they consider it necessary for the purposes of this section until complete particulars have been furnished to their satisfaction.
- (3) If it appears to the Board by reference to all the circumstances in relation to the assets of any such individual (including circumstances with respect to sales, purchases, dealings, contracts, arrangements, transfers or any other transactions relating to such assets) that the individual has thereby avoided, or would avoid, more than 10 per cent. of the amount of the surtax for any year which would have been payable in his case if the income from those assets had been deemed to accrue from day to day and had been apportioned accordingly and the income so deemed to have been apportioned to him had been treated as part of his total income for the purposes of surtax, then those assets shall be deemed to be assets to which subsection (4) below applies.
- (4) For the purposes of assessment to surtax in the case of any such individual, the income from any assets to which this subsection applies shall be deemed to accrue from day

to day and, in the case of the sale or transfer of any such assets by or to him, shall be deemed to have been received as and when it is deemed to have accrued:

Provided that an individual shall not be liable to be assessed to surtax under this section in respect of any such income if he proves to the satisfaction of the Board that the avoidance of surtax was exceptional and not systematic, and that there was not in his case in any of the three next preceding years any such avoidance of surtax as is described in the provisions of subsection (3) above.

- (5) If any individual fails to furnish any statement or particulars required under this section, or if the Board are not satisfied with any statement or particulars furnished under this section, they may make an estimate of the amount of the income which, under the preceding provisions of this section, is to be deemed to form part of his total income for the purposes of surtax.
- (6) For the purposes of this section " assets " means—
- (a) stocks or securities entitled to interest or dividend at a fixed rate only, not being stocks or securities the interest or dividend on which is dependent on the earnings of a company, and
  - (b) any other stocks or securities and any shares, if transactions in relation thereto have been effected by the individual otherwise than through a stock exchange in the United Kingdom and by a transfer on which ad valorem duty has been paid under the heading " Conveyance or Transfer on Sale " in Schedule 1 to the Stamp Act 1891.

### **31 Relief where income attributable to a period exceeding a year is received in a year**

If any individual, on a claim made to the Board under this section, proves to the satisfaction of the Board—

- (a) that, as respects any assets, in consequence of the operation of the provisions of the Income Tax Acts which require that for the purposes of surtax any income which is chargeable with income tax by way of deduction shall be deemed to be income of the year in which it is receivable, the income from those assets, as estimated for the purposes of surtax for any year of assessment, represents more than the income which would be attributable to a period of one full year if the income were deemed to have accrued from day to day, and
- (b) that, in consequence, the amount of surtax payable by him for that year exceeds by more than 5 per cent. the amount of the surtax which would have been payable by him for that year if the amount of his income from those assets had not exceeded the amount which would be attributable to a period of one full year if the income from those assets were deemed to have accrued from day to day,

the Board shall charge him to surtax, or adjust his liability to surtax, for that year and any succeeding year so as to give such relief as may be just, having regard to all the circumstances and, in particular, to the amount of any liability or additional liability to surtax which would have arisen for any preceding year or years if—

- (i) the income from such assets as aforesaid were deemed to have accrued from day to day and to have been apportioned accordingly, and
- (ii) the income so deemed to have been apportioned to him had been treated as part of his total income for the purposes of surtax.

### **32 Relief in case of purchases cum dividend**

If any individual, on a claim made to the Board under this section, proves to the satisfaction of the Board that, in consequence of the sale or transfer to him of any assets, the amount of surtax payable by him for any year of assessment exceeds by more than 10 per cent. the amount of the surtax which would have been payable by him for that year if the income from those assets and from any assets sold or transferred by him were deemed to have accrued from day to day, then, for the purposes of surtax in the case of that individual for that year, the income from all such assets as aforesaid shall be deemed to have accrued from day to day and to have been received by him as and when it is deemed to have accrued.

### **33 Supplemental**

- (1) Any income arising in respect of any assets which, for any of the purposes of sections 30 to 32 above, is deemed to have accrued from day to day, or which is to be computed as if it were income that accrued from day to day, shall—
  - (a) if payable in respect of any stated period, be deemed to have accrued from day to day during that period, and
  - (b) if not payable in respect of any stated period, be deemed to have accrued from day to day during the period of twelve months next preceding the date on which that income was declared payable, or during the period between the last previous declaration of a dividend (not being a dividend expressed to be an interim dividend in respect of a stated period), payment of interest, or other yield or produce of such asset and the date aforesaid, whichever period is the less.
- (2) The jurisdiction of the Special Commissioners on any appeal shall include jurisdiction to review any relevant decision taken by the Board in the exercise of their functions under the said sections 30 to 32.

#### *Other special provisions*

### **34 Surtax to be charged on consideration for certain restrictive covenants etc.**

- (1) Where—
  - (a) an individual who holds, has held, or is about to hold, an office or employment gives in connection with his holding thereof an undertaking (whether absolute or qualified, and whether legally valid or not) the tenor or effect of which is to restrict him as to his conduct or activities, and
  - (b) in respect of the giving of that undertaking by him, or of the total or partial fulfilment of that undertaking by him, any sum is paid either to him or to any other person, and
  - (c) apart from this section, the sum paid would neither fall to be treated as income of any person for the purposes of income tax for any year of assessment nor fall to be taken into account as a receipt in computing, for the purposes of income tax for any year of assessment, the amount of any income of, or loss incurred by, any person,

the same results shall follow in relation to surtax for the year of assessment in which the said sum is paid as would have followed if the said sum had been paid to the said individual (and not to any other person) as and for the net amount of an annual payment to which the said individual was entitled, being an annual payment chargeable

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to income tax from the gross amount of which income tax at the standard rate for that year had been duly deducted under section 52 or 53 of this Act:

Provided that, where the individual has died before the payment of the said sum, so much of the preceding provisions of this subsection as relates to the results which are to follow from the matters specified in paragraphs (a) to (c) thereof shall have effect as if the said sum had been paid immediately before the death.

- (2) Where valuable consideration otherwise than in the form of money is given in respect of the giving of, or of the total or partial fulfilment of, any undertaking, subsection (1) above shall apply as if a sum had instead been paid equal to the value of that consideration.
- (3) Subsections (1) and (2) above shall not apply to any sum paid or consideration given if either—
  - (a) the undertaking in question was given on or before 6th April 1948, or
  - (b) the sum or consideration is or was paid or given at or after the time of the retirement of the individual in question from the service of the person under whom the office or employment in question was held, and is or was so paid or given in pursuance of a provision in that behalf which expressly provides for the payment or giving thereof at or after that time and is embodied in a contract made in writing on or before 18th April 1950, or reduced to writing on or before that date, or
  - (c) the sum or consideration is or was paid or given in pursuance of an express provision in that behalf embodied in a contract made in writing on or before the said 18th April, or reduced to writing on or before that date, being a contract the main purpose of which was to provide for the transfer of a trade or part of a trade, or for the transfer of the controlling interest in any body corporate.

For the purposes of this subsection, a director of a company shall be deemed to be in the service of that company and to hold his office as such under that company.

- (4) Where any sum is paid or valuable consideration given to any person in any year of assessment in respect of the giving of, or of the total or partial fulfilment of, an undertaking given after 6th April 1948 and satisfying the conditions specified in subsection (1)(a) above (not being a sum from which income tax is duly deducted under any provision of the Income Tax Acts), it shall be the duty of the person paying over the sum or giving the consideration to deliver particulars thereof in writing to the inspector not later than one month after the end of that year, identifying the recipient of the payment or consideration, the undertaking in connection with which it was made or given and the individual who gave that undertaking.
- (5) In this section " office or employment" means any office or employment whatsoever such that the emoluments thereof, if any, are or would be chargeable to income tax under Case I or II of Schedule E ; and references in this section to the giving of valuable consideration do not include references to the mere assumption of an obligation to make over or provide valuable property, rights or advantages, but do include references to the doing of anything in or towards the discharge of such an obligation.

### **35 Expenses of Crown servants abroad**

For the purpose of charging surtax, there shall be deducted from the total income of an individual in the service of the Crown abroad any such sum as the Minister for the

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Civil Service may allow for expenses which, in the Minister's opinion, are necessarily incidental to the discharge of the functions of the individual's office and for which an allowance has not already been made.

### **36 Recovery of surtax due from beneficiary under discretionary trust**

- (1) The provisions of this section shall have effect in relation to surtax due from any person (in this section referred to as "the beneficiary") to whom, or for whose benefit, any income or any capital may in the discretion of some other person be paid or applied under a trust.
- (2) If any surtax charged in respect of the income of the beneficiary is not paid before the expiry of six months from the date when it became due and payable, the Board may at any time thereafter, so long as the said surtax remains unpaid, cause to be served on the trustees of the trust a notice in writing that the said surtax remains unpaid.
- (3) Where such a notice as aforesaid is served in accordance with the provisions of this section on the trustees of the trust, it shall be the duty of the trustees, as soon as may be, and if necessary from time to time, to pay to the Board in or towards satisfaction of the said surtax from time to time remaining unpaid any income or capital which, by virtue of any exercise of the discretion under the trust, the beneficiary may become entitled to receive or to have applied for his benefit.
- (4) Any payments made out of income by trustees on account of surtax in respect of which a notice under this section has been served shall be deemed for all the purposes of the Income Tax Acts to represent income paid to the beneficiary.
- (5) Any sum which the trustees are liable to pay by virtue of the provisions of this section shall be recoverable from them as a debt due to the Crown.
- (6) Where there are two or more trustees under the trust, a notice under this section shall be deemed to have been validly served upon the trustees if served upon any one of them, but nothing in this section shall render a trustee personally liable for anything done by him in good faith and in ignorance of the fact that such a notice has been served.

## **CHAPTER IV**

### **AGGREGATION OF INCOME—HUSBAND AND WIFE**

#### **37 General rule for aggregation of wife's income**

- (1) Subject to the provisions of this Chapter, a woman's income chargeable to income tax shall, so far as it is income for a year of assessment or part of a year of assessment during which she is a married woman living with her husband, be deemed for income tax purposes to be his income and not to be her income:

Provided that the question whether there is any income of hers chargeable to income tax for any year of assessment and, if so, what is to be taken to be the amount thereof for income tax purposes shall not be affected by the provisions of this subsection.

- (2) Any tax falling to be assessed in respect of any income which, under subsection (1) above, is to be deemed to be the income of a woman's husband shall, instead of being assessed on her, or on her trustee, guardian, curator, receiver or committee, or on her

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executors or administrators, be assessable on him or, in the appropriate cases, on his trustee, guardian, curator, receiver or committee, or on his executors or administrators:

Provided that nothing in this subsection shall affect the operation of section 152 of this Act (assessment of partnership income).

- (3) The personal reliefs allowed in the case of a man for any year of assessment shall be so allowed that an amount not less than the total of the following—
- (a) any deduction falling to be made under section 8(2) of this Act (special relief where a man's income includes earned income of his wife), and
  - (b) so much of any deduction falling to be made under section 9(1) of this Act (earned income relief) as could not have been made but for the existence of earned income of his wife, and
  - (c) any deduction falling to be made by virtue of section 22(2) of this Act (increase in reduced rate relief in certain cases where a man's income includes earned income of his wife),
- goes to reduce the income tax chargeable on the earned income of his wife.
- (4) References in this section to a woman's income include references to any sum which, apart from the provisions of this section, would fall to be included in computing her total income, and this subsection has effect in relation to any such sum notwithstanding that some enactment (including, except so far as the contrary is expressly provided, an enactment passed after the passing of this Act) requires that that sum should not be treated as income of any person other than her.
- (5) In this section " personal relief " means any relief under Chapter II of this Part of this Act.

### **38 Options for separate assessment**

- (1) If, within six months before the 6th July in any year of assessment, a husband or a wife makes an application for the purpose in such manner and form as the Board may prescribe, income tax other than surtax for that year shall be assessed, charged and recovered on the income of the husband and on the income of the wife as if they were not married, and all the provisions of the Income Tax Acts with respect to the assessment, charge and recovery of income tax other than surtax shall, save as otherwise provided by those Acts, apply as if they were not married:

Provided that, in the case of persons married during the course of a year of assessment, an application under this subsection may be made as regards that year at any time before the 6th July in the following year.

- (2) If, before the 6th July in the year next following the year of assessment, a husband or a wife makes an application for the purpose in such manner and form as the Board may prescribe—
- (a) surtax for that year shall be assessed, charged and recovered on the income of the husband and on the the income of the wife as if they were not married, and all the provisions of the Income Tax Acts with respect to the assessment, charge and recovery of surtax shall apply as if they were not married, and
  - (b) the income of the husband and wife shall be treated as one in estimating total income for the purposes of surtax, and, subject to section 39(4) below, the amount of surtax payable in respect of the total income shall be divided between the husband and wife in proportion to the amounts of their respective



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incomes and the total amount payable shall not be less than it would have been if an application had not been made under this subsection.

- (3) Subject to subsection (4) below, an application duly made by a husband or wife under subsection (1) or (2) above shall have effect, not only as respects the year of assessment for which it is made, but also for any subsequent year of assessment.
- (4) A person who has made any such application for any year of assessment may give, for any subsequent year of assessment, a notice to withdraw that application; and where such a notice is given the application shall not have effect with respect to the year for which the notice is given or any subsequent year.
- (5) A notice of withdrawal under subsection (4) above shall be in such form, and be given in such manner, as may be prescribed by the Board, and shall not be valid unless it is given within the period allowed by law for making, for the year for which the notice is given, applications similar to that to which the notice relates.

### **39 Effect of separate assessment on personal reliefs (including those running for surtax)**

- (1) Where, by virtue of an application under section 38(1) above, income tax other than surtax for any year of assessment is to be assessable and chargeable on the incomes of a husband and wife as if they were not married, the total relief given to the husband and the wife by way of personal reliefs (meaning, in this subsection, the reliefs provided for by Chapter II of this Part of this Act) shall be the same as if the application had not had effect with respect to the year and, subject to the proviso to this subsection and to subsection (2) below, the reduction of tax flowing from the personal reliefs shall be allocated to the husband and the wife—
  - (a) so far as it flows from relief under section 9(1) in the said Chapter II (earned income relief), in proportion to the amounts of their respective earned incomes,
  - (b) so far as it flows from relief under section 6 or 9(2) (relief for small incomes, and old age relief), in proportion to the amounts of their respective total incomes,
  - (c) so far as it flows from relief under section 19 or 20 (relief for life insurance premiums and other payments), to the husband or the wife according as he or she made the payment giving rise to the relief,
  - (d) so far as it flows from relief in respect of a child under section 10(1)(b), or relief in respect of a dependent relative under section 16, or relief in respect of a daughter under section 17, to the husband or the wife according as he or she maintains the child, relative or daughter, and
  - (e) as to the balance, in proportion to the amounts of tax which would have been payable by them respectively if the only personal reliefs allowable had been the reliefs referred to in paragraphs (a) and (b) above:

Provided that, subject to subsection (2) below, the amount of reduction of tax allocated to the wife by virtue of paragraphs (a) to (e) above shall not be less than the minimum amount which, if no application under the said section 38(1) had had effect for that year, would under section 37(3) above have had to go to reduce the tax chargeable in respect of her earned income, and the amount of reduction of tax allocated to the husband shall be correspondingly reduced.

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- (2) Where the amount of reduction of tax allocated to the husband under subsection (1) above exceeds the tax (other than surtax) chargeable on the income of the husband for the year of assessment, the balance shall be applied to reduce the tax chargeable on the income of the wife for that year; and where the amount of reduction of tax allocated to the wife under that subsection exceeds the tax (other than surtax) chargeable on her income for the year of assessment, the balance shall be applied to reduce the tax chargeable on the income of the husband for that year.
- (3) Returns of the total incomes of the husband and the wife may be made for the purposes of subsections (1) and (2) above either by the husband or by the wife, but, if the Board are not satisfied with any such return, they may obtain a return from the wife or the husband, as the case may be.
- (4) Where for any year of assessment a husband and wife are separately assessed by virtue of an application under section 38(1) or 38(2) above—
  - (a) whether or not they are separately assessed to surtax, the total relief resulting from section 28 above (surtax reliefs) shall be the same as if there were no separate assessment, and
  - (b) if they are separately assessed to surtax, the relief resulting from paragraphs (a) and (b) of section 28(1) above (earned income) shall be allocated between them by apportioning the aggregate deduction under those paragraphs from total income in proportion to their respective earned incomes, and
  - (c) if they are separately assessed to surtax, the relief resulting from paragraph (c) of section 28(1) above shall be allocated between them as follows—
    - (i) the amount (if any) added to the deduction from their total income under that paragraph in respect of relief under section 10(1)(b), 16 or 17 of this Act shall be treated as reducing the income of the husband or the wife according to whether he or she maintains the child, relative or daughter in respect of whom that relief is given, and
    - (ii) subject to sub-paragraph (i) above, the said deduction shall be treated as reducing their respective incomes rateably, or, where relief is given under paragraph (a) or (b) of the said section 28(1), as reducing rateably those incomes as first reduced in accordance with paragraph (b) of this subsection, and
  - (d) in so far as any deduction to which paragraph (b) or (c) of this subsection applies cannot be applied for the benefit of the one for whose benefit it would be applicable under the paragraph in question, it shall be applied for the benefit of the other.

#### **40 Collection from wife of tax assessed on husband but attributable to her income**

- (1) Where—
  - (a) an assessment to income tax (hereafter in this section referred to as "the original assessment") is made on a man, or on a man's trustee, guardian, curator, receiver or committee, or on a man's executors or administrators, and
  - (b) the Board are of opinion that, if an application for separate assessment under section 38(1) or 38(2) of this Act had been in force with respect to the year for which the assessment is made, an assessment in respect of, or of part of, the same income would have fallen to be made on, or on the trustee, guardian, curator, receiver or committee of, or on the executors or administrators of, a

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woman who is the said man's wife, or was his wife in that year of assessment, and

- (c) the whole or part of the amount payable under the original assessment has remained unpaid at the expiration of twenty-eight days from the time when it became due,

the Board may serve on her, or, if she is dead, on her executors or administrators, or, if such an assessment as is referred to in paragraph (b) above could in the event therein referred to have been made on her trustee, guardian, curator, receiver or committee, on her or on her trustee, guardian, curator, receiver or committee, a notice—

- (i) giving particulars of the original assessment and of the amount remaining unpaid thereunder, and
- (ii) giving particulars, to the best of their judgment, of the assessment which would have fallen to be made as aforesaid,

and requiring the person on whom the notice is served to pay the amount which would have been payable under the last-mentioned assessment if it conformed with those particulars, or the amount remaining unpaid under the original assessment, whichever is the less.

- (2) The same consequences as respects—

- (a) the imposition of a liability to pay, and the recovery of, the tax, with or without interest, and
- (b) priority for the tax in bankruptcy, or in the administration of the estate of a deceased person, and
- (c) appeals to the General or Special Commissioners, and the stating of cases for the opinion of the High Court, and
- (d) the ultimate incidence of the liability imposed,

shall follow on the service of a notice under subsection (1) above on a woman, or on her trustee, guardian, curator, receiver or committee, or on her executors or administrators, as would have followed on the making on her, or on her trustee, guardian, curator, receiver or committee, or on her executors or administrators, as the case may be, of such an assessment as is referred to in paragraph (b) of that subsection, being an assessment which—

- (i) was made on the day of the service of the notice, and
- (ii) charged the same amount of income tax as is required to be paid by the notice, and
- (iii) fell to be made, and was made, by the authority who made the original assessment, and
- (iv) was made by that authority to the best of their judgment,

and the provisions of the Income Tax Acts relating to the matters specified in paragraphs (a) to (d) of this subsection shall, with the necessary adaptations, have effect accordingly:

Provided that, where an appeal against the original assessment has been heard in whole or in part by the Special Commissioners, any appeal from the notice shall be an appeal to the Special Commissioners, and where an appeal against the original assessment has been heard in whole or in part by the General Commissioners for any division, any appeal from the notice shall be an appeal to the General Commissioners for that division.

- (3) Where a notice is given under subsection (1) above, income tax up to the amount required to be paid by the notice shall cease to be recoverable under the original

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assessment, and, where the tax charged by the original assessment carried interest under section 86 of the Taxes Management Act 1970, such adjustment shall be made of the amount payable under that section in relation to that assessment, and such repayment shall be made of any amounts previously paid under that section in relation thereto, as are necessary to secure that the total sum, if any, paid or payable under that section in relation to that assessment is the same as it would have been if the amount which ceases to be recoverable had never been charged.

- (4) Where the amount payable under a notice given under subsection (1) above is reduced as the result of an appeal, or of the stating of a case for the opinion of the High Court—
- (a) the Board shall, if in the light of that result they are satisfied that the original assessment was excessive, cause such relief to be given by way of repayment or otherwise as appears to them to be just, but
  - (b) subject to any relief so given, a sum equal to the reduction in the amount payable under the notice shall again become recoverable under the original assessment.
- (5) The Board and the inspector shall have the like powers of obtaining information with a view to the giving of, and otherwise in connection with, a notice under subsection (1) above as they would have had with a view to the making of, and otherwise in connection with, such an assessment as is referred to in paragraph (b) of that subsection if the necessary conditions had been fulfilled for the making of such an assessment.

#### **41 Right of husband to disclaim liability for tax on deceased wife's income**

- (1) Where a woman dies who, at any time before her death, was a married woman living with her husband, he or, if he is dead, his executors or administrators, may, not later than two months from the date of the grant of probate or letters of administration in respect of her estate or, with the consent of her executors or administrators, at any later date, serve on her executors or administrators and on the inspector a notice in writing declaring that, to the extent permitted by this section, he or they disclaims or disclaim responsibility for unpaid income tax in respect of all income of hers for any year of assessment or part of a year of assessment during which he was her husband and she was living with him:

Provided that a notice under this section shall not be deemed to be validly served on the inspector unless it specifies the names and addresses of the woman's executors or administrators.

- (2) Where such a notice has been duly served on a woman's executors or administrators and on the inspector—
- (a) it shall be the duty of the Board to exercise such powers as they may then or thereafter be entitled to exercise under section 40 above in connection with any assessment made on or before the date when the service of the notice is completed, being an assessment in respect of any of the income to which the notice relates, and
  - (b) the assessments (if any), whether to income tax other than surtax or to surtax, which may be made after that date shall in all respects, and in particular as respects the persons assessable and the tax payable, be the assessments which would have fallen to be made if—
    - (i) an application for separate assessment under section 38(1) or 38(2) above, as the case may be, had been in force in respect of the year of assessment in question, and

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- (ii) all assessments previously made had been made accordingly.
- (3) In the application of this section to Scotland, the reference to the date of the grant of probate or letters of administration shall be construed as a reference to the date of confirmation.

#### **42 Construction of references to married women living with their husbands, etc.**

- (1) A married woman shall be treated for income tax purposes as living with her husband unless—
  - (a) they are separated under an order of a court of competent jurisdiction, or by deed of separation, or
  - (b) they are in fact separated in such circumstances that the separation is likely to be permanent.
- (2) Where a married woman is living with her husband and either—
  - (a) one of them is, and one of them is not, resident in the United Kingdom for a year of assessment, or
  - (b) both of them are resident in the United Kingdom for a year of assessment, but one of them is, and one of them is not, absent from the United Kingdom throughout that year,

the same consequences shall follow for income tax purposes as would have followed if, throughout that year of assessment, they had been in fact separated in such circumstances that the separation was likely to be permanent:

Provided that, where this subsection applies and the net aggregate amount of income tax (including surtax) falling to be borne by the husband and the wife for the year is greater than it would have been but for the provisions of this subsection, the Board shall cause such relief to be given (by the reduction of such assessments on the husband or the wife or the repayment of such tax paid (by deduction or otherwise) by the husband or the wife as the Board may direct) as will reduce the said net aggregate amount by the amount of the excess.

### **CHAPTER V**

#### **AGGREGATION OF INCOME—PARENT AND CHILD**

#### **43 General rule for aggregation of investment etc. income of unmarried infants not regularly working**

- (1) Subject to the following provisions of this section, an infant's income, so far as it is income for a year of assessment or part of a year of assessment during which he or she is unmarried and not regularly working, shall, in the circumstances specified in section 44 below, be treated in accordance with that section as income of his or her parent or parents.

An infant is to be treated for the purposes of this subsection as working regularly if, and only if, he or she—

- (a) is engaged in a full-time occupation, not being one entered into during an interval not exceeding fifteen months between two periods of full-time education, and

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(b) intends to be regularly engaged in that or another such occupation, and in this provision " occupation " means any office, employment, trade, profession or vocation.

(2) Subsection (1) above does not apply to—

- (a) earned income, or
- (b) income derived from any sum, or from assets representing any sum, paid by way of, or in satisfaction of a claim for, damages in respect of personal injury to the infant (including any disease, and any impairment of his or her physical or mental condition) or paid in respect of any such personal injury by a body established for charitable purposes only, or by the Criminal Injuries Compensation Board or under any enactment of the Parliament of Northern Ireland providing for compensation in respect of criminal injuries, or
- (c) income consisting of payments made to a female infant by the putative father of a child of the infant and for the benefit, maintenance or education of that child,

but, subject to those exclusions and to subsection (3) below, applies to all such amounts as would fall to be included in computing the infant's total income apart therefrom, and so applies notwithstanding anything in any other enactment (including, except so far as the contrary is expressly provided, any enactment passed after this Act) requiring any amount not to be treated as income of anyone other than the infant.

- (3) Subsection (1) above shall not have effect in relation to an infant for any year of assessment for which his or her aggregate income, so far as it would fall within that subsection or within section 437(1) of this Act (settlements on children: treatment of income as settlor's) but for this exception and the corresponding exception in subsection (3) of the said section 437, does not exceed £5.
- (4) Income of an infant falling to be treated as income of a parent by virtue of the provisions of this Chapter shall be so treated for all income tax purposes, or for the purposes of income tax other than surtax, or for the purposes of surtax only, according to the purposes for which it would have constituted income of the infant but for those provisions.
- (5) Any tax falling to be assessed in respect of income which is to be treated by virtue of this Chapter as income of an infant's parent shall, instead of being assessed on the infant, or on the infant's trustee, guardian, curator, receiver or committee, or on the infant's executors or administrators, be assessable on the parent, or, in the appropriate cases, on the parent's trustee, guardian, curator, receiver or committee, or on the parent's executors or administrators.
- (6) This section shall be disregarded for the purposes of section 21 of the Finance Act 1965 (calculation of capital gains tax by reference to liability to income tax).

#### **44 Detailed rules**

- (1) Subject to the following provisions of this section, income to which section 43(1) above applies shall be treated as follows—
  - (a) so far as it is income for a year of assessment, or part of a year of assessment, during which both parents of the infant are alive and are married to and living with each other, as income for that year of the father,
  - (b) so far as it is income for a year or part during which both parents are alive, but are either not married to each other or not living with each other, as income for

that year of the father or, for any period during which the mother has actual custody of the infant, as income for that year of the mother, and

- (c) so far as it is income for a year or part during which one only of the parents is alive, as income for the year of that parent.
- (2) So far as any income to which the said section 43(1) applies is income for a year of assessment, or part of a year of assessment, of an infant who is illegitimate and has not been adopted, subsection (1) above shall not apply to the income, but it shall be treated instead as income for that year of the mother, or, for any period during which the father has actual custody of the infant, as income for that year of the father.
- (3) Subsection (1) above shall not apply to any income so far as it is income for a year of assessment, or part of a year of assessment, during which the infant was in law in the custody of a person or persons other than a parent, and was not in the actual custody of a parent.
- (4) Where, in the case of any income falling within subsection (1)(a) above, one of the infant's parents is, and one is not, resident for the year in the United Kingdom, the said subsection (1)(a) shall have effect in relation thereto as if, instead of specifying the infant's father, it specified the parent resident for the year in the United Kingdom if the infant is so resident, and the other parent if the infant is not so resident.
- (5) Nothing in this section shall have effect so as to treat income of an infant resident in the United Kingdom for any year of assessment as income of a parent not so resident for that year, or income of an infant not so resident for any year as income of a parent so resident for that year.

#### **45 Consequences of aggregation as respects certain payments involving tax reliefs**

- (1) Where income of an infant for any period is treated by virtue of this Chapter as income of a parent, and the infant has made payments of either of the following descriptions—
- (a) annual payments in respect of which a deduction is permitted in computing for that period total income for the purposes of income tax or surtax, or
- (b) payments in that period of interest in respect of which income tax at the standard rate is repayable,
- the said payments shall, to the extent of that income, be treated as having been made thereout by the parent instead of by the infant, and in the order in which they are described above.
- (2) Where income of an infant for any period is so treated, and the infant has during that period made payments qualifying for relief under section 19 of this Act (life policy and annuity contract premiums), the deductions from tax to which the infant would apart from this subsection be entitled by reason of those payments shall, to the extent that the payments could have been made out of the income so treated (or, where subsection (1) above has effect, out of that income reduced by the payments falling within that subsection), be made instead from the tax with which the parent is chargeable.

#### **46 Right of parent to recover tax on aggregated income**

- (1) Where income of an infant is treated by virtue of this Chapter as income of a parent for any year of assessment, the parent shall be entitled to recover from the infant an amount equal to that by which the tax chargeable on and payable by the parent for

the year exceeds that which would have been so chargeable and payable if the income had not been so treated:

Provided that, so far as the excess is attributable to trust income which has not been distributed, the right conferred by this subsection shall be exercisable against that income instead of against the infant.

- (2) A parent may require from the Board a certificate specifying in relation to any income the amount of tax which he or she is entitled to recover under subsection (1) above from trustees, and any such certificate shall be conclusive evidence of that amount.

#### **47 Accountability of parent for tax repayments attributable to aggregation**

Where income of an infant is treated as income of a parent by virtue of this Chapter, and, by reason thereof, the parent obtains in respect of any allowance or relief a repayment of tax in excess of that to which he or she would have been entitled if the income had not been so treated, the parent shall pay an amount equal to the excess to the infant, or, if the income arose under a trust, to the trustees.

#### **48 Supplemental**

- (1) For the purposes of this Chapter, an infant's parents are to be treated as living with each other unless—
- (a) they are separated under an order of a court of competent jurisdiction, or by deed of separation, or
  - (b) they are in fact separated in such circumstances that the separation is likely to be permanent.
- (2) Where a parent appeals against any assessment or decision on a claim on the grounds that an infant was not, or was, in his or her actual custody for any period, or was or was not for any period in the actual custody of the other parent, the other parent shall be entitled to appear and be heard on that question by the Commissioners hearing the appeal; and, as respects that question—
- (a) if the other parent does so appear, the determination of the Commissioners shall for the purposes of income tax be final and conclusive against him or her, save that he or she shall have the same right as the appellant to require the statement of a case for the opinion of the High Court, and
  - (b) the determination of the Commissioners shall also be final and conclusive against the other parent if he or she fails without reasonable cause to appear.
- (3) A trustee shall, on being so required in writing by a parent of any beneficiary under the trust, give to the parent details of the trust income arising to the beneficiary for any year of assessment during or for any part of which the beneficiary is an infant.
- (4) In this Chapter—
- " infant " means a person who has not attained the age of eighteen,
  - " parent " means, in relation to an infant who has been adopted, a parent by adoption (with references to the father and the mother of an infant construed accordingly), and references to adoption include references to adoption under the law of any territory outside the United Kingdom.



## CHAPTER VI

### RESIDENCE

#### **49 British subjects etc. temporarily abroad**

Every British subject or citizen of the Republic of Ireland shall, if his ordinary residence has been in the United Kingdom, be assessed and charged to income tax notwithstanding that at the time the assessment or charge is made he may have left the United Kingdom, if he has so left the United Kingdom for the purpose only of occasional residence abroad, and shall be charged as a person actually residing in the United Kingdom upon the whole amount of his profits or gains, whether they arise from property in the United Kingdom or elsewhere, or from any allowance, annuity or stipend, or from any trade, profession, employment or vocation in the United Kingdom or elsewhere.

#### **50 Residence of persons working abroad**

- (1) Where a person works full-time in one or more of the following, that is to say, a trade, profession, vocation, office or employment, and the condition mentioned in subsection (2) below is satisfied, the question whether he is resident in the United Kingdom shall be decided without regard to any place of abode maintained in the United Kingdom for his use.
- (2) The said condition is that no part of the trade, profession or vocation is carried on in the United Kingdom and all the duties of the office or employment are performed outside the United Kingdom.
- (3) Where an office or employment is in substance one of which the duties fall in the year of assessment to be performed outside the United Kingdom there shall be treated for the purposes of this section as so performed any duties performed in the United Kingdom the performance of which is merely incidental to the performance of the other duties outside the United Kingdom.

#### **51 Temporary residents in United Kingdom**

- (1) A person shall not be charged to income tax under Schedule D as a person residing in the United Kingdom, in respect of profits or gains received in respect of possessions or securities out of the United Kingdom, who is in the United Kingdom for some temporary purpose only and not with any view or intent of establishing his residence therein, and who has not actually resided in the United Kingdom at one time or several times for a period equal in the whole to six months in any year of assessment, but if any such person resides in the United Kingdom for the aforesaid period he shall be so chargeable for that year.
- (2) For the purposes of Cases I, II and III of Schedule E, a person who is in the United Kingdom for some temporary purpose only and not with the intention of establishing his residence there shall not be treated as resident in the United Kingdom if he has not in the aggregate spent at least six months in the United Kingdom in the year of assessment, but shall be treated as resident there if he has.

## PART II

### ANNUAL PAYMENTS AND INTEREST

#### *Deduction of income tax at standard rate*

#### **52 Payments out of profits or gains brought into charge to income tax**

(1) Where any annuity or other annual payment charged with tax under Case III of Schedule D, not being interest, is payable wholly out of profits or gains brought into charge to income tax—

- (a) no assessment to income tax (other than surtax) shall be made on the person entitled to the annuity or other annual payment, and
- (b) the whole of the profits or gains shall be assessed and charged with income tax on the person liable to the annuity or other annual payment, without distinguishing the annuity or other annual payment, and
- (c) the person liable to make the payment, whether out of the profits or gains charged with income tax or out of any annual payment liable to deduction, or from which a deduction has been made, shall be entitled on making the payment to deduct and retain out of it a sum representing the amount of income tax thereon at the standard rate for the year in which the amount payable becomes due, and
- (d) the person to whom the payment is made shall allow the deduction on receipt of the residue of the payment, and the person making the deduction shall be acquitted and discharged of so much money as is represented by the deduction, as if that sum had been actually paid.

(2) Where—

- (a) any royalty or other sum paid in respect of the user of a patent, or
- (b) any rent, royalty or other payment which, by section 156 or 157 of this Act (mining etc. rents and royalties), is declared to be subject to deduction of income tax under this Part of this Act as if it were a royalty or other sum paid in respect of the user of a patent,

is paid wholly out of profits or gains brought into charge to income tax, the person making the payment shall be entitled on making the payment to deduct and retain out of it a sum representing the amount of the income tax thereon at the standard rate for the year in which the amount payable becomes due.

#### **53 Payments not out of profits or gains brought into charge to income tax**

(1) Where—

- (a) any annuity or other annual payment charged with tax under Case III of Schedule D, not being interest, or
- (b) any royalty or other sum paid in respect of the user of a patent, or
- (c) any rent, royalty or other payment which, by section 156 or 157 of this Act (mining etc. rents and royalties), is declared to be subject to deduction of income tax under this Part of this Act as if it were a royalty or other sum paid in respect of the user of a patent,

is not payable, or not wholly payable, out of profits or gains brought into charge to income tax, the person by or through whom any payment thereof is made shall, on

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making the payment, deduct out of it a sum representing the amount of income tax thereon at the standard rate in force at the time of the payment.

- (2) Where any such payment as is mentioned in subsection (1) above is made by or through any person, that person shall forthwith deliver to the inspector an account of the payment, and shall be assessable and chargeable with income tax at the standard rate on the payment, or on so much thereof as is not made out of profits or gains brought into charge to income tax.
- (3) All the provisions of the Income Tax Acts relating to persons who are to be chargeable with income tax, to income tax assessments, and to the collection and recovery of income tax, shall, so far as they are applicable, apply to the charge, assessment, collection and recovery of income tax under this section.
- (4) Subsections (2) and (3) above have effect subject to the provisions of Schedule 9 to this Act with respect to the time and manner in which companies resident in the United Kingdom are to account for and pay income tax in respect of payments from which tax is deductible.

#### **54 Annual interest**

- (1) Subject to subsections (2) and (3) below, where any yearly interest of money chargeable to tax under Case III of Schedule D is paid—
  - (a) otherwise than in a fiduciary or representative capacity, by a company or local authority, or
  - (b) by or on behalf of a partnership of which a company is a member, or
  - (c) by any person to another person whose usual place of abode is outside the United Kingdom.

the person by or through whom the payment is made shall, on making the payment, deduct out of it a sum representing the amount of income tax thereon at the standard rate in force at the time of the payment.

- (2) Subsection (1) above does not apply—
  - (a) to interest payable in the United Kingdom on an advance from a bank carrying on a bona fide banking business in the United Kingdom, or
  - (b) to interest paid by such a bank in the ordinary course of that business.
- (3) Subsections (2) to (4) of section 53 above shall apply to payments within subsection (1) of this section as they apply to payments within subsection (1) of that section.

#### **55 Certificates of deduction**

- (1) A person making any payment which is subject to deduction of income tax by virtue of section 52, 53 or 54 above shall, if the recipient so requests in writing, furnish him with a statement in writing showing the gross amount of the payment, the amount of tax deducted, and the actual amount paid.
- (2) The duty imposed by subsection (1) above shall be enforceable at the suit or instance of the person requesting the statement.

**56 Construction of references to payments not out of profits or gains brought into charge**

In section 53 above, any reference to a payment or sum as being not payable, or not wholly payable, out of profits or gains brought into charge to income tax shall be construed as a reference to it as being payable wholly or in part out of a source other than profits or gains brought into charge; and any such reference elsewhere in the Tax Acts shall be construed accordingly.

*Interest paid: relief from income tax*

**57 Loans for purchase or improvement of land**

- (1) Subject to the following provisions of this Part of this Act, interest is eligible for relief under this section if it is paid by a person for the time being owning an estate or interest in land in the United Kingdom or the Republic of Ireland on a loan to defray money applied—
  - (a) in purchasing the estate or interest, or one absorbed into, or given up to obtain, the estate or interest, or
  - (b) in improving or developing the land, or buildings on the land, or
  - (c) in paying off another loan, where the claimant could have obtained relief under this section for interest on that other loan if it had not been paid off (and, if free of interest, assuming it carried interest).
- (2) Subsection (1) above shall not apply to a loan unless made in connection with the application of the money, and either on the occasion of its application or within what is in the circumstances a reasonable time from the application of the money ; and that subsection shall not apply to a loan the proceeds of which are applied for some other purpose before being applied as described in that subsection.
- (3) If and so far as a loan made by allowing the debtor to overdraw an account is applied in improving land or buildings (otherwise than by the construction of a building or part of a building), no relief shall be given in respect of interest on the loan falling due more than three years after the end of the year of assessment in which the loan is so applied.
- (4) References in this section to money applied in improving or developing land or buildings include references to payments in respect of maintenance or repairs incurred by reason of dilapidation attributable to a period before the estate or interest was acquired, but otherwise do not include references to payments in respect of maintenance or repairs, or any of the other payments mentioned in section 72(1) of this Act (payments deductible from rent).
- (5) References in this section to money applied in improving or developing land include references to expenditure incurred or defrayed directly or indirectly in respect of street works, other than works of maintenance or repair, for any highway or road, or in Scotland any right of way, adjoining or serving the land.
- (6) References in this section to an estate or interest in land include references to the property in any caravan but, unless it is a large caravan, no relief shall be given by virtue of this subsection in respect of the payment of any interest unless—
  - (a) the caravan, taken with the land on which it stands, is for the time being a rateable hereditament for the purposes of the General Rate Act 1967 or

any corresponding enactment in force in Scotland, Northern Ireland or the Republic of Ireland, and

- (b) the owner, or his wife or her husband, has, as occupier of the caravan, duly paid rates under that Act or any such enactment for the period in which the interest was paid.

In this subsection "hereditament", in relation to Scotland, means lands and heritages.

- (7) References in this section to an estate or interest do not include references—
  - (a) to a rentcharge or, in Scotland, a superiority or the interest of a creditor in a contract of ground annual; or
  - (b) to the interest of a chargee or mortgagee, or, in Scotland, the interest of a creditor in a charge or security of any kind over land.
- (8) Where interest is payable by the tenant occupier of any property to the landlord in pursuance of arrangements whereby money advanced at interest by the landlord is applied by the tenant in purchasing the landlord's estate or interest, but that estate or interest is not to pass to the tenant until some time after the interest begins to be payable, this section shall have effect in relation to the tenant as if he were the owner of the landlord's estate or interest.
- (9) Interest eligible for relief under this section shall be deducted from or set off against the income of the person paying it for the year of assessment in which it is paid, and income tax shall be discharged or repaid accordingly.
- (10) Where relief for any year of assessment is given under this section in respect of interest on any debt, then interest on that debt shall not be allowable as a deduction for any other purpose of the Income Tax Acts for that year or any subsequent year of assessment if and so far as this section applies to that interest; and where interest on any debt is allowed as a deduction in computing profits or gains or losses for the purposes of income tax for any year of assessment, then this section shall not apply to interest on that debt in relation to that or any subsequent year of assessment.

In this subsection references to relief having been given or a deduction being allowed are references to its being given or allowed in a claim or assessment which has been finally determined.

- (11) Subsection (1)(a) above shall not apply—
  - (a) where the seller and purchaser are a husband and his wife, and either sells to the other, or
  - (b) where the purchaser, or the wife or husband of the purchaser, has since 15th April 1969 disposed of an estate or interest in the land in question, and it appears that the main purpose of the disposal and purchase was to obtain relief in respect of interest on the loan, or
  - (c) where the purchasers are the trustees of a settlement, and the seller is the settlor, or the wife or husband of the settlor, and it appears that the main purpose of the purchase is to obtain relief in respect of interest on the loan, or
  - (d) where the purchaser is directly or indirectly purchasing from a person who is within the terms of section 533 of this Act connected with him, and the price substantially exceeds the value of what is acquired;

and subsection (1)(b) above shall not apply where the person spending the money is within the terms of the said section 533 connected with the person who, directly or indirectly, receives the money, and the money substantially exceeds the value of the work done.

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For the purposes of this subsection, references to a husband and wife are references to a husband and his wife living with him.

(12) In this section, as it applies throughout the United Kingdom and in relation to the Republic of Ireland—

" caravan " has the meaning given by section 29(1) of the Caravan Sites and Control of Development Act 1960,

" large caravan " means one which has either or both of the following dimensions—

(a) an overall length (excluding any drawbar) exceeding 22 feet,

(b) an overall width exceeding 7 feet 6 inches, where " overall length " and " overall width " have the meanings given in Regulation 3 of the Motor Vehicles (Construction and Use) Regulations 1966,

" street works " means any works for the sewerage, levelling, paving, metalling, flagging, channelling and making good of a road, and includes the provision of proper means for lighting a road.

## **58 Loan applied in acquiring interest in close company**

(1) This section applies to a loan to an individual to defray money applied—

- (a) in acquiring any part of the ordinary share capital of a close company within subsection (2) below, or
- (b) in lending money to such a close company which is used wholly and exclusively for the purposes of the business of the company or of any associated company (being a close company within subsection (2) below) of the company, or
- (c) in paying off another loan where relief could have been obtained under this section for interest on that other loan if it had not been paid off (and, if free of interest, assuming it carried interest).

(2) Subsection (1) above applies to a close company—

- (a) if it is a trading company, or
- (b) if it is a member of a trading group, or
- (c) if the whole, or substantially the whole, of its income is of one or more of the following descriptions, that is—
  - (i) estate or trading income,
  - (ii) interest, and dividends or other distributions, received from a 51 per cent subsidiary of it (both companies being bodies corporate) if the subsidiary is itself within any of paragraphs (a), (b) and (c) of this subsection.

(3) Relief shall be given in respect of any payment of the interest by the individual on the loan—

- (a) if when the interest is paid he has a material interest in the company, and
- (b) if, taking the period from the application of the proceeds of the loan until the interest was paid as a whole, he has worked for the greater part of his time in the actual management or conduct of the business of the company, or of any associated company of the company, and

- (c) if he shows that in that period he has not recovered any capital from the close company, apart from any amount taken into account under subsection (4) below.
- (4) If at any time after the application of the proceeds of the loan the individual has recovered any amount of capital from the close company without using that amount in repayment of the loan, he shall be treated for the purposes of this section as if he had at that time repaid that amount out of the loan, and so that out of the interest otherwise eligible for relief and payable for any period after that time there shall be deducted an amount equal to interest on the amount of capital so recovered.

If under section 64(4) below this section applies to a loan part only of which fulfils the conditions in this section, so as to afford relief for interest on that part, the deduction to be made under this subsection shall be made wholly out of interest on that part.

- (5) The individual shall be treated as having recovered an amount of capital from the close company if—
- (a) he receives consideration of that amount or value for the sale of any part of the ordinary share capital of the company, or any consideration of that amount or value by way of repayment of any part of that ordinary share capital, or
  - (b) the close company repays that amount of a loan or advance from him, or
  - (c) he receives consideration of that amount or value for assigning any debt due to him from the close company.

In the case of a sale or assignment otherwise than by way of a bargain made at arm's length, the sale or assignment shall be deemed to be for consideration of an amount equal to the market value of what is disposed of.

- (6) Subsections (3), (4) and (5) above shall apply to a loan within subsection (1)(c) above as if it, and any loan it replaces, were one loan, and so that—
- (a) references to the application of the proceeds of the loan are references to the application of the proceeds of the original loan, and
  - (b) any restriction under subsection (4) above which applied to any loan which has been replaced shall apply also to the loan which replaces it.
- (7) Subsection (1) above shall not apply to a loan unless made in connection with the application of the money, and either on the occasion of its application, or within what is in the circumstances a reasonable time from the application of the money, and that subsection shall not apply to a loan the proceeds of which are applied for some other purpose before being applied as described in that subsection.
- (8) Interest eligible for relief under this section shall be deducted from or set off against the income of the individual for the year of assessment in which the interest is paid, and income tax shall be discharged or repaid accordingly.
- (9) "Distribution" has in this section the meaning given by Part X of this Act with sections 284 and 285, and expressions used in this section to which a meaning is given by Chapter III of Part XI of this Act have the same meaning in this section; and—
- (a) in determining for the purposes of subsection (2)(c)(ii) above whether one body corporate is a 51 per cent subsidiary of another, that other shall be treated as not being the owner—
    - (i) of any share capital which it owns directly or indirectly in a body corporate not resident in the United Kingdom, or

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- (ii) of any share capital which it owns indirectly, and which is owned directly by a body corporate for which a profit on the sale of the shares would be a trading receipt,
- (b) for the purposes of subsection (3) (a) above, an individual has a material interest in a company—
  - (i) if he, either on his own or with any one or more of his associates, or if any associate of his with or without any other such associates, is the beneficial owner of, or able, directly or through the medium of other companies or by any other indirect means, to control, more than 5 per cent of the ordinary share capital of the company, or
  - (ii) if, on an amount equal to the whole distributable income of the company falling under Chapter III of Part XI of this Act to be apportioned for the purposes of surtax, more than 5 per cent of that amount could be apportioned to him together with his associates (if any), or to any associate of his, or any such associates taken together.

## **59 Loan applied in acquiring interest in a partnership**

- (1) This section applies to a loan to an individual to defray money applied—
  - (a) in purchasing a share in a partnership, or
  - (b) in contributing money to a partnership by way of capital or a premium, or in advancing money to the partnership, where the money contributed or advanced is used wholly and exclusively for the purposes of the trade, profession or vocation carried on by the partnership, or
  - (c) in paying off another loan where relief could have been obtained under this section for interest on that other loan if it had not been paid off (and, if free of interest, assuming it carried interest).
- (2) Relief shall be given in respect of any payment of interest by the individual on the loan—
  - (a) if throughout the period from the application of the proceeds of the loan until the interest was paid he has personally acted in the conduct of the trade, profession or vocation carried on by the partnership, and
  - (b) if he shows that in that period he has not recovered any capital from the partnership, apart from any amount taken into account under the next following subsection.
- (3) If at any time after the application of the proceeds of the loan the individual has recovered any amount of capital from the partnership without using that amount in repayment of the loan, he shall be treated for the purposes of this section as if he had at that time repaid that amount out of the loan, and so that out of the interest otherwise eligible for relief and payable for any period after that time there shall be deducted an amount equal to interest on the amount of capital so recovered.

If under section 64(4) below this section applies to a loan part only of which fulfils the conditions in this section, so as to afford relief for interest on that part, the deduction to be made under this subsection shall be made wholly out of interest on that part.

- (4) The individual shall be treated as having recovered an amount of capital from the partnership if—
  - (a) he receives a consideration of that amount or value for the sale of any part of his interest in the partnership, or



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- (b) the partnership returns any amount of capital to him or repays any amount advanced by him, or
- (c) he receives consideration of that amount or value for assigning any debt due to him from the partnership.

In the case of a sale or assignment otherwise than by way of a bargain made at arm's length, the sale or assignment shall be deemed to be for consideration of an amount equal to the market value of what is disposed of.

- (5) Subsections (2), (3) and (4) above shall apply to a loan within subsection (1)(c) above as if it, and any loan it replaces, were one loan, and so that—
  - (a) references to the application of the proceeds of the loan are references to the application of the proceeds of the original loan, and
  - (b) any restriction under subsection (3) above which applied to any loan which has been replaced shall apply also as respects the loan which replaces it.
- (6) Subsection (1) above shall not apply to a loan unless made in connection with the application of the money, and either on the occasion of its application, or within what is in the circumstances a reasonable time from the application of the money, and that subsection shall not apply to a loan the proceeds of which are applied for some other purpose before being applied as described in that subsection.
- (7) Interest eligible for relief under this section shall be deducted from or set off against the income of the individual for the year of assessment in which the interest is paid, and income tax shall be discharged or repaid accordingly.

#### **60 Loan to purchase machinery or plant used by a partnership**

- (1) Where an individual is a member of a partnership which, under section 44 of the Capital Allowances Act 1968, is entitled to a capital allowance or liable to a balancing charge for any year of assessment in respect of machinery or plant belonging to the individual, he shall be entitled to relief on any interest paid by him in that year on a loan to defray money applied as capital expenditure on the provision of that machinery or plant.
- (2) No relief shall be given under this section in respect of interest falling due and payable more than three years after the end of the year of assessment in which the debt was incurred.
- (3) Where the machinery or plant is in use partly for the purposes of the trade, profession or vocation carried on by the partnership and partly for other purposes, section 28 of the said Act of 1968 (part-time use) shall apply in relation to relief under this section as it applies in relation to writing-down allowances.
- (4) Interest eligible for relief under this section shall be deducted from or set off against the income of the individual for the year of assessment in which the interest is paid, and income tax shall be discharged or repaid accordingly.

#### **61 Loan to pay estate duty**

- (1) This section applies to any loan to the personal representatives of a deceased person the proceeds of which are applied—
  - (a) in paying, before the grant of representation, estate duty in accordance with section 6(2) of the Finance Act 1894, being estate duty in respect of personal

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property of which the deceased was competent to dispose at his death payable on delivery of the Inland Revenue affidavit, or

- (b) in paying off another loan where relief could have been obtained under this section for interest on that other loan if it had not been paid off.

- (2) Interest paid on the loan in respect of any period ending within one year from the making of the loan within subsection (1)(a) above shall be deducted from or set off against the income of the personal representatives as such for the year in which the interest is paid :

Provided that in relation to estate duty on property the principal value of which falls to be ascertained under section 55 of the Finance Act 1940 (shares and debentures of certain companies) this subsection shall have effect with the substitution for " one year " of " three years ".

- (3) No relief shall be given under this section in respect of interest on so much of any loan as is applied in paying estate duty in respect of property situate in Great Britain which did not pass to the personal representatives as such, or in respect of property which, even if it had been situate in Great Britain, would not have passed to the personal representatives as such.
- (4) Sufficient evidence of the amount of estate duty paid in accordance with the said section 6(2) in respect of any particular description of property, and of any statements relevant to its computation in the Inland Revenue affidavit, may be given by the production of a document purporting to be a certificate from the Board.
- (5) For the purposes of this section—
  - (a) " estate duty " means estate duty leviable under the law in force in Great Britain or the law in force in Northern Ireland, together with any interest payable on the duty,
  - (b) references to interest in respect of a period ending within a given time apply whether or not interest continues to run after that time.
- (6) This section shall apply to estate duty leviable under the law of Northern Ireland with the substitution for the estate duty enactments mentioned in this section of the corresponding enactments forming part of the law of Northern Ireland, and with the substitution of " Northern Ireland " for " Great Britain " in subsection (3) above, and the reference to the Board shall include a reference to the Ministry of Finance for Northern Ireland.

## **62 Certain pre-1970 loans**

- (1) Relief shall be given in respect of any payment of interest falling due before 6th April 1975 on a debt incurred on or before 15th April 1969, being annual interest—
  - (a) on which the recipient is chargeable to tax under Case III of Schedule D, and
  - (b) which is not interest on a debt incurred by overdrawing an account with the creditor,

where both the date when the payment fell due and its amount were fixed by or under arrangements made when the debt was incurred, or subsequent arrangements in force on 15th April 1969.

- (2) Relief shall be given in respect of any interest paid without deduction of tax in the United Kingdom on an advance from a bank carrying on a bona fide banking business in the United Kingdom, or from a person bona fide carrying on business as a member

of a stock exchange in the United Kingdom or bona fide carrying on the business of a discount house in the United Kingdom, if, assuming that it had been paid without deduction of tax when it became due and payable, relief could have been given in respect of it under section 200 of the Income Tax Act 1952 (which was repealed by section 18(2) of the Finance Act 1969, but not so as to affect relief for interest paid before 6th April 1970 in respect of a period before 1st July 1969).

- (3) Interest eligible for relief under this section shall be deducted from or set off against the income of the person paying the interest for the year of assessment in which the interest is paid, and income tax shall be discharged or repaid accordingly.

### **63 Supplemental: overdrafts**

- (1) This section has effect for the purposes of sections 57 to 61 above.
- (2) If a person draws money from a bank account or other running account, and applies it, or any part of it, so as to fulfil the conditions in any of those sections, he shall be regarded as obtaining a loan of that money up to the amount of the highest debit balance in the account in the six months beginning with the date on which the money is drawn:

Provided that if the date fell before 6th April 1968, it shall be assumed that the said highest debit balance was not less than the amount of money drawn from the account.

- (3) If the account has been in credit throughout a year of assessment (excluding any year before the year 1968-69), any loan so obtained before the year in which the account has been in credit shall be treated as having been repaid at the beginning of that year.
- (4) The whole of the interest on debit balances in the account in any year of assessment shall be available for attribution to any outstanding loans so obtained:

Provided that the amount of interest attributable to a loan, or to the aggregate of any loans, made before the beginning of the year 1968-69 shall not exceed the amount of interest on debit balances in the account in the year 1968-69 with which the said person has been charged.

- (5) A loan so obtained shall be regarded as carrying interest in any year of assessment at the rate chargeable on the account on the last day of that year on which the account was in debit, but only so far as interest is available for attribution under subsection (4) above, and, where part only of a loan is eligible for relief under the said sections 57 to 61, that interest is to be attributed rateably to the eligible and ineligible parts of the loan.
- (6) Where the amount of interest paid on a loan for part only of a year of assessment is to be ascertained, this section shall be applied to ascertain the amount of interest paid for the whole of the year, and that amount shall be apportioned between that part of the year and the remainder according to their respective lengths.

### **64 Other supplemental provisions**

- (1) The following provisions have effect as respects relief under sections 57 to 62 above.
- (2) Where credit is given for any money due from the purchaser under any sale, that shall be treated for the purposes of those sections as the making of a loan to defray money applied by the purchaser in making the purchase.

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- (3) If interest is paid at a rate in excess of a reasonable commercial rate, so much of any payment as represents such an excess shall not be eligible for relief under any of those sections.
- (4) Where the whole of a debt does not fulfil the conditions required by any one of those sections, relief shall be given under the section only in respect of the proportion of any payment of interest equal to the proportion of the debt fulfilling those conditions at the time of the application of the money in question.
- (5) If relief is given in respect of any interest under any of those sections, the interest shall not be allowable as a deduction for any other purpose of the Income Tax Acts.
- (6) No relief shall be given against income chargeable to corporation tax, or any other income of a company.
- (7) The relief shall be given only on the making of a claim therefor.
- (8) Subject to subsection (10) below, a person who claims relief in respect of any payment of interest shall furnish to the inspector a statement in writing by the person to whom the payment is made showing—
  - (a) the date when the debt was incurred,
  - (b) the amount of the debt when incurred,
  - (c) the interest paid in the year of assessment for which the claim is made, and
  - (d) the name and address of the debtor:

Provided that if the claim relates to interest on an overdraft the statement shall show, instead of the particulars in paragraphs (a) to (d) above—

- (i) the date when the money was drawn out of the account, and, unless that date fell before 6th April 1968, the highest debit balance in the account in the six months beginning with that date,
  - (ii) the rate of interest chargeable on the account for the last day of the year of assessment to which the claim relates on which the account was in debit,
  - (iii) the amount of interest on debit balances in the account in the year of assessment, and
  - (iv) the name and address of the claimant.
- (9) Subject to the said subsection (10), a person to whom any interest is paid by another person shall, if that other person so requests in writing, furnish that other person with a statement in writing conforming with subsection (8) above and dealing with that payment of interest.

The duty imposed by this subsection shall be enforceable at the suit or instance of the person making the request.

- (10) Subsections (8) and (9) above shall not apply to interest paid to a building society as defined in section 343(8) of this Act, to a company within section 343(9) of this Act, or to a local authority.

*Special types of payment*

**65 Small maintenance payments**

- (1) In this section "small maintenance payments" means payments under an order made by a court in the United Kingdom—
  - (a) by one of the parties to a marriage (including a marriage which has been dissolved or annulled) to or for the benefit of the other party to that marriage for that other party's maintenance, or
  - (b) to any person for the benefit of, or for the maintenance or education of, a person under 21 years of age, not being such a payment as is mentioned in paragraph (a) above,being (subject to subsection (5) below) payments which—
  - (i) are for the time being required by the order (whether as originally made or as varied) to be made—
    - ((A)) weekly at a rate not exceeding £7 10s. Od. per week, or
    - ((B)) monthly at a rate not exceeding £32 10s. Od. per month, and
  - (ii) would, apart from this section, fall within section 52 or 53 above (deduction of income tax from annual payments),and "small maintenance order" means an order providing for the making of small maintenance payments.
- (2) Notwithstanding anything in the said section 52 or 53, small maintenance payments shall be made without deduction of income tax.
- (3) Any sums paid in or towards the discharge of a small maintenance payment shall be chargeable under Case III of Schedule D, but the tax shall (notwithstanding anything in sections 119 to 121 of this Act) be computed in all cases on the payments falling due in the year of assessment, so far as paid in that or in any other year.
- (4) A person making a claim in that behalf shall be entitled, in computing his total income for any year of assessment for any of the purposes of the Income Tax Acts, to deduct sums paid by him in or towards the discharge of any small maintenance payments which fall due in that year; and, for the purposes of section 25 of this Act (personal reliefs not to be given in respect of charges on income), any amount which can be deducted under this subsection in computing the total income of a person shall be treated as if it were income the tax on which that person is entitled to charge against another person.
- (5) The Treasury may from time to time, by order made by statutory instrument subject to annulment in pursuance of a resolution of the House of Commons, increase the amount of £7 10s. Od. and the amount of £32 10s. Od. in subsection (1)(i) above, either as respects payments within paragraph (a) of that subsection, or as respects payments within paragraph (b) thereof, or as respects both.
- (6) An order under subsection (5) above which increases, or further increases, the said amount of £7 10s. Od. for a class of payments shall increase, or further increase, the amount of £32 10s. Od. for that class of payments so that it is 52 twelfths of the weekly amount or, if that does not give a convenient round sum, such other amount as appears to the Treasury to be the nearest convenient round sum; and an order under that subsection may contain provision whereby it—

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- (a) does not in general affect payments falling due in the year of assessment in which it comes into force under small maintenance orders made before its coming into force, but
  - (b) in the case of a small maintenance order which was made before that time but is varied or revived after that time, does apply in relation to payments falling due under that order at any time after the variation or revival.
- (7) Where a court—
- (a) make or revive a small maintenance order, or
  - (b) vary or revive an order so that it becomes, or ceases to be, a small maintenance order, or
  - (c) change the persons who are entitled to small maintenance payments,
- the court shall furnish to the Board, in such form as the Board may prescribe, particulars of the order or variation, as the case may be, the names of the persons affected by the order, and, so far as known to the court, the addresses of those persons.

In this subsection—

" the persons affected ", in relation to a small maintenance order, means the person liable to make the payments under the order and any person for the time being entitled to the payments, and

references to the variation of an order include references to the making of an order changing the persons entitled to the payments thereunder.

## 66 Tithe annuities

- (1) No deduction in respect of income tax shall be made from any instalment of any annuity within the meaning of the Tithe Acts 1936 and 1951.
- (2) Five-sixths, but no more, of the amount of any payment made as such an instalment, or as part of such an instalment, shall for income tax purposes be deducted from, or set off against, the income of the person making the payment for the year of assessment in which the instalment becomes payable, and income tax shall be discharged or repaid accordingly.

## PART III

### SCHEDULE A, AND ASSOCIATED CHARGES UNDER SCHEDULE D

#### *The Schedule A charge*

## 67 Schedule A

- (1) The Schedule referred to as Schedule A is as follows:—

### “SCHEDULE A

- 1 Tax under this Schedule shall be charged on the annual profits or gains arising in respect of any such rents or receipts as follow, that is to say—
  - (a) rents under leases of land in the United Kingdom,

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- (b) rentcharges, ground annuals and feu duties, and any other annual payments reserved in respect of, or charged on or issuing out of, such land, and
  - (c) other receipts arising to a person from, or by virtue of, his ownership of an estate or interest in or right over such land or any incorporeal hereditament or incorporeal heritable subject in the United Kingdom.
- 2 Tax under this Schedule shall be charged by reference to the rents or receipts to which a person becomes entitled in the chargeable period.

*Exceptions*

- 3 Paragraph 1 above does not apply—
- (a) to any yearly interest, or
  - (b) to any profits or gains charged to tax under Schedule D by virtue of section 112 of this Act (mines, quarries and other concerns), or
  - (c) to any payment so charged by virtue of section 156 or 157 of this Act (mining etc. rents and royalties);
- and the said paragraph has effect subject also to the provisions of section 140 of this Act with respect to tied premises.
- 4 Where rent is payable under a lease under which the tenant is entitled to the use of furniture, and tax in respect of the payment for its use is chargeable under Case VI of Schedule D, tax in respect of the rent shall be charged under the said Case VI instead of under this Schedule unless the landlord elects that this paragraph shall not apply.”
- (2) An election that paragraph 4 of Schedule A shall not apply shall be made by notice in writing to the inspector given within two years after the end of the chargeable period; and where such notice is given, any adjustment of the liability to tax of the person giving it which is required in consequence thereof may be made by an assessment, or by repayment or otherwise, as the case may require.
- (3) Profits or gains arising in any chargeable period from payments for any easement over or right to use any land made to the person who occupies the land shall not be excluded from the charge to tax under Schedule A by reason only that he is chargeable with respect to the land under Schedule B, but shall be treated for the purposes of Schedule A as limited to the amount (if any) by which they exceed the assessable value for the purposes of Schedule B of his occupation of the land in that period.

**68 Persons chargeable**

- (1) Income tax under Schedule A shall be charged on and paid by the persons receiving or entitled to the profits or gains in respect of which tax under that Schedule is directed by the Income Tax Acts to be charged.
- (2) For the purposes of corporation tax, the provisions of Chapter I of Part XI of this Act have effect to the exclusion of subsection (1) above.

**69 Assessment**

- (1) The profits or gains arising to a person for any chargeable period which are assessable to tax under Schedule A may, if they arise from more than one source, be assessed in one or more assessments, and, in the latter case, each assessment may relate to profits or gains from one or more sources.
- (2) Where an assessment to income tax under Schedule A for any year of assessment is made in that year—
  - (a) it shall be made on the basis that all sources of income and all amounts relevant in computing profits or gains are the same as for the last preceding year of assessment, and
  - (b) tax shall be leviable accordingly, but any necessary adjustments shall be made after the end of the year, whether by way of assessment, repayment of tax or otherwise, to secure that tax is charged by reference to the rents or receipts to which the person assessed becomes entitled in the year of assessment:

Provided that if before the 1st January in any year a person delivers a statement in writing to the inspector—

- (i) showing that since the beginning of the last preceding year of assessment he has ceased to possess one or more sources of income chargeable under Schedule A, and
- (ii) giving the aggregate of the rents and receipts relevant for the purposes of Schedule A to which he has become or is likely to become entitled in the current year, and
- (iii) showing that that aggregate is less than the aggregate of such rents and receipts to which he became entitled in the last preceding year, and that it would not have been less if he had not ceased to possess the said source or sources,

then, if the inspector is satisfied as to the correctness of the declaration, an assessment made on that person in the current year shall be made on an amount which bears to the amount arrived at under paragraph (a) above the same proportion as the said aggregate for the current year bears to the said aggregate for the last preceding year, and paragraph (b) above shall apply accordingly.

**70 Collection from lessees and agents**

- (1) Where any tax under Schedule A is charged in respect of profits or gains arising from any land to a person who is not the occupier of the land, but the tax is not paid by that person (in this subsection referred to as "the person in default"), it may be recovered in accordance with the following provisions:—
  - (a) subject to paragraph (b) below, the collector may from time to time by notice in writing, in such form as may be prescribed by the Board, require any lessee of the land or any part thereof whose interest is derived (directly or indirectly) from that held by the person in default (in this subsection referred to as "a derivative lessee") to make to him payment, on the date or dates specified in the notice, of such sum or sums as may be required to satisfy the tax ;
  - (b) the sum demanded from a derivative lessee to be paid during any period shall not exceed the amount of the rent or other payments arising out of the land which becomes due from him at the end of the period and payable to the person in default or to another derivative lessee;



- (c) in default of payment by a derivative lessee of any amount duly demanded of him under this subsection, that amount may be recovered from him in like manner as if he had been charged with tax of that amount;
  - (d) where any sum on account of tax has been collected from a derivative lessee in pursuance of this subsection, he may deduct that sum from any subsequent payment arising as aforesaid and payable to the person in default or to another derivative lessee, and shall be acquitted and discharged of the amount so deducted;
  - (e) where under paragraph (d) above, or under that paragraph as applied by this paragraph, a sum is deducted from an amount payable to another derivative lessee, that paragraph shall apply as if the sum had been collected from him under a demand made under this subsection by the collector, and, where the amounts from which under that paragraph he is entitled to make deductions in respect of that sum during the following twelve months are less than that sum, he shall be entitled to recover from the Board an amount equal to the difference, which shall be treated as reducing the tax recovered under this subsection.
- (2) Where any person (hereinafter referred to as " the agent") is in receipt of rents or receipts from land on behalf of another person (hereinafter referred to as " the principal"), and any tax under Schedule A charged on the principal has not been paid, the collector may by notice in writing, in such form as may be prescribed by the Board, require the agent to pay to the collector in or towards the satisfaction of the tax any sums from time to time received by the agent on behalf of the principal on account of rents or receipts from any land (including any sums so received which are in his hands when the notice is given) until the liability in respect of the tax has been satisfied; and the agent shall pay all such sums over to the collector accordingly, and the payment shall acquit and discharge him as against the person on whose behalf he received them.

If the agent fails to comply with the requirements of a notice duly served on him, he shall be liable to a penalty not exceeding £50 for each failure, non-compliance as respects sums in his hands when the notice is given, or as respects any one payment subsequently received by him, being treated as a separate failure.

### *Deductions and allowances*

## **71 Deductions: introductory**

- (1) In computing for the purposes of Schedule A the profits or gains arising to a person in any chargeable period, such deductions shall be made from any rents or receipts to which he becomes entitled in the period as are provided for by sections 72 to 77 below, subject however to the provisions of Schedule 2 to this Act.
- (2) In those sections and that Schedule—
- references to a lease extend only to a lease conferring a right, as against the person whose interest is subject to the lease, to the possession of premises,
  - " rent " includes a payment made by the tenant to defray the cost of work of maintenance of, or repairs to, the demised premises, not being work required by the lease to be carried out by the tenant, and
  - " tenant's repairing lease " means a lease where the lessee is under an obligation to maintain and repair the whole, or substantially the whole, of the premises comprised in the lease;

and for the purposes of the said sections and Schedule, a lease shall be taken to be at a full rent if the rent reserved under the lease (including an appropriate sum in respect of any premium under the lease) is sufficient, taking one year with another, to defray the cost to the lessor of fulfilling his obligations under the lease and of meeting any expenses of maintenance, repairs, insurance and management of the premises subject to the lease which fall to be borne by him.

## 72 Deductions from rents: general rules

- (1) The deductions which, by virtue of section 71(1) above, may be made from rent to which a person (hereinafter referred to as "the person chargeable") becomes entitled under a lease shall be such deductions as are provided by subsections (2) to (6) below of the amounts of payments made by him—
- (a) in respect of maintenance, repairs, insurance or management,
  - (b) in respect of any services provided by him otherwise than by way of maintenance or repairs, being services which he was obliged to provide but in respect of which he received no separate consideration,
  - (c) in respect of rates or other charges on the occupier which the person chargeable was obliged to defray,
  - (d) in respect of any rent, rentcharge, ground annual, feu duty or other periodical payment reserved in respect of, or charged on or issuing out of, land:

Provided that this subsection shall not apply to any payment of interest.

- (2) From rent to which the person chargeable becomes entitled in a chargeable period, there may be deducted the amount of any such payment as aforesaid which became due in that period, or at an earlier time falling within the currency of the lease, in so far as the payment—
- (a) was made in respect of the premises comprised in the lease, and
  - (b) in the case of a payment for maintenance or repairs, was incurred by reason of dilapidation attributable to a period falling within the currency of the lease or, in the case of any other payment, was incurred in respect of such a period :

Provided that where the person chargeable became the landlord after the lease began, references in this subsection to the currency of the lease shall not include any time before he became the landlord.

- (3) In the case of a lease at a full rent, subsection (2) above shall apply as if references to the currency of the lease included any period (hereinafter referred to as "a previous qualifying period")—
- (a) during which the person chargeable was the landlord in relation to a previous lease of the premises, being a lease at a full rent, or
  - (b) which was a void period beginning either with the termination of a previous such lease as aforesaid or with the acquisition by the person chargeable of the interest in the premises giving him the right to possession thereof,

so however that a period shall not be a previous qualifying period if it preceded a period ending before the beginning of the lease which was not itself a previous qualifying period.

Where during any period the conditions necessary for the period to be a previous qualifying period were fulfilled as respects part of the premises, but not the whole, the period shall be treated as a previous qualifying period as respects that part

of the premises only, and this subsection shall apply accordingly, any necessary apportionment being made of rent, payments or other matters.

- (4) In the case of a lease at a full rent, not being a tenant's repairing lease, there may also be deducted the amount of any payment made in respect of other premises by the person chargeable—
- (a) in so far as that amount could be deducted under subsections (2) and (3) above from rent to which he became entitled in the chargeable period under a lease of those other premises, being a lease at a full rent, or could be so deducted if that rent were not insufficient, or
  - (b) if any part of the chargeable period is, in respect of those other premises, a void period beginning with the termination of a lease at a full rent, in so far as the amount could be deducted as aforesaid if the lease had continued until the end of that period.
- (5) Where by reason of any change of circumstances a lease ceases to be, or becomes, a tenant's repairing lease, or ceases to be, or becomes, a lease at a full rent, subsections (3) and (4) above shall apply in relation to the lease as it subsists after the change of circumstances as if it were a new lease granted when the change occurred.
- (6) Where the person chargeable retains possession of a part of any premises and that part is used in common by persons respectively occupying other parts of the premises, subsections (1) to (5) above shall apply as if a payment made in respect of the part used in common had been made in respect of those other parts.
- (7) In subsections (3) and (4) above "void period " means a period during which the person chargeable was not in occupation of the premises or any part thereof, but was entitled to possession thereof.

### **73 Deductions from rents: land managed as one estate**

- (1) Where this section applies to an estate for a chargeable period, the owner shall be treated—
- (a) in relation to a part of the estate which for any portion of that period is not comprised in a lease under which he is the landlord, as if he were entitled under a lease of that part at a full rent (not being a tenant's repairing lease) to rent for the said portion, becoming due from day to day, at a rate per annum equal to the annual value of that part ascertained in accordance with section 531 of this Act, and
  - (b) in relation to a part of the estate which for any portion of the said period is comprised in a lease under which he is the landlord, not being a lease at a full rent, as if the lease were at a full rent, and as if the rent so far as it relates to that part were at a rate per annum not less than the annual value of that part ascertained as aforesaid,

and section 72 above shall apply accordingly:

Provided that—

- (i) a payment relating to premises comprised in the estate shall not be deductible from rent in respect of premises not so comprised, and
- (ii) paragraph (a) above shall not apply to premises occupied by the owner wholly and exclusively for purposes connected with the management of the estate or for the purposes of a trade, profession or vocation.

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- (2) This section shall apply to an estate if, at the end of the year 1962-63, the land then comprised therein was managed as one estate and the owner for the time being of the estate by notice in writing to the inspector so elects, but such an election—
- (a) must be made within twelve months after the end of the first chargeable period for which the person making it became entitled to make it or such further time as the Board may allow,
  - (b) except in the case of the first election that can be made under this subsection, shall not have effect unless the like election has had effect as respects the immediately preceding ownership, and
  - (c) shall apply in relation to the estate throughout the ownership of the person making it.
- (3) Where in any chargeable period the estate comprises premises not included in it at the end of the year 1962-63, subsection (1) above (except the proviso) shall apply in relation to the chargeable period as if the premises were not included in the estate in that period:

Provided that where at the end of the year 1962-63 the owner of the remainder of the estate, as then subsisting, was entitled under trusts arising under a settlement or on an intestacy, or was entitled (in Scotland) under a disposition by way of liferent and feu, to an interest such that, on the occurrence of some future event or events, he might become the owner of the said premises, this subsection shall not apply to the premises if at any time before the end of that year the premises and the remainder of the estate, as then subsisting, were together managed as one estate.

- (4) In this section " estate" means land in one ownership managed as one estate.

#### **74 Deductions from receipts other than rent**

- (1) Where a person becomes entitled in a chargeable period to a sum other than rent payable under a lease, the deductions to be made from that sum by virtue of section 71(1) above shall be such amounts (if any) as are expressed to be deductible under subsection (2) below.
- (2) There shall be deductible—
- (a) so much of any payment made by that person as was made in respect of maintenance, repairs, insurance or management of premises to which the sum relates and constituted an expense of the transaction under which he became entitled to that sum,
  - (b) so much of any rent, rentcharge, ground annual, feu duty or other periodical payment made by that person as was reserved in respect of, or was charged upon or issued out of, premises to which the sum relates and constituted an expense of that transaction,
  - (c) so much of any other payment made by that person as constituted an expense of that transaction, not being an expense of a capital nature, and
  - (d) where, in or before the chargeable period, that person entered into any like transaction, any amount which, under paragraphs (a) to (c) above, is deductible from a sum to which he is entitled under that like transaction in the period, or was deductible from a sum to which he was so entitled in a previous chargeable period but has not been deducted.

## 75 Sporting rights

- (1) Where the person entitled to possession of any land is in the practice of granting sporting rights over the land for payment, but, in any year of assessment, such rights are for any reason not granted by him, the aggregate of any amounts paid by him which, if such rights had been granted in the year, would have been deductible under section 74 above from payments receivable by him in respect of the grant shall be treated for the purposes of section 72(4) above as a deduction which, by virtue of subsection (2) of the said section 72, might have been made by him from rent to which he was entitled for that year under a lease of the land, being a lease at a full rent:

Provided that if in the year sporting rights over the land are exercised—

- (i) by that person, or
- (ii) by any other person at his invitation, or
- (iii) where the first-mentioned person is a close company, by a person who is, within the meaning of Chapter III of Part XI of this Act, a director of, or a participator in, that company,

the aggregate of the said amounts shall be treated as reduced by an amount equal to the price which might reasonably be expected to have been paid for that exercise of the rights if the person exercising them had had to give full consideration therefor.

- (2) For the purposes of the proviso to subsection (1) above, an exercise of sporting rights shall be disregarded if it gives rise to a charge to tax under Schedule E by virtue of section 196 of this Act (benefits to directors etc).
- (3) Where the person first-mentioned in subsection (1) above is a company, section 250(1) of this Act shall not have effect so as to require references therein to a year of assessment to be read as references to an accounting period, but any deduction thereby authorised shall be apportioned between the accounting periods (if more than one) comprising the year of assessment.
- (4) In this section " sporting rights " means rights of fowling, shooting or fishing, or of taking or killing game, deer or rabbits.

## 76 Expenditure on making sea walls

- (1) Where in any year of assessment the owner or tenant of any premises incurs expenditure in the making of any sea wall or other embankment necessary for the preservation or protection of the premises against the encroachment or overflowing of the sea or any tidal river, he shall be treated for the purposes of sections 72 and 74 above and section 77 below as making in that year of assessment and in each of the succeeding twenty years of assessment a payment in relation to the premises preserved or protected by the embankment of an amount equal to a twenty-first part of the expenditure and incurred in respect of dilapidation attributable to the year.
- (2) Where the whole of that person's interest in the premises or any part thereof is transferred (whether by operation of law or otherwise) to some other person—
- (a) the amount of the payment which he would be so treated as making for the year of assessment in which the transfer takes place shall be treated as being made partly by the transferor and partly by the transferee, as may be just, and
  - (b) the transferee shall, to the exclusion of the transferor, be treated in any subsequent year—

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- (i) where the interest transferred is in the whole of the premises, as having made the whole of the payment for that year, and
  - (ii) where the interest transferred is in part only of the premises, as having made so much of the payment for the year as is properly referable to that part of the premises.
- (3) For the purposes of subsection (2) above, where an interest in any premises is a lease and that lease comes to an end, that interest shall be deemed to have been transferred—
- (a) if an incoming lessee makes any payment to the outgoing lessee in respect of the embankment in question, to the incoming lessee, and
  - (b) in any other case, to the owner of the interest in immediate reversion on the lease and, in relation to Scotland, the expression " the owner of the interest in immediate reversion on the lease " shall be construed as a reference to the landlord.
- (4) In relation to a company, section 250(1) of this Act shall not have effect so as to require references in this section to a year of assessment to be read as references to an accounting period, but any deduction authorised by this section shall be apportioned between the accounting periods (if more than one) comprising the year of assessment, other than any such period ended before the expenditure is incurred, or transfer takes place, by virtue of which the company is entitled to the deduction.
- (5) This section shall not apply in relation to any expenditure in respect of which a capital allowance has been made.

## 77 **Deductions: supplemental**

- (1) Subject to subsections (2) to (5) below, where a sum or part of a sum deductible under the provisions of sections 72 to 76 above and Schedule 2 to this Act can be deducted for the chargeable period in which the sum is paid, it shall be so deducted, and, where it cannot, it shall be deducted for the earliest chargeable period for which it can be deducted.
- (2) Where for any chargeable period the amount from which deductions can be made under the said provisions is sufficient to allow the deduction therefrom of some, but not all, of different sums or parts of sums deductible under those provisions, the sum or parts to be deducted for that period shall in the aggregate be equal to the said amount, and, subject to that requirement, shall be such as the person whose liability to tax is in question may choose.
- (3) No deduction shall be made under the said provisions in respect of—
- (a) a payment made by any person, to the extent to which the payment has been, or will be—
    - (i) balanced by the receipt of insurance moneys, or
    - (ii) recovered from, or in any other manner borne by, some other person, otherwise than by means of an amount on the profits or gains arising from which the first-mentioned person would be chargeable under Schedule A, or
  - (b) a payment made by a person other than a company, if payable under deduction of income tax.
- (4) An amount, or part of an amount, shall not be deducted under the said provisions more than once from any sum, or from more than one sum, and shall not in any case be

deducted thereunder if it has been otherwise allowed as a deduction in computing the income of any person for tax purposes.

- (5) Where, on account of a payment made in any chargeable period, a deduction falls to be made under the said provisions from any rents or receipts to which the person making the payment became entitled in a previous period, all such adjustments of liability to tax shall be made, by repayment or otherwise, as may be necessary to give effect to the deduction.

## **78 Capital allowances for machinery and plant used in estate management**

- (1) Subject to the provisions of this section, Chapter II of Part I of the Capital Allowances Act 1968, and such other provisions of the Tax Acts as relate to allowances or charges under that Chapter, shall apply with any necessary adaptations in relation to machinery or plant provided for use or used by a person entitled to rents or receipts falling within Schedule A for the maintenance, repair or management of premises in respect of which those rents or receipts arise as they apply in relation to machinery or plant provided for use or used for the purposes of a trade; and, except as provided by subsection (2) below, in relation to any allowances and balancing charges which fail to be made by virtue of this section, the Tax Acts shall apply as if they were to be made in taxing a trade.
- (2) Allowances and balancing charges which by virtue of this section fall to be made to or on a person for any chargeable period shall be made by—
  - (a) adding the amount of any such allowances to the expenditure on maintenance, repairs and management of the premises which is deductible under section 72 or 74 above in computing his profits or gains for the purposes of Schedule A, and
  - (b) deducting the amount on which any such charge is to be made from that expenditure (or from the sum of that expenditure and any addition made to it under this subsection);

and section 46 of the Capital Allowances Act 1968 (manner of making allowances and charges under Chapter II) shall not apply:

Provided that any charge shall be made under Case VI of Schedule D if or in so far as a deduction cannot be made for it under paragraph (b) above.

- (3) No allowance, other than an investment allowance, and no balancing charge shall be made by virtue of this section for any chargeable period in respect of expenditure incurred by any person on machinery or plant, except in pursuance of an election made by him for that period; but an election for any chargeable period shall have effect as an election for that and all subsequent chargeable periods.
- (4) An election under subsection (3) above shall be made by notice in writing to the inspector, either for all machinery or plant provided for use or used for the maintenance, repair or management of the relevant premises or for any class of machinery or plant so provided or used ; but an election for machinery or plant of any class shall not be made for any chargeable period after payments made in that or a subsequent chargeable period for the maintenance, repair or management of the relevant premises have been taken into account in an assessment or claim to repayment of tax which has been finally determined.
- (5) Corresponding allowances or charges in the case of the same machinery or plant shall not be made under Chapter II of Part I of the Capital Allowances Act 1968 (whether

for the same chargeable period or for different chargeable periods) both in computing profits or gains for the purposes of Schedule A and in some other way; and, on any assessment to tax, expenditure to which an election under this section applies shall not be taken into account otherwise than under the said Chapter II.

- (6) The Tax Acts shall have effect as if this section were contained in Chapter II of Part I of the Capital Allowances Act 1968.

## **79 Agricultural land: allowance for excess maintenance etc expenditure**

- (1) Where in the case of an estate which consists of or includes agricultural land—
- (a) provision is made in sections 71 to 78 above for the deduction of a sum in respect of payments in the chargeable period for maintenance, repairs, insurance or management of the estate, or in respect of allowances for machinery or plant provided for use or used on the estate, and
  - (b) owing to the insufficiency of rents and receipts to which the owner of the estate becomes entitled in the period, whether from the estate or from other property, the sum in question cannot be deducted (other amounts deductible under Schedule A being treated as deductible in priority thereto),

the said sum shall be treated as if it were the amount of an allowance falling to be made under the Capital Allowances Act 1968 by way of discharge or repayment of tax, and available primarily against agricultural income as defined in section 69 of that Act; and sections 71 and 74 of the said Act of 1968 shall apply as if this section were contained in Part I of that Act:

Provided that the sum to be so treated shall not exceed the sum which would have fallen to be so treated if—

- (i) the estate had not included such parts thereof as were used wholly for purposes other than purposes of husbandry, and
  - (ii) payments or allowances in respect of parts thereof which were used partly for purposes of husbandry and partly for other purposes were reduced to an extent corresponding to the extent to which those parts were used for other purposes.
- (2) In this section—

" agricultural land " means land, houses or other buildings in the United Kingdom occupied wholly or mainly for the purpose of husbandry, and

" estate " means any land (including any houses or other buildings) managed as one estate.

*Premiums, leases at undervalue etc. (Schedules A and D)*

## **80 Treatment of premiums etc. as rent or Schedule D profits**

- (1) Where the payment of any premium is required under a lease, or otherwise under the terms subject to which a lease is granted, and the duration of the lease does not exceed fifty years, the landlord shall be treated for the purposes of the Tax Acts as becoming entitled when the lease is granted to an amount by way of rent (in addition to any actual rent) equal to the amount of the premium reduced by one-fiftieth of that amount for each complete period of twelve months (other than the first) comprised in the duration of the lease.



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- (2) Where the terms subject to which a lease is granted impose on the tenant an obligation to carry out any work on the premises, the lease shall be deemed for the purposes of this section to have required the payment of a premium to the landlord (in addition to any other premium) of an amount equal to the amount by which the value of the landlord's estate or interest immediately after the commencement of the lease exceeds what its then value would have been if the said terms did not impose that obligation on the tenant:

Provided that this subsection shall not apply in so far as the obligation requires the carrying out of work payment for which would, if the landlord and not the tenant were obliged to carry it out, be deductible from the rent under sections 72 to 76 above.

- (3) Where, under the terms subject to which a lease is granted, a sum becomes payable by the tenant in lieu of the whole or a part of the rent for any period, or as consideration for the surrender of the lease, the lease shall be deemed for the purposes of this section to have required the payment of a premium to the landlord (in addition to any other premium) of the amount of that sum; but—
- (a) in computing tax chargeable by virtue of this subsection in respect of a sum payable in lieu of rent, the duration of the lease shall be treated as not including any period other than that in relation to which the sum is payable, and
  - (b) notwithstanding anything in subsection (1) above, rent treated as arising by virtue of this subsection shall be deemed to become due when the sum in question becomes payable by the tenant.
- (4) Where, as consideration for the variation or waiver of any of the terms of a lease, a sum becomes payable by the tenant otherwise than by way of rent, the lease shall be deemed for the purposes of this section to have required the payment of a premium to the landlord (in addition to any other premium) of the amount of that sum ; but—
- (a) in computing tax chargeable by virtue of this subsection, the duration of the lease shall be treated as not including any period which precedes the time at which the variation or waiver takes effect, or falls after the time at which it ceases to have effect, and
  - (b) notwithstanding anything in subsection (1) above, rent treated as arising by virtue of this subsection shall be deemed to become due when the contract providing for the variation or waiver is entered into.
- (5) Where a payment falling within subsection (1), (3) or (4) above is due to a person other than the landlord, no charge to tax shall arise under that subsection, but any amount which would otherwise fall to be treated as rent shall be treated as profits or gains of that other person chargeable under Case VI of Schedule D:

Provided that where the amount relates to a payment falling within subsection (4) above, it shall not be so treated unless the payment is due to a person who is, within the terms of section 533 of this Act, connected with the landlord.

- (6) Where an amount by reference to which a person is chargeable to tax by virtue of this section is payable by instalments, the tax chargeable by reference to that amount shall, if he makes a claim in that behalf by notice in writing not later than one year after the chargeable period in which he becomes entitled to the first such instalment, instead of being computed in accordance with the preceding provisions of this section, be computed as if each instalment were rent payable under the lease, or, in the case of instalments payable to a person other than the landlord or to a person after he has ceased to be the landlord, were profits or gains chargeable to tax under Case VI

of Schedule D; and where a claim is so made, all such assessments, alterations of assessments and repayments of tax shall be made as may be necessary.

- (7) Section 69(2) above shall not apply in relation to amounts which, in computing profits or gains for the purposes of Schedule A, are relevant only by virtue of this section.

## **81 Schedule D charge on assignment of lease granted at undervalue**

- (1) Where the terms subject to which a lease of a duration not exceeding fifty years was granted are such that the grantor, having regard to values prevailing at the time it was granted, and on the assumption that the negotiations for the lease were at arm's length, could have required the payment of an additional sum (hereinafter referred to as "the amount foregone ") by way of premium, or additional premium, for the grant of the lease, then, on any assignment of the lease for a consideration—
- (a) where the lease has not previously been assigned, exceeding the premium (if any) for which it was granted, or
  - (b) where the lease has been previously assigned, exceeding the consideration for which it was last assigned,
- the amount of the excess, in so far as it is not greater than the amount foregone reduced by the amount of any such excess arising on a previous assignment of the lease, shall, in the same proportion as the amount foregone would under section 80(1) above have fallen to be treated as rent if it had been a premium under the lease, be treated as profits or gains of the assignor chargeable to tax under Case VI of Schedule D.
- (2) If there is submitted to the inspector, by the grantor or any assignor or assignee of the lease, a statement showing whether or not a charge to tax arises or may arise under this section and, if so, the amount on which the charge arises or may arise, then, if the inspector is satisfied as to the accuracy of the statement, he shall certify the accuracy thereof.

## **82 Schedule D charge on sale of land with right to reconveyance**

- (1) Where the terms subject to which an estate or interest in land is sold provide that it shall be, or may be required to be, reconveyed at a future date to the vendor or a person who is, within the terms of section 533 of this Act, connected with him, the vendor shall be chargeable to tax under Case VI of Schedule D on any amount by which the price at which the estate or interest is sold exceeds the price at which it is to be reconveyed, or, if the earliest date at which in accordance with those terms it would fall to be reconveyed is a date two years or more after the sale, on that excess reduced by one-fiftieth thereof for each complete year (other than the first) in the period between the sale and that date.
- (2) Where under the terms of the sale the date of the reconveyance is not fixed, then—
- (a) if the price on reconveyance varies with the date, the price shall be taken for the purposes of this section to be the lowest possible under the terms of the sale, and
  - (b) there shall be repaid to the vendor, on a claim made before the expiry of six years after the date on which the reconveyance takes place, any amount by which tax assessed on him by virtue of this section exceeded the amount which would have been so assessed if that date had been treated for the purposes of this section as the date fixed by the terms of the sale.

- (3) Where the terms of the sale provide for the grant of a lease directly or indirectly out of the estate or interest to the vendor or a person who is, within the terms of section 533 of this Act, connected with him, this section shall apply as if the grant of the lease were a reconveyance of the estate or interest at a price equal to the sum of the amount of the premium (if any) for the lease and the value at the date of the sale of the right to receive a conveyance of the reversion immediately after the lease begins to run:

Provided that this subsection shall not apply if the lease is granted, and begins to run, within one month after the sale.

### **83 Premiums paid etc.: deduction from premiums and rents received**

- (1) Where in relation to any premises—
- (a) tax has become chargeable under the provisions of section 80 (except subsection (6)), 81 or 82 above on any amount (disregarding any reduction in that amount under this subsection), or
  - (b) tax would have become so chargeable on that amount but for the operation of the said section 80(6) or this subsection, or but for any exemption from tax,

and, in respect of a lease granted out of, or a disposition of, the lease, estate or interest in respect of which tax so became or would have become chargeable on the said amount (hereinafter referred to as "the amount chargeable on the superior interest"), a person would apart from this subsection be chargeable under the said provisions on any amount (hereinafter referred to as "the later chargeable amount"), the amount on which he is so chargeable shall, where no claim is or can be made by him under the said section 80(6), be the excess (if any) of the later chargeable amount over the appropriate fraction of the amount chargeable on the superior interest.

Provided that where a person would, apart from this subsection, be so chargeable in respect of a lease or disposition which extends to a part only of the said premises, the amount on which he is so chargeable shall, where no claim is or can be made by him under the said section 80(6), be the excess (if any) of the later chargeable amount over so much of the appropriate fraction of the amount chargeable on the superior interest as, on a just apportionment, is attributable to that part of the premises.

- (2) Where in relation to any premises tax has or would have become chargeable as mentioned in subsection (1)(a) or (b) above in respect of a lease, estate or interest, then, subject to subsection (3) below, the person for the time being entitled to the lease, estate or interest shall be treated for the purpose of deductions under sections 72 and 73 above from rent receivable by him in respect of those or other premises as paying rent for those premises (in addition to any actual rent), becoming due from day to day, during any part of the period in respect of which the amount chargeable on the superior interest arose for which he was entitled to the lease, estate or interest, and in all bearing to that amount the same proportion as that part of the period bears to the whole.
- (3) Where subsection (1) above has effect in relation to a lease granted out of, or a disposition of, the lease, estate or interest in respect of which tax has or would have become so chargeable, subsection (2) above shall apply for the period in respect of which the later chargeable amount arose only if the appropriate fraction of the amount chargeable on the superior interest exceeds the later chargeable amount, and shall then apply as if the amount chargeable on the superior interest were reduced in the proportion which the said excess bears to the said appropriate fraction:

Provided that where the lease so granted, or the said disposition, extends to a part only of the premises, the said subsection (2) and this subsection shall be applied separately in relation to that part and to the remainder of the premises, but as if for any reference to the amount chargeable on the superior interest there were substituted a reference to that amount proportionately adjusted.

- (4) For the purposes of this section—
- (a) the appropriate fraction of the amount chargeable on the superior interest is the fraction
- $$\frac{A}{B}$$
- of that amount, where—
- A is the period in respect of which the later chargeable amount arose, and  
B is the period in respect of which the amount chargeable on the superior interest arose ; and
- (b) the period in respect of which an amount arose—
- (i) where it arose under section 80 above, shall be the period treated in computing the amount as being the duration of the lease ;
- (ii) where it arose under section 81 above, shall be the period treated in computing the amount as being the duration of the lease remaining at the date of the assignment;
- (iii) where it arose under section 82 above, shall be the period beginning with the sale and ending on the date fixed under the terms of the sale as the date of the reconveyance or grant, or, if that date is not fixed, ending with the earliest date at which the reconveyance or grant could take place in accordance with the terms of the sale.
- (5) Where the amount chargeable on the superior interest arose under section 80(2) above by reason of an obligation which included the carrying out of work in respect of which any capital allowance has fallen or will fall to be made, subsections (1) to (3) above shall apply as if the obligation had not included the carrying out of that work and the said amount had been calculated accordingly.
- (6) Where an amount relevant for the purposes of subsection (1), (2) or (3) above arose under section 82 above, and the reconveyance or grant in question takes place at a price different from that taken in calculating the amount, or on a date different from that taken in determining the period in respect of which the amount arose, that subsection shall be deemed to have had effect (for all relevant chargeable periods) as it would have had effect if the actual price or date had been so taken, and such adjustment of liability to tax shall be made, by means of an assessment or otherwise, as may be necessary, and may be so made at any time at which it could be made if it related only to tax for the chargeable period in which the reconveyance or grant takes place.
- (7) An amount, or part of an amount, shall not be deducted under this section more than once from any sum, or from more than one sum, and shall not in any case be deducted thereunder if it has been otherwise allowed as a deduction in computing the income of any person for tax purposes.

#### **84 Rules for ascertaining duration of leases**

- (1) The following provisions shall have effect in ascertaining the duration of a lease for the purposes of sections 80 to 82 above—

- (a) where the terms of the lease include provision for the determination of the lease by notice given by the landlord, the lease shall not be treated as granted for a term longer than one ending at the earliest date on which it could be determined by notice so given,
  - (b) where any of the terms of the lease (whether relating to forfeiture or to any other matter) or any other circumstances render it unlikely that the lease will continue beyond a date falling before the expiry of the term of the lease, the lease shall not be treated as having been granted for a term longer than one ending on that date, and
  - (c) where the terms of the lease include provision for the extension of the lease beyond a given date by notice given by the tenant, account may be taken of any circumstances making it likely that the lease will be so extended.
- (2) Subsection (1)(b) above shall be applied by reference to the facts which were known or ascertainable at the time of the grant of the lease, or, in relation to tax under section 80(4) above, at the time when the contract providing for the variation or waiver is entered into; and it shall be assumed in applying the said subsection (1)(b) that all parties concerned, whatever their relationship, act as they would act if they were at arm's length.
- (3) In relation to Scotland, the expression " term " in subsection (1) above, where referring to the duration of a lease, means " period " .
- (4) The above provisions have effect subject to paragraph 3 of Schedule 14 to this Act (which confines them, except for certain specified purposes, to leases granted after 12th June 1969 and, in relation to section 80(4) above, variations or waivers under contracts entered into after that date); and where the above provisions do not have effect, the rules to be applied for the purpose mentioned in subsection (1) above are those set out in paragraph 4 of the said Schedule 14.

## **85 Saving for pre-1963 leases, and special relief for individuals**

- (1) Nothing in sections 80 to 82 above shall apply in relation to a lease granted, or an estate or interest in land sold, before the beginning of the year 1963-64, or in pursuance of a contract entered into before 4th April 1963:

Provided that section 80(4) above shall apply to the variation or waiver of any terms of a lease (not being a variation or waiver made in pursuance of a contract entered into before 4th April 1963) notwithstanding that the lease was granted before the beginning of the year 1963-64.

- (2) Schedule 3 to this Act shall have effect for giving relief, on a claim being made by him in that behalf, from any increase in an individual's liability to income tax which is attributable to amounts being treated by virtue of section 80 (except subsection (6)), 81 or 82 above as receipts for a single year of assessment rather than as receipts for the period in relation to which they are chargeable.

### *Supplemental (Schedules A and D)*

## **86 Tax treatment of receipts and outgoings on sale of land**

- (1) Where by virtue of a contract for the sale of an estate or interest in land there falls to be apportioned between the parties a receipt or outgoing in respect of the estate or interest

which becomes due after the making of the contract but before the time to which the apportionment falls to be made, and a part of the receipt is therefore receivable by the vendor in trust for the purchaser or, as the case may be, a part of the outgoing is paid by the vendor as trustee for the purchaser, the purchaser shall be treated for the purposes of tax under Schedule A as if that part had become receivable or payable on his behalf immediately after the time to which the apportionment falls to be made.

- (2) Where by virtue of such a contract there falls to be apportioned between the parties a receipt or outgoing in respect of the estate or interest which became due before the making of the contract, the parties shall be treated for the purposes of tax under Schedule A as if the contract had been entered into before the receipt or outgoing became due, and subsection (1) above shall apply accordingly.
- (3) Where on the sale of an estate or interest in land there is apportioned to the vendor a part of a receipt or outgoing in respect of the estate or interest which is to become receivable or be paid by the purchaser after the making of the apportionment, then, for the purposes of tax under Schedule A—
  - (a) when the receipt becomes due or, as the case may be, the outgoing is paid, the amount of it shall be treated as reduced by so much thereof as was apportioned to the vendor, and
  - (b) the part apportioned to the vendor shall be treated as if it were of the same nature as the receipt or outgoing and had become receivable, or had been paid, directly by him immediately before the time to which the apportionment is made and, where it is part of an outgoing, had become due immediately before that time.
- (4) Any reference in subsection (1) or (2) above to a party to a contract shall include a person to whom the rights and obligations of that party under the contract have passed by assignment or otherwise.
- (5) This section shall apply as respects tax under Case VI of Schedule D in a case falling within paragraph 4 of Schedule A (furnished lettings) as it applies as respects tax under Schedule A in other cases.

## **87 Relief for rent etc. not paid**

- (1) Where on a claim in that behalf a person proves—
  - (a) that he has not received an amount which he was entitled to receive in respect of any rents or receipts on the profits or gains arising from which he would be chargeable under Schedule A, and
  - (b) if the non-receipt of the said amount was attributable to the default of the person by whom it was payable, that the claimant has taken any reasonable steps available to him to enforce payment,
  - (c) if the claimant waived payment of the said amount, that the waiver was made without consideration, and was reasonably made in order to avoid hardship,the claimant shall be treated for tax purposes for all relevant chargeable periods as if he had not been entitled to the said amount, and such adjustment shall be made, by repayment or otherwise, as the case may require; but if all or any of the said amount is subsequently received, the claimant or, if he is dead, his executors or administrators shall, not later than six months thereafter, give notice in writing of its receipt to the inspector, and such re-adjustment of liability to tax (for all relevant chargeable periods) shall be made as may be necessary, and may be made at any time at which it could

be made if it related only to tax for the chargeable period in which the amount, or the part of the amount, is received.

- (2) Subsection (1) above shall apply in relation to sums chargeable to tax under Case VI of Schedule D by virtue of any provision of sections 80 to 82 above as it applies to profits or gains chargeable to tax under Schedule A.

## **88 Allowances for betterment levy**

Schedule 4 to this Act (effect of charges to betterment levy on charges to tax under Schedules A and D) shall have effect.

## **89 Non-residents**

- (1) Section 78 of the Taxes Management Act 1970 (taxation of non-residents in name of agent) shall not apply to tax on profits or gains chargeable to tax under Schedule A, or on any of the profits or gains chargeable under Case VI of Schedule D—

- (a) in a case falling within paragraph 4 of Schedule A, or
- (b) which arise under the terms of a lease, but to a person other than the landlord, or otherwise arise out of any disposition or contract such that if they arose to the person making it they would be chargeable under Schedule A,

where payment is made (whether in the United Kingdom or elsewhere) directly to a person whose usual place of abode is outside the United Kingdom, but section 53 of this Act shall apply in relation to the payment as it applies to annual payments charged with tax under Case III of Schedule D and not payable out of profits or gains brought into charge to income tax.

- (2) Subsection (1) above shall apply in relation to sums chargeable to tax under Case VI of Schedule D by virtue of any provision of sections 80 to 82 above as it applies to profits or gains chargeable to tax under Schedule A.
- (3) Where by virtue of subsection (1) above the income tax chargeable for any year of assessment on a person's profits or gains chargeable to tax under Schedule A or Case VI of Schedule D or both would, apart from this subsection, be greater than the tax which would be chargeable thereon apart from section 69(2) of this Act, then, on a claim in that behalf being made, relief shall be given from the excess, whether by repayment or otherwise.

## **90 Interpretation**

- (1) In this Part of this Act, except where the context otherwise requires—

" assignment ", in relation to Scotland, means an assignation ;

" lease " includes an agreement for a lease, and any tenancy, but does not include a mortgage or heritable security, and " lessee ", " lessor " and " letting " shall be construed accordingly, and " lessee " and " lessor " include respectively the successors in title of a lessee or a lessor;

" premises " includes any land ;

" premium " includes any like sum, whether payable to the immediate or a superior landlord ;

" reversion ", in relation to Scotland, means the interest of the landlord in the property subject to the lease.

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- (2) For the purposes of this Part of this Act any sum (other than rent) paid on or in connection with the granting of a tenancy shall be presumed to have been paid by way of premium except in so far as other sufficient consideration for the payment is shown to have been given.
- (3) In the application of this Part of this Act to Scotland "premium" includes in particular a grassum payable to any landlord or intermediate landlord on the creation of a sublease; and in this subsection "intermediate landlord" means, where an occupying lessee is a sub-lessee, any person for the time being holding the interest of landlord under a sub-lease which comprises the property of which the occupying lessee is sub-lessee, but does not include the immediate landlord.

## PART IV

### SCHEDULE B

#### 91 Schedule B

The Schedule referred to as Schedule B is as follows:—

#### “SCHEDULE B

- 1 Tax under this Schedule shall be charged in respect of the occupation of woodlands in the United Kingdom managed on a commercial basis and with a view to the realisation of profits.
- 2 Paragraph 1 above has effect subject to the right given by section 111 of this Act to elect for assessment under Schedule D.”

#### 92 Supplemental

- (1) Tax under Schedule B shall be charged on the occupier of the woodlands on the assessable value of his occupation in the chargeable period, and the amount on which he is chargeable shall be deemed for all tax purposes to be income arising from that occupation.
- (2) For the purposes of tax under Schedule B—
- (a) the assessable value of a person's occupation of woodlands is an amount equal to one-third of the woodlands' annual value, or a proportionate part of that amount if the period in respect of which he is chargeable is less than one year, and
  - (b) the annual value of any woodlands shall be determined in accordance with section 531 of this Act, but as if the land, instead of being woodlands, were let in its natural and unimproved state.
- (3) For the purposes of Schedule B and of subsections (1) and (2) above, every person having the use of lands shall be deemed to be the occupier thereof, and references to occupation shall be construed accordingly.



## PART V

### SCHEDULE C, AND GENERAL PROVISIONS ABOUT GOVERNMENT SECURITIES

#### *The Schedule C charge*

#### **93 Schedule C**

The Schedule referred to as Schedule C is as follows:—

#### “SCHEDULE C

- 1 Tax under this Schedule shall be charged in respect of all profits arising from public revenue dividends payable in the United Kingdom in any chargeable period.
- 2 Tax under this Schedule shall also be charged in respect of profits arising from public revenue dividends payable in the Republic of Ireland in any chargeable period, being dividends on securities of the United Kingdom Government entered in the register of the Bank of Ireland in Dublin.
- 3 Where a banker or any other person in the United Kingdom obtains payment of any overseas public revenue dividends by means of coupons received from any other person or otherwise on his behalf, tax under this Schedule shall be charged in respect of the dividends.
- 4 Where—
  - (a) any banker in the United Kingdom sells or otherwise realises coupons for any overseas public revenue dividends, and pays over the proceeds to any person or carries them to his account, or
  - (b) any dealer in coupons in the United Kingdom purchases any such coupons as aforesaid otherwise than from a banker or another dealer in coupons,tax under this Schedule shall be charged in respect of the proceeds of the sale or other realisation.
- 5 Notwithstanding anything in paragraphs 1 to 4 above, where any half-yearly payment in respect of any dividend entrusted to the Bank of England or the Bank of Ireland for payment and distribution, or which is payable by the National Debt Commissioners or of which they have the distribution, does not exceed 50 shillings, it shall not be charged under this Schedule, but shall be assessed and charged under Case III of Schedule D:  
  
Provided that this paragraph does not apply to any payment obtained by means of a coupon in respect of a bond to bearer or stock certificate.”

#### **94 Income tax: mode of charge**

- (1) Income tax under Schedule C shall be charged by the Board, and shall be paid on behalf of the persons entitled to the profits, dividends or proceeds which are the subject of the tax—
  - (a) in the case of tax charged under paragraph 1 of that Schedule, by the persons and bodies of persons respectively entrusted with payment,

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- (b) in the case of tax charged under paragraph 2 of that Schedule, by the Bank of England, and
  - (c) in the case of tax charged under paragraph 3 or 4 of that Schedule, by the banker or other person, or by the banker or dealer in coupons, as the case may be.
- (2) Schedule 5 to this Act shall have effect in relation to the assessment, charge and payment of income tax under Schedule C.

*Government securities: exemptions from tax*

**95 United Kingdom savings certificates**

- (1) The accumulated interest payable in respect of any national or war savings certificate issued by the Treasury through the Post Office or under the auspices of the Director of Savings, being a certificate under which the purchaser, by virtue of an immediate payment, becomes entitled after the expiry of a specified period to receive some greater sum, shall not be liable to tax so long as the amount of the certificates held by the person who is for the time being the holder of the certificate does not exceed the amount which an individual is for the time being authorised to hold under regulations made by the Treasury.
- (2) Where the currency of any national or war savings certificate has been extended under any Act, subsection (1) above shall apply with respect to any interest payable in respect of the certificate for the period after the expiry of the period referred to in that subsection up to the date on which it is repaid or redeemed as it applies to the said accumulated interest.

**96 Ulster savings certificates held by persons resident and domiciled in Northern Ireland**

- (1) The provisions of section 95 above giving relief from tax in respect of the accumulated interest payable in respect of national savings certificates shall extend to the accumulated interest payable in respect of any Ulster savings certificates issued by the Government of Northern Ireland and held by persons resident and domiciled in Northern Ireland, whether issued for the same price, and whether maturing for payment on the expiry of the same period, as national savings certificates or not, and whether the sum payable on maturity is the same as in the case of national savings certificates or not.
- (2) A claim under this section shall be made to the Board.

**97 Ulster savings certificates issued to persons resident in Northern Ireland**

- (1) Subject to subsections (2) and (3) below, there shall be exempt from tax the accumulated interest payable in respect of any such savings certificates issued by the Government of Northern Ireland as are declared by regulations made by the Treasury to be certificates the proceeds of the sale of which have been made available to Her Majesty's Government in the United Kingdom.
- (2) The exemption conferred by subsection (1) above shall not extend to the interest on any certificate unless the person beneficially entitled to the certificate when it was issued was then resident in Northern Ireland.

- (3) If, at the date of the encashment of any certificates to which subsection (1) above applies, the total savings certificate holding of the person beneficially entitled to the certificates encashed, computed in the prescribed manner, exceeds the prescribed limit, the said exemption—
- (a) shall not extend to the interest on the encashed certificates unless the encashment thereof brings the total savings certificate holding of that person, computed as aforesaid, below the prescribed limit, and
  - (b) shall then extend only to the interest on so much of the encashed certificates as is equal to the amount by which the said total holding, so computed, is brought by the encashment below the prescribed limit.

In this subsection " the total savings certificate holding" means, in relation to a person, his total holding of certificates to which subsection (1) above applies and savings certificates issued by the Treasury through the Post Office or under the auspices of the Director of Savings, and " prescribed " means prescribed by regulations made by the Treasury.

- (4) A claim under this section shall be made to the Board.
- (5) Nothing in this section shall deprive any person of any exemption from tax under section 96 above.
- (6) Any power conferred by this section to make regulations shall be exercisable by statutory instrument.

#### **98 Tax reserve certificates**

Tax shall not be chargeable in respect of the interest on tax reserve certificates issued by the Treasury,

#### **99 United Kingdom government securities held by nonresidents**

- (1) Where the Treasury (whether before or after the passing of this Act) issue any securities which they have power to issue for the purpose of raising any money or any loan with a condition that the interest thereon shall not be liable to income tax so long as it is shown that the securities are in the beneficial ownership of persons who are not ordinarily resident in the United Kingdom, the interest on securities issued with such a condition shall, subject to subsection (3) below, be exempt from tax accordingly.
- (2) A claim under this section shall be made to the Board.
- (3) Where any income of any person is, by virtue of any provision of the Tax Acts (and in particular, but without prejudice to the generality of the preceding words, by virtue of Chapter III of Part XVII of this Act) to be deemed to be income of any other person, that income is not exempt from tax as being derived from a security issued by the Treasury with any condition regulating the treatment of the interest thereon for tax purposes by reason of the first-mentioned person not being ordinarily resident, or being neither domiciled nor ordinarily resident, in the United Kingdom.

#### **100 Securities of foreign states held by non-residents**

- (1) Subject to subsection (3) below, no tax shall be chargeable in respect of dividends payable in the United Kingdom on the securities of any state or territory outside the

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United Kingdom, or in respect of any dividends or proceeds chargeable apart from this subsection under paragraph 3 or 4 of Schedule C, if it is proved, on a claim in that behalf made to the Board, that the person owning the securities and entitled to the dividends or proceeds is not resident in the United Kingdom.

- (2) Where securities are held under a trust, and the person who is the beneficiary in possession under the trust is the sole beneficiary in possession and can, by means either of the revocation of the trust or of the exercise of any powers under the trust, call upon the trustees at any time to transfer the securities to him absolutely free from any trust, that person shall, for the purposes of subsection (1) above, be deemed to be the person owning the securities.
- (3) Where any income of any person is, by virtue of any provision of the Tax Acts (and in particular, but without prejudice to the generality of the preceding words, by virtue of Chapter III of Part XVII of this Act) to be deemed to be income of any other person, that income is not exempt from tax by virtue of this section by reason of the first-mentioned person not being resident in the United Kingdom.

*Government securities: payment of interest without deduction of income tax, and other provisions*

#### **101 United Kingdom securities: Treasury directions for payment without deduction**

- (1) The Treasury may direct that any of the following securities, that is to say—
  - (a) any securities issued under the War Loan Acts 1914 to 1919, or under section 60 of the Finance Act 1916, and
  - (b) any securities issued, or deemed to be issued, under the National Loans Act 1939, or issued under the National Loans Act 1968,
  - (c) any Government stock issued under section 1 of the Bank of England Act 1946, section 1 of the Cable and Wireless Act 1946, section 65(1) of the Town and Country Planning Act 1947, or section 62(1) of the Town and Country Planning (Scotland) Act 1947, and
  - (d) any such stock as is mentioned in section 33(1) of the Coal Industry Nationalisation Act 1946, or section 26(1) of the Iron and Steel Act 1967,
 shall be issued, or shall be deemed to have been issued, subject to the condition that the interest thereon shall be paid without deduction of income tax; and, subject to the provisions of this section, the interest shall be so paid accordingly, but shall be chargeable under Case III of Schedule D.
- (2) The holder of any registered securities the interest on which is, by virtue of directions given under subsection (1) above, payable without deduction of tax may make an application to the Bank under this subsection requesting that income tax shall be deducted from the interest on those securities before payment thereof; and where any such application is made, income tax in respect of the interest on those securities shall, so long as they remain registered in the name of the person making the application and subject to the withdrawal of the application under subsection (4) below, be deducted and charged in the same manner as if they were not securities to which the said subsection (1) applied.
- (3) An application under subsection (2) above shall be in such form as the Bank with the approval of the Treasury may prescribe, and any application made less than two months before the date on which any interest is payable shall only have effect as regards any payment of interest subsequent to the payment falling due on that date.

- (4) An application made under the said subsection (2) may at any time be withdrawn by notice to the Bank in such form as the Bank with the approval of the Treasury may prescribe, but an application so withdrawn shall, notwithstanding the withdrawal, continue to have effect as regards any interest payable less than two months after the date on which the notice is received at the Bank.
- (5) Where any securities to which subsection (2) above applies are held upon trust, the holders of the securities may make an application under that subsection in respect thereof without the consent of any other person, notwithstanding anything in the instrument creating the trust.
- (6) In this section " the Bank " means the Bank of England or the Bank of Ireland as the case requires, and " registered " means entered in the register of the Bank.

### **102 Treasury directions as respects Northern Ireland securities**

- (1) The Treasury on the application of the Ministry of Finance for Northern Ireland may, as respects any securities to which this section applies, direct that the securities specified in the direction shall be issued, or shall be deemed to have been issued, subject to the condition that the interest thereon shall be paid without deduction of income tax; and, in relation to any securities so specified and the interest thereon, section 101 above shall have effect as if—
  - (a) the securities were securities in respect of which a direction had been given by the Treasury under subsection (1) of that section,
  - (b) references in that section to " the Bank " were (notwithstanding subsection (6) thereof) references to the bank in the books of which the securities are registered or inscribed, and
  - (c) the references in subsections (3) and (4) of that section to the Treasury were references to the said Ministry of Finance.
- (2) The securities to which this section applies are securities issued under section 11(1) (c) of the Exchequer and Financial Provisions Act (Northern Ireland) 1950 for money borrowed by the said Ministry of Finance for the purposes of making issues from the Consolidated Fund of Northern Ireland.

### **103 Information to be given where interest paid without deduction**

Where interest on any securities issued subject to the condition that interest is payable without deduction of tax is paid without deduction of tax, any person by whom such interest is paid, and any person who receives on behalf of any other person, being a registered or inscribed holder of any such security, any interest so paid without deduction of tax, and any person who has acted as intermediary in the purchase of any securities on which the interest is payable without deduction of tax, shall, on being so required by the Board, furnish to them—

- (a) the names and addresses of the persons to whom such interest has been paid, or on whose behalf such interest has been received, or on whose behalf such securities have been purchased, and
- (b) the amount of the interest so paid or received, or the amount of the securities so purchased.

**104 Taxation of interest on converted government securities, and interest which becomes subject to deduction**

- (1) Where the income which any individual is required under the Income Tax Acts to include in a statement of his total income for any year includes both—
- (a) interest received without deduction of income tax in respect of government securities (in this section referred to as "original securities") which have been exchanged for any other government securities (in this section referred to as "substituted securities"), and
  - (b) interest taxed by deduction in respect of such substituted securities, and the amount of the interest so included exceeds the full amount of the interest for a complete year on the original securities,
- then, if that individual so requires, the excess—
- (i) shall not be taken into account in ascertaining his total income for that year for the purposes of income tax, but
  - (ii) shall nevertheless be chargeable to income tax for that year at such rate or rates, and subject to such reliefs, if any, as would be applicable if the excess constituted the highest part of an income equal, subject to section 529 of this Act, to the amount of his total income exclusive of the excess.
- (2) Where an application is made under section 101(2) of this Act with respect to any securities, subsection (1) above shall have effect as if, during the period in which the interest on those securities was paid without deduction of income tax, those securities were original securities within the meaning of the said subsection (1), and as if thereafter they were substituted securities within the meaning of that subsection.

**105 Subscriptions by banks to war loans**

Any bank carrying on a bona fide banking business in the United Kingdom shall be relieved, by repayment or otherwise, from tax under Schedule C in respect of the interest on any securities which the bank proves to represent subscriptions by the bank to any government loan issued for the purposes of the war which was being carried on at the time of the passing of the Income Tax Act 1918, and the bank shall include the amount of any such interest in the computation of its profits or gains for the purpose of assessment under Case I of Schedule D.

*Miscellaneous and supplemental***106 Exemption for stock and dividends in name of Treasury etc.**

- (1) No tax shall be chargeable in respect of the stock or dividends transferred to accounts in the books of the Bank of England in the name of the Treasury or the National Debt Commissioners in pursuance of any Act of Parliament, but the Bank of England shall transmit to the Board an account of the total amount thereof.
- (2) No tax shall be chargeable in respect of the stock or dividends belonging to the Crown, in whatever name they may stand in the books of the Bank of England.
- (3) Gains shall not be chargeable gains if accruing on the disposal of stock to which subsection (1) or (2) above applies.

**107 Interpretation**

In this Part of this Act—

" dividends " means any interest, public annuities, dividends or shares of annuities,

" public revenue ", except where the context otherwise requires, includes the public revenue of any government whatsoever, and the revenue of any public authority or institution in any country outside the United Kingdom,

" public revenue dividends " means dividends payable out of any public revenue,

" overseas public revenue dividends " means public revenue dividends payable elsewhere than in the United Kingdom (whether they are also payable in the United Kingdom or not) out of any public revenue other than the public revenue of the United Kingdom,

" banker " includes a person acting as a banker, and

" coupons ", and " coupons for any overseas public revenue dividends ", include warrants for or bills of exchange purporting to be drawn or made in payment of any overseas public revenue dividends.

**PART VI**

## SCHEDULE D

**CHAPTER I**

## THE CHARGE

*The Schedule, and the seven Cases***108 Schedule D**

The Schedule referred to as Schedule D is as follows:—

## “SCHEDULE D

1 Tax under this Schedule shall be charged in respect of—

(a) the annual profits or gains arising or accruing—

- (i) to any person residing in the United Kingdom from any kind of property whatever, whether situated in the United Kingdom or elsewhere, and
- (ii) to any person residing in the United Kingdom from any trade, profession or vocation, whether carried on in the United Kingdom or elsewhere, and
- (iii) to any person, whether a British subject or not, although not resident in the United Kingdom, from any property whatever in the United Kingdom, or from any trade, profession or vocation exercised within the United Kingdom, and

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- (b) all interest of money, annuities and other annual profits or gains not charged under Schedule A, B, C or E, and not specially exempted from tax.
- 2 There shall also be charged under this Schedule, to the extent provided in Chapter VIII of this Part of this Act, income tax (but not corporation tax) in respect of the gains accruing to any person resident and ordinarily resident in the United Kingdom from his acquisition and disposal of assets.
  - 3 The provisions of paragraphs 1 and 2 above are without prejudice to any other provision of the Tax Acts directing tax to be charged under this Schedule, and the tax so directed to be charged shall be charged accordingly.”

### **109 Tax to be charged under seven Cases**

- (1) Tax under Schedule D shall be charged under the Cases set out in subsection (2) below, and subject to and in accordance with the provisions of the Tax Acts applicable to those Cases respectively.
- (2) The Cases are—
  - Case I—tax in respect of any trade carried on in the United Kingdom or elsewhere ;
  - Case II—tax in respect of any profession or vocation not contained in any other Schedule ;
  - Case III—tax in respect of—
    - (a) any interest of money, whether yearly or otherwise, or any annuity or other annual payment, whether such payment is payable within or out of the United Kingdom, either as a charge on any property of the person paying the same by virtue of any deed or will or otherwise, or as a reservation out of it, or as a personal debt or obligation by virtue of any contract, or whether the same is received and payable half-yearly or at any shorter or more distant periods, but not including any payment chargeable under Schedule A, and
    - (b) all discounts, and
    - (c) income, except income charged under Schedule C, from securities bearing interest payable out of the public revenue;
  - Case IV—tax in respect of income arising from securities out of the United Kingdom, except such income as is charged under Schedule C ;
  - Case V—tax in respect of income arising from possessions out of the United Kingdom, not being income consisting of emoluments of any office or employment;
  - Case VI—tax in respect of any annual profits or gains not falling under any other Case of Schedule D, and not charged by virtue of Schedule A, B, C or E; and
  - Case VII—income tax chargeable by virtue of Chapter VIII of this Part of this Act in respect of gains accruing from the acquisition and disposal of assets.
- (3) The provisions of subsection (1) above are without prejudice to any other provision of the Tax Acts directing tax to be charged under one or other of the said Cases, and the tax so directed to be charged shall be charged accordingly.



*Supplementary charging provisions*

**110 Farming, and other commercial occupation of land (except woodlands)**

- (1) All farming and market gardening in the United Kingdom shall be treated as the carrying on of a trade or, as the case may be, of a part of a trade, and the profits or gains thereof shall be charged to tax under Case I of Schedule D accordingly.
- (2) All the farming carried on by any particular person or partnership or body of persons shall be treated as one trade.
- (3) The occupation of land in the United Kingdom for any purpose other than farming or market gardening shall, if the land is managed on a commercial basis and with a view to the realisation of profits, be treated as the carrying on of a trade or, as the case may be, of a part of a trade, and the profits or gains thereof shall be charged to tax under Case I of Schedule D accordingly:

Provided that nothing in this subsection shall affect the taxation of woodlands which are managed on a commercial basis and with a view to the realisation of profits.

**111 Woodlands managed on a commercial basis**

- (1) Any person occupying woodlands which are managed by him on a commercial basis and with a view to the realisation of profits may elect to be assessed and charged to tax in respect of those woodlands under Schedule D instead of under Schedule B.
- (2) The election of any such person shall be signified by notice in writing to the inspector not later than two years after the end of the chargeable period, and, from and after the receipt of the notice, the charge upon him for that period shall be under Schedule D, and the profits or gains arising to him from the occupation of the woodlands shall for all purposes be deemed to be profits or gains of a trade chargeable under that Schedule.
- (3) Any such election shall extend to all woodlands so managed on the same estate:

Provided that woodlands shall be treated for this purpose as being woodlands on a separate estate if the person occupying them gives notice to the inspector within ten years after the time when they are planted or replanted.

- (4) An election under this section shall have effect not only as respects the chargeable period, but also as respects all future chargeable periods so long as the woodlands are occupied by the person making the election.

**112 Mines, quarries and other concerns**

- (1) Profits or gains arising out of land in the case of any concern specified in subsection (2) below shall be charged to tax under Case I of Schedule D.
- (2) The said concerns are—
  - (a) mines and quarries (including gravel pits, sand pits and brickfields),
  - (b) ironworks, gasworks, salt springs or works, alum mines or works (not being mines falling within the preceding paragraph), and waterworks and streams of water,
  - (c) canals, inland navigations, docks, and drains or levels,
  - (d) fishings,

- (e) rights of markets and fairs, tolls, bridges and ferries,
- (f) railways and other ways, and
- (g) other concerns of the like nature as any of the concerns specified in paragraphs (b) to (e) above.

### **113 Foreign pensions**

- (1) A pension which—
  - (a) is paid by or on behalf of a person outside the United Kingdom, and
  - (b) is not charged under paragraph 4 of Schedule E,shall be charged to tax under Case V of Schedule D.
- (2) Where—
  - (a) a person has ceased to hold any office or employment, and
  - (b) a pension or annual payment is paid to him, or to his widow or child, or to any relative or dependant of his, by the person under whom he held the office or by whom he was employed, or by the successors of that person, and
  - (c) that pension or annual payment is paid by or on behalf of a person outside the United Kingdom,

then, notwithstanding that the pension or payment is paid voluntarily, or is capable of being discontinued, it shall be deemed to be income for the purposes of assessment to tax, and shall be assessed and charged under Case V of Schedule D as income from a pension.

### **114 Persons chargeable**

- (1) Subject to subsections (2) and (3) below, income tax under Schedule D shall be charged on and paid by the persons receiving or entitled to the income in respect of which the tax is directed by the Income Tax Acts to be charged.
- (2) Income tax to be charged under Schedule D in respect of any of the concerns mentioned in section 112 above shall be assessed and charged on the person carrying on the concern, or on the agents or other officers who have the direction or management of the concern or receive the profits thereof.
- (3) Where, in accordance with that section, income tax is charged under Schedule D on the profits of markets or fairs, or on tolls, fisheries or any other annual or casual profits not distrainable, the owner or occupier or receiver of the profits thereof shall be answerable for the tax so charged, and may retain and deduct the same out of any such profits.
- (4) For the purposes of corporation tax, the provisions of Chapter I of Part XI of this Act have effect to the exclusion of subsections (1) to (3) above.

## CHAPTER II

### CASES I TO VI: INCOME TAX: BASIS OF ASSESSMENT ETC.

#### *Cases I and II*

#### **115 Assessment on preceding year basis**

- (1) Subject to the provisions of this section and sections 116 to 118 below, income tax shall be charged under Cases I and II of Schedule D on the full amount of the profits or gains of the year preceding the year of assessment.
- (2) Where, in the case of the trade, profession or vocation, an account has, or accounts have, been made up to a date or dates within the period of three years immediately preceding the year of assessment, then—
  - (a) if an account was made up to a date within the year preceding the year of assessment, and that account was the only account made up to a date in that year, and was for a period of one year beginning either at the commencement of the trade, profession or vocation or at the end of the period on the profits or gains of which the assessment for the last preceding year of assessment was to be computed, the profits or gains of the year ending on that date shall be taken to be the profits or gains of the year preceding the year of assessment, and
  - (b) in any other case, the Board shall decide what period of twelve months ending on a date within the year preceding the year of assessment shall be deemed to be the year the profits or gains of which are to be taken to be the profits or gains of the year preceding the year of assessment.
- (3) Where the Board have given a decision under subsection (2)(b) above and it appears to them that, in consequence thereof, income tax for the last preceding year of assessment in respect of the profits or gains from the same source should be computed on the profits or gains of a corresponding period, they may give a direction to that effect, and an assessment or, on a claim therefor, repayment of tax shall be made accordingly.
- (4) The decision whether or not to give a direction under subsection (3) above shall be subject to an appeal, which shall lie to the General Commissioners unless the appellant elects (in accordance with section 46(1) of the Taxes Management Act 1970) to bring it before the Special Commissioners, and the Commissioners hearing the appeal shall grant such relief, if any, as is just.
- (5) An appeal under subsection (4) above shall be brought within thirty days of receipt of notice of the decision, save that, if the decision is to give a direction and an assessment is made in accordance with the direction, the appeal against the decision shall be by way of an appeal against the assessment.
- (6) In the case of the death of a person who, if he had not died, would under the provisions of subsections (2) and (3) above have become chargeable to income tax for any year, the tax which would have been so chargeable shall be assessed and charged on his executors or administrators, and shall be a debt due from and payable out of his estate.

#### **116 Special basis at commencement of trade, profession or vocation**

- (1) Where the trade, profession or vocation has been set up and commenced within the year of assessment, the computation of the profits or gains chargeable to income tax

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under Case I or Case II of Schedule D shall be made either on the full amount of the profits or gains arising in the year of assessment or according to the average of such period, not being greater than one year, as the case may require and as may be directed by the inspector.

On an appeal to the General or Special Commissioners, the Commissioners shall have jurisdiction to review the inspector's decision under this subsection.

- (2) Where the trade, profession or vocation has been set up and commenced within the year preceding the year of assessment, the computation of the profits or gains chargeable to income tax under Case I or Case II of Schedule D shall be made on the profits or gains for one year from the first setting up thereof.

### **117 Special basis for two years following commencement**

- (1) In this section—

" charged " means charged to income tax in respect of the profits or gains of a trade, profession or vocation, and

" the second year of assessment " and " the third year of assessment " mean respectively the year next after, and the year next but one after, the year of assessment in which the trade, profession or vocation was set up and commenced.

- (2) The person charged, or liable to be charged, shall be entitled, on giving notice in writing to the inspector within seven years after the end of the second year of assessment, to require that tax shall be charged for both the second year of assessment and the third year of assessment (but not for one or other only of those years) on the amount of the profits or gains of each such year respectively:

Provided that he may by notice in writing given to the inspector within six years after the end of the third year of assessment revoke the notice, and, in that case, tax shall be charged for both the second year of assessment and the third year of assessment as if the first notice had never been given.

- (3) If, at any time during the second or third year of assessment, any such change as is hereinafter mentioned occurs in the persons engaged in the trade, profession or vocation, that is to say, if either—

(a) a change occurs in a partnership of persons engaged therein, by reason of retirement or death, or the dissolution of the partnership as to one or more of the partners, or the admission of a new partner, in such circumstances that one or more of the persons who until that time were engaged in the trade, profession or vocation continue to be engaged therein, or

(b) a person who until that time was engaged in the trade, profession or vocation on his own account continues to be engaged in it, but as a partner in a partnership,

a notice for the purposes of subsection (2) above (including the proviso thereto) must, if given after the occurrence of the change and after notice has been given as respects the change under section 154(2) of this Act (election for change not to be treated as a discontinuance)—

- (i) in the case of a notice given within twelve months after the end of the second year of assessment, be signed by each of the individuals who were engaged in the trade, profession or vocation at any time between the commencement

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- of the second year of assessment and the giving of the notice, or, in the case of a deceased person, by his legal representatives, and
- (ii) in the case of a notice given after the end of the third year of assessment, be signed by each of the individuals who were engaged in the trade, profession or vocation at any time during the second or third year of assessment, or, in the case of a deceased person, by his legal representatives.
- (4) In the case of the death of a person who, if he had not died, would under the provisions of this section have become chargeable to income tax for any year, the tax which would have been so chargeable shall be assessed and charged on his executors or administrators, and shall be a debt due from and payable out of his estate.
- (5) There shall be made such assessments, reductions of assessments or, on a claim in that behalf, repayments of tax as may in any case be required in order to give effect to the preceding provisions of this section.

## **118 Special basis on discontinuance**

- (1) Where in any year of assessment a trade, profession or vocation is permanently discontinued, then, notwithstanding anything in sections 115 to 117 above—
- (a) the person charged or chargeable with income tax in respect thereof shall be charged for that year on the amount of the profits or gains of the period beginning on the 6th April in that year and ending on the date of the discontinuance, but subject to any deduction or setoff to which he may be entitled under section 171 of this Act (carry-forward) in respect of any loss, and
- (b) if the aggregate of the profits or gains (if any) of the years ending on the 5th April in each of the two years preceding the year of assessment in which the discontinuance occurs exceeds the aggregate of the amounts on which that person has been charged for each of the said two preceding years, or the aggregate of the amounts on which he would have been so charged if no such deduction or set-off as aforesaid had been allowed, he may be charged instead, for each of the said two preceding years, but subject to any such deduction or set-off, on the amount of the profits or gains of the year ending on the 5th April in that year.
- (2) Where a person has been charged with income tax otherwise than in accordance with paragraph (a) or (b) of subsection (1) above, any such assessment to tax, reduction or discharge of an assessment to tax, or, on a claim therefor, repayment of tax, shall be made as may be necessary to give effect to those paragraphs.
- (3) In the case of the death of a person who, if he had not died, would under the provisions of this section have become chargeable to income tax for any year, the tax which would have been so chargeable shall be assessed and charged on his executors or administrators, and shall be a debt due from and payable out of his estate.
- (4) Subsection (1)(b) above shall not apply where a trade is permanently discontinued in consequence of the nationalisation of any property constituting the assets of the trade.

For the purposes of this subsection " nationalisation " means, in relation to any property, a transfer of the property for which provision is made by any Act passed after the beginning of August 1945 and embodying a scheme for the carrying on of any industry or part of an industry, or of any undertaking, under national ownership or control, being a transfer, as part of the initial putting into force of the scheme, either

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to the Crown or to a body corporate constituted for the purposes of the scheme or of some previous scheme for such national ownership or control as aforesaid.

### *Case III*

#### **119 Assessment on preceding year basis**

Subject to sections 120 and 121 below, income tax under Case III of Schedule D shall be computed on the full amount of the income arising within the year preceding the year of assessment, and shall be paid on the actual amount of the said income, without any deduction.

#### **120 Special rules for fresh income**

- (1) Income tax under Case III of Schedule D shall, in the following cases, be computed on the following amounts, and paid on those actual amounts without any deduction—
  - (a) as respects the year of assessment in which the income first arises, on the full amount of the income arising within that year,
  - (b) where the income first arose on some day in the year preceding the year of assessment other than the 6th April, on the amount of the income of the year of assessment, and
  - (c) where the income first arose on the 6th April in the year preceding the year of assessment, or on some day in the year next before the year preceding the year of assessment other than the 6th April, and the person charged so requires by notice in writing given to the inspector at any time within six years after the end of the year of assessment, on the amount of the income of that year.
- (2) Where subsection (1)(c) above applies, and income tax charged otherwise than in accordance with that provision has been paid, any amount overpaid shall be repaid.
- (3) If at any time a person acquires a new source of any income in respect of which he is chargeable under Case III of Schedule D, or an addition to any source of any such income, then, for the year of assessment in which income first arises from the source or addition and the two following years of assessment, income tax in respect of the income from the source or addition shall, notwithstanding section 128 below (assessment of Case III income in one sum), be computed separately, and subsection (1) above shall apply to the computation thereof.
- (4) If at any time interest on a debt ceases to be payable subject to deduction of income tax, subsection (3) above shall apply as if the debt were a new source of income acquired by the creditor at that time.

#### **121 Special rules where source of income ceases**

- (1) Subject to the provisions of this section, if in any year of assessment a person charged or chargeable to income tax in respect of any income chargeable under Case III of Schedule D ceases to possess any particular source of any such income, or any part of any such source, the following provisions shall apply to the tax in respect of the income from that source or part—
  - (a) notwithstanding section 128 below (assessment of Case III income in one sum), the tax shall for that year, and (if necessary) for the preceding year, be computed separately,

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- (b) subject to paragraph (c) below, the tax shall for that year be computed on the amount of the income arising within the year (instead of the income arising within the preceding year), and shall for that preceding year also be computed on the amount of the income arising within it if greater than the amount on which tax is to be computed for that preceding year apart from this provision, and
  - (c) if no income arose within those two years, and the person charged or chargeable makes a claim under this section not later than two years after the end of them, then, subject to subsection (3) below—
    - (i) paragraphs (a) and (b) above shall apply to the year of assessment in which income did last arise and the year preceding it as, apart from this paragraph, they would apply to the year in which he ceases to possess the source or part and the year preceding it, and
    - (ii) tax shall not for the year of assessment following that in which income did last arise be chargeable on the amount of the income so arising.
- (2) If at any time interest on a debt begins to be payable subject to deduction of income tax, subsection (1) above shall apply as if the debt were a source of income which the creditor ceased to possess at that time.
- (3) A person shall not be entitled by virtue of subsection (1)(c) above to make a claim under this section in respect of any source of income, or any part of such a source, more than eight years after the end of the year of assessment in which income last arose from that source; but a person possessing a source of income chargeable to income tax under Case III of Schedule D, and having possessed it for six consecutive years of assessment without any income arising from it, shall be entitled, if income did arise from it in the year preceding those six years, to make a claim under this section not later than two years after the end of those six years, and, if he does so—
- (a) subsection (1) above shall apply as if he had ceased to possess the source of income immediately before the end of those six years, and
  - (b) section 120(3) above shall apply (in relation to later years of assessment) as if he had acquired the source as a new source immediately after the end of those six years.
- (4) There shall be made all such adjustments, whether by way of repayment of tax, assessment or otherwise, as may be necessary to give effect to this section.
- (5) A person's executors or administrators may make any claim under this section which he might have made, if he had not died, in respect of any source of income, or part of such a source, which he ceased to possess before his death, and may also make a claim under this section in respect of sources of income which he ceased to possess by dying ; and after a person's death—
- (a) any tax paid by him and repayable by virtue of a claim under this section (whether made by him or by his executors or administrators) shall be repaid to his executors or administrators, and
  - (b) any additional tax chargeable by virtue of such a claim shall be assessed and charged on his executors or administrators, and shall be a debt due from and payable out of his estate.

*Cases IV and V*

**122 Assessment on preceding year basis, but, in certain cases, only on sums received in United Kingdom**

- (1) Subject to the provisions of this section and sections 123 and 124 below, income tax chargeable under Case IV or Case V of Schedule D shall be computed on the full amount of the income arising in the year preceding the year of assessment, whether the income has been or will be received in the United Kingdom or not, subject in the case of income not received in the United Kingdom—
  - (a) to the same deductions and allowances as if it had been so received, and
  - (b) to a deduction on account of any annuity or other annual payment (not being interest) payable out of the income to a person not resident in the United Kingdom, and
  - (c) to a deduction on account of any annual interest payable out of the income to a person not resident in the United Kingdom, being interest paid before 6th April 1975 on a debt incurred on or before 15th April 1969.
- (2) Subsection (1) above shall not apply—
  - (a) to any person who satisfies the Board that he is not domiciled in the United Kingdom, or that, being a British subject or a citizen of the Republic of Ireland, he is not ordinarily resident in the United Kingdom, or
  - (b) to any income which is immediately derived by a person from the carrying on by him of any trade, profession or vocation, either solely or in partnership, or
  - (c) to any income which arises from any pension.

Any claim under paragraph (a) above shall be made to the Board.
- (3) In the cases mentioned in subsection (2) above, the tax shall, subject to sections 123 and 124 below, be computed—
  - (a) in the case of tax chargeable under Case IV, on the full amount, so far as the same can be computed, of the sums received in the United Kingdom in the year preceding the year of assessment, without any deduction or abatement, and
  - (b) in the case of tax chargeable under Case V, on the full amount of the actual sums received in the United Kingdom in the year preceding the year of assessment from remittances payable in the United Kingdom, or from property imported, or from money or value arising from property not imported, or from money or value so received on credit or on account in respect of any such remittances, property, money or value brought or to be brought into the United Kingdom, without any deduction or abatement other than is allowed under the provisions of the Income Tax Acts in respect of profits or gains charged under Case I of Schedule D.
- (4) For the purposes of subsection (3) above, any income arising from securities or possessions out of the United Kingdom which is applied outside the United Kingdom by a person ordinarily resident in the United Kingdom in or towards satisfaction of—
  - (a) any debt for money lent to him in the United Kingdom, or for interest on money so lent, or
  - (b) any debt for money lent to him outside the United Kingdom and received in or brought to the United Kingdom, or
  - (c) any debt incurred for satisfying in whole or in part a debt falling within paragraph (a) or (b) above,



shall be treated as received by him in the United Kingdom (and, for the purposes of paragraph (b) of the said subsection (3), as so received from remittances payable in the United Kingdom).

- (5) Where a person ordinarily resident in the United Kingdom receives in or brings to the United Kingdom money lent to him outside the United Kingdom, but the debt for that money is wholly or partly satisfied before he does so, subsection (4) above shall apply as if the money had been received in or brought to the United Kingdom before the debt was so satisfied, except that any sums treated by virtue of that subsection as received in the United Kingdom shall be treated as so received at the time when the money so lent is actually received in or brought to the United Kingdom.
- (6) Where a person is indebted for money lent to him, income applied by him in such a way that the money or property representing it is held by the lender on behalf of or to the account of the said person in such circumstances as to be available to the lender for the purpose of satisfying or reducing the debt by set-off or otherwise shall be treated as applied by the said person in or towards its satisfaction if, under any arrangement between the said person and the lender, the amount for the time being of the said person's indebtedness to the lender, or the time at which it is to be repaid in whole or in part, depends in any respect directly or indirectly on the amount or value held by the lender as aforesaid.
- (7) For the purposes of subsections (4) to (6) above—
  - (a) a debt for money lent shall, to the extent to which that money is applied in or towards satisfying another debt, be deemed to be a debt incurred for satisfying that other debt, and a debt incurred for satisfying in whole or in part a debt falling within paragraph (c) of the said subsection (4) shall itself be treated as falling within that paragraph, and
  - (b) "lender" includes, in relation to any money lent, any person for the time being entitled to repayment.

### **123 Special rules for fresh income**

- (1) Subject to subsection (5) below, income tax under Case IV or Case V of Schedule D shall be computed—
  - (a) as respects the year of assessment in which the income first arises, on the full amount of the income arising within that year,
  - (b) where the income first arose on some day in the year preceding the year of assessment other than the 6th April, on the income of the year of assessment, and
  - (c) where the income first arose on the 6th April in the year preceding the year of assessment, or on some day in the year next before the year preceding the year of assessment other than the 6th April, and the person charged so requires by notice in writing given to the inspector within six years after the end of the year of assessment, on the amount of the income of that year.
- (2) Where subsection (1)(c) above applies, and income tax charged otherwise than in accordance with that provision has been paid, any amount overpaid shall be repaid.
- (3) If at any time any person acquires a new source of any income chargeable to income tax under Case IV or Case V of Schedule D, or an addition to any source of any such income, then, for the year of assessment in which income first arises from the source or addition and the two following years of assessment, income tax in

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respect of the income from the source or addition shall, notwithstanding section 128 below (assessment of Case IV or V income in one sum), be computed separately, and subsection (1) above shall apply.

- (4) Where income arising to any person from any security or possession in any place out of the United Kingdom ceases at any time to be chargeable to income tax by deduction under the provisions of section 159 below (foreign dividends etc.), subsection (3) above shall apply as if that security or possession were a new source of income acquired by that person at that time.
- (5) The preceding provisions of this section shall, in cases where tax is to be charged by reference to the amount of income received in the United Kingdom, have effect as if references to income which arises or arose were references to income which is or was so received.

#### **124 Special rules where source of income ceases**

- (1) Subject to the provisions of this section, if in any year of assessment a person charged or chargeable to income tax in respect of any income chargeable under Case IV or Case V of Schedule D ceases to possess any particular source of any such income, or any part of any such source, the following provisions shall apply to the tax in respect of the income from that source or part—
  - (a) notwithstanding section 128 below (assessment of Case IV or V income in one sum), the tax shall for that year, and (if necessary) for the preceding year, be computed separately,
  - (b) subject to paragraph (c) below, the tax shall for that year be computed on the amount of the income arising within the year (instead of the income arising within the preceding year), and shall for that preceding year also be computed on the amount of the income arising within it if greater than the amount on which tax is to be computed for that preceding year apart from this provision, and
  - (c) if no income arose within those two years, and the person charged or chargeable makes a claim under this section not later than two years after the end of them, then, subject to subsection (3) below—
    - (i) paragraphs (a) and (b) above shall apply to the year of assessment in which income did last arise and the year preceding it as, apart from this paragraph, they would apply to the year in which he ceases to possess the source or part and the year preceding it, and
    - (ii) tax shall not for the year of assessment following that in which income did last arise be chargeable on the amount of the income so arising.
- (2) Where income in respect of which a person has previously been charged or chargeable to income tax under Case IV or V of Schedule D becomes at any time chargeable to income tax by deduction under the provisions of section 159 below (foreign dividends etc.), subsection (1) above shall apply as if the security or possession in question were a source of income which he ceased to possess at that time.
- (3) A person shall not be entitled by virtue of subsection (1)(c) above to make a claim under this section in respect of any source of income, or any part of such a source, more than eight years after the end of the year of assessment in which income last arose from that source; but a person possessing a source of income chargeable to income tax under Case IV or Case V of Schedule D, and having possessed it for six consecutive years of assessment without any income arising from it, shall be entitled, if income did

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arise from it in the year preceding those six years, to make a claim under this section not later than two years after the end of those six years, and, if he does so—

- (a) subsection (1) above shall apply as if he had ceased to possess the source of income immediately before the end of those six years, and
  - (b) section 123(3) above shall apply (in relation to later years of assessment) as if he had acquired the source as a new source immediately after the end of those six years.
- (4) References in this section to income arising shall, in cases where tax is to be computed by reference to the amount of income received in the United Kingdom, be construed as references to income being so received.
- (5) There shall be made all such adjustments, whether by way of repayment of tax, assessment or otherwise, as may be necessary to give effect to this section.
- (6) A person's executors or administrators may make any claim under this section which he might have made, if he had not died, in respect of any source of income, or part of such a source, which he ceased to possess before his death, and may also make a claim under this section in respect of sources of income which he ceased to possess by dying; and after a person's death—
- (a) any tax paid by him and repayable by virtue of a claim under this section (whether made by him or by his executors or administrators) shall be repaid to his executors or administrators, and
  - (b) any additional tax chargeable by virtue of such a claim shall be assessed and charged on his executors or administrators, and shall be a debt due from and payable out of his estate.

#### *Case VI*

### **125 Assessment on current year basis unless otherwise directed**

- (1) Income tax under Case VI of Schedule D shall be computed either on the full amount of the profits or gains arising in the year of assessment or according to an average of such period, not being greater than one year, as the case may require and as may be directed by the inspector.
- (2) On an appeal to the General or Special Commissioners, the Commissioners shall have jurisdiction to review the inspector's decision under this section.

#### *Miscellaneous*

### **126 Tax computed on profits of previous period to be charged though no profits in year of assessment**

Where it is provided by the Income Tax Acts that income tax under Schedule D in respect of profits or gains or income from any source is to be computed by reference to the amount of the profits or gains or income of some period preceding the year of assessment, tax as so computed shall be charged for that year of assessment notwithstanding that no profits or gains or income arise from that source for or within that year.

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**127 Apportionments etc. for purposes of Cases I, II and VI**

- (1) Where, in the case of any profits or gains chargeable under Case I, Case II or Case VI of Schedule D, it is necessary, in order to arrive for the purposes of income tax at the profits or gains or losses of any year of assessment or other period, to divide and apportion to specific periods the profits or gains or losses for any period for which the accounts have been made up, or to aggregate any such profits or gains or losses or any apportioned parts thereof, it shall be lawful to make such a division and apportionment or aggregation.
- (2) Any apportionment under this section shall be made in proportion to the number of months, or fractions of months, in the respective periods.

**128 Single assessments for purposes of Cases III, IV and V**

Except as otherwise provided by the Income Tax Acts, all income in respect of which a person is chargeable to income tax under Case III, Case IV or Case V of Schedule D may respectively be assessed and charged in one sum.

### CHAPTER III

#### CASES I TO VI: CORPORATION TAX : BASIS OF ASSESSMENT ETC.

**129 Basis of assessment, apportionments, single assessments, and miscellaneous special provisions**

- (1) In accordance with Part XI of this Act (company taxation), for the purposes of corporation tax for any accounting period, income shall be computed under Cases I to VI of Schedule D on the full amount of the profits or gains or income arising in the period (whether or not received in or transmitted to the United Kingdom), without any other deduction than is authorised by the Corporation Tax Acts.
- (2) Where, in the case of any profits or gains chargeable under Case I, Case II or Case VI of Schedule D, it is necessary, in order to arrive for the purposes of corporation tax at the profits or gains or losses for any accounting period or other period, to divide and apportion to specific periods the profits or gains or losses for any period for which the accounts have been made up, or to aggregate any such profits or gains or losses or any apportioned parts thereof, it shall be lawful to make such a division and apportionment or aggregation.
- (3) Except as otherwise provided by the Corporation Tax Acts, all income in respect of which a company is chargeable to corporation tax under Case III, Case IV or Case V of Schedule D may respectively be assessed and charged in one sum.
- (4) Where a company is chargeable to corporation tax in respect of a trade or vocation under Case V of Schedule D, the income from the trade or vocation shall be computed in accordance with the rules applicable to Case I of Schedule D.
- (5) Cases IV and V of Schedule D shall for the purposes of corporation tax extend to companies not resident in the United Kingdom, so far as those companies are chargeable to tax on income of descriptions which, in the case of companies resident in the United Kingdom, fall within those Cases (but without prejudice to any provision of

the Tax Acts specially exempting non-residents from tax on any particular description of income).

## CHAPTER IV

### TRADES, PROFESSIONS AND VOCATIONS: COMPUTATIONAL PROVISIONS

#### *General provisions*

#### **130 General rules as to deductions not allowable**

Subject to the provisions of the Tax Acts, in computing the amount of the profits or gains to be charged under Case I or Case II of Schedule D, no sum shall be deducted in respect of—

- (a) any disbursements or expenses, not being money wholly and exclusively laid out or expended for the purposes of the trade, profession or vocation,
- (b) any disbursements or expenses of maintenance of the parties, their families or establishments, or any sums expended for any other domestic or private purposes distinct from the purposes of the trade, profession or vocation,
- (c) the rent of any dwelling-house or domestic offices or any part thereof, except such part thereof as is used for the purposes of the trade or profession, and where any such part is so used, the sum so deducted shall not, unless in any particular case it appears that having regard to all the circumstances some greater sum ought to be deducted, exceed two-thirds of the rent bona fide paid for the said dwelling-house or offices,
- (d) any sum expended for repairs of premises occupied, or for the supply, repairs or alterations of any implements, utensils or articles employed, for the purposes of the trade, profession or vocation, beyond the sum actually expended for those purposes,
- (e) any loss not connected with or arising out of the trade, profession or vocation,
- (f) any capital withdrawn from, or any sum employed or intended to be employed as capital in, the trade, profession or vocation, but so that this paragraph shall not be treated as disallowing the deduction of any interest,
- (g) any capital employed in improvements of premises occupied for the purposes of the trade, profession or vocation,
- (h) any interest which might have been made if any such sums as aforesaid had been laid out at interest,
- (i) any debts, except bad debts proved to be such, and doubtful debts to the extent that they are respectively estimated to be bad, and in the case of the bankruptcy or insolvency of a debtor the amount which may reasonably be expected to be received on any such debt shall be deemed to be the value thereof,
- (j) any average loss beyond the actual amount of loss after adjustment,
- (k) any sum recoverable under an insurance or contract of indemnity,
- (l) any annuity or other annual payment (other than interest) payable out of the profits or gains,
- (m) any interest paid to a person not resident in the United Kingdom if and so far as it is interest at more than a reasonable commercial rate,
- (n) any royalty or other sum paid in respect of the user of a patent, or

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- (o) any rent, royalty or other payment which, by section 156 or 157 of this Act (mining etc. rents and royalties), is declared to be subject to deduction of tax under Part II of this Act as if it were a royalty or other sum paid in respect of the user of a patent.

### **131 Income tax: deduction of interest paid to non-residents**

- (1) In computing the profits or gains arising from a trade, profession or vocation, no sum shall be deducted in respect of any annual interest paid to a person not resident in the United Kingdom unless—
  - (a) the person making the payment has deducted income tax from the payment in accordance with section 54 of this Act, and accounts for the tax so deducted, or
  - (b) the conditions set out in subsection (2) below are satisfied.
- (2) The conditions referred to in subsection (1)(b) above are as follows—
  - (a) that the trade, profession or vocation is carried on by a person residing in the United Kingdom, and
  - (b) that the liability to pay the interest was incurred exclusively for the purposes of the trade, profession or vocation, and
  - (c) that either—
    - (i) the liability to pay the interest was incurred wholly or mainly for the purposes of activities of the trade, profession or vocation carried on outside the United Kingdom, or
    - (ii) the interest is payable in the currency of a territory outside the scheduled territories, and
  - (d) that, under the terms of the contract under which the interest is payable, the interest is to be paid, or may be required to be paid, outside the United Kingdom, and
  - (e) that the interest is in fact paid outside the United Kingdom.
- (3) Where the trade, profession or vocation is carried on by a partnership, subsection (1)(b) above shall not apply to any interest which is payable to any of the partners, or is payable in respect of the share of any partner in the partnership capital.
- (4) Subsection (1)(b) above shall not apply where—
  - (a) the trade, profession or vocation is carried on by a body of persons over whom the person entitled to the interest has control, or
  - (b) the person entitled to the interest is a body of persons over whom the person carrying on the trade, profession or vocation has control, or
  - (c) the person carrying on the trade, profession or vocation, and the person entitled to the interest are both bodies of persons, and some other person has control over both of them.

In this subsection, the references to a body of persons include references to a partnership, and "control" has the meaning given by section 534 of this Act.

- (5) If interest paid under deduction of tax in accordance with section 54 of this Act is deductible in computing the profits or gains of a trade, profession or vocation, the amount so deductible shall be the gross amount.

- (6) In subsection (2)(c)(ii) above " the scheduled territories " means the territories specified in Schedule 1 to the Exchange Control Act 1947 as for the time being in force.
- (7) This section does not apply for the purposes of corporation tax.

### **132 Deduction of patent etc. fees and expenses**

Notwithstanding anything in section 130 above, in computing the profits or gains of a trade, there may be deducted as expenses any fees paid or expenses incurred—

- (a) in obtaining, for the purposes of the trade, the grant of a patent, an extension of the term of a patent, the registration of a design or trade mark, the extension of the period of copyright in a design, or the renewal of registration of a trade mark, or
- (b) in connection with a rejected or abandoned application for a patent made for the purposes of the trade.

### **133 Deduction of payments for technical education**

- (1) Notwithstanding anything in section 130 above, where a person carrying on a trade makes any payment to be used for the purposes of technical education related to that trade at any university or university college, or at any such technical college or other similar institution as may for the time being be approved for the purposes of this section by the Secretary of State for Education and Science, the payment may be deducted as an expense in computing the profits or gains of the trade for the purposes of tax.
- (2) For the purposes of this section, technical education shall be deemed to be related to a trade if, and only if, it is technical education of a kind specially requisite for persons employed in the class of trade to which that trade belongs.
- (3) In relation to technical colleges or other institutions in Scotland or Northern Ireland, this section shall have effect as if, for the reference to the Secretary of State for Education and Science, there were substituted a reference, in the case of Scotland, to the Secretary of State and, in the case of Northern Ireland, to the Ministry of Education for Northern Ireland.

### **134 Deductions where premiums etc. taxable**

- (1) Where, in relation to any land used in connection with a trade, profession or vocation—
- (a) tax has become chargeable under section 80 (except subsection (6)), 81 or 82 of this Act on any amount (disregarding any reduction in that amount under section 83(1) of this Act), or
- (b) tax would have become so chargeable on that amount but for the operation of the said section 80(6) or the said section 83(1), or but for any exemption from tax,

subsections (2) to (7) below shall have effect, in the cases there provided, for allowing deductions calculated by reference to that amount (hereinafter referred to as " the amount chargeable ") in computing the profits or gains of the trade, profession or vocation chargeable to tax under Case I or Case II of Schedule D ; and in those subsections " the relevant period " means—

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- (i) where the amount chargeable arose under the said section 80, the period treated in computing that amount as being the duration of the lease,
  - (ii) where that amount arose under the said section 81, the period treated in computing the amount as being the duration of the lease remaining at the date of the assignment, and
  - (iii) where that amount arose under the said section 82, the period beginning with the sale and ending on the date fixed under the terms of the sale as the date of the reconveyance or grant, or, if that date is not fixed, ending with the earliest date at which the reconveyance or grant could take place in accordance with the terms of the sale.
- (2) Subject to subsections (3) to (7) below, where during any part of the relevant period the land in relation to which the amount chargeable arose is occupied by the person for the time being entitled to the lease, estate or interest as respects which it arose for the purposes of a trade, profession or vocation carried on by him, he shall be treated, in computing the profits or gains of the trade, profession or vocation chargeable as aforesaid, as paying in respect of that land rent for the period (in addition to any actual rent), becoming due from day to day, of an amount which bears to the amount chargeable the same proportion as that part of the relevant period bears to the whole.
- (3) As respects any period during which a part only of the land in relation to which the amount chargeable arose is occupied as mentioned in subsection (2) above, that subsection shall apply as if the whole were so occupied, but the amount chargeable shall be treated as reduced by so much thereof as, on a just apportionment, is attributable to the remainder of the land.
- (4) Where a person, although not in occupation of the said land or a part thereof, deals with his interest in the land or that part as property employed for the purposes of a trade, profession or vocation carried on by him, subsections (2) and (3) above shall apply as if the land or part were occupied by him for those purposes:  

Provided that—

  - (a) where section 83(1) of this Act has effect in relation to a lease granted out of that interest, subsection (3) of that section shall apply for modifying the operation of subsections (2) and (3) above as it applies for modifying the operation of subsection (2) of that section, and
  - (b) in computing profits or gains for any chargeable period, rent shall not by virtue of this subsection be treated as paid by a person for any period in respect of land in so far as rent treated under section 83(2) of this Act as paid by him for that period in respect of the land has in any previous chargeable period been deducted, or falls in that chargeable period to be deducted, under Part III of this Act.
- (5) Where, in respect of expenditure on the acquisition of his interest in the land in relation to which the amount chargeable arose, a person has become entitled to an allowance under section 60 of the Capital Allowances Act 1968 (mineral depletion) for any chargeable period, then—
  - (a) if the allowance is in respect of the whole of the expenditure, no deduction shall be allowed him under this section for that or any subsequent chargeable period, or
  - (b) if the allowance is in respect of part only of the expenditure, a deduction allowed him under this section for that or any subsequent chargeable period shall be the fraction



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

of the amount which apart from this subsection would fall to be deducted, where—

A is the whole of the expenditure, and  
B is the said part of the expenditure.

- (6) Where the amount chargeable arose under section 80(2) of this Act by reason of an obligation which included the carrying out of work in respect of which any capital allowance has fallen or will fall to be made, this section shall apply as if the obligation had not included the carrying out of that work and the amount chargeable had been calculated accordingly.
- (7) Where the amount chargeable arose under section 82 of this Act and the reconveyance or grant in question takes place at a price different from that taken in calculating that amount, or on a date different from that taken in determining the relevant period, the preceding provisions of this section shall be deemed to have had effect (for all relevant chargeable periods) as they would have had effect if the actual price or date had been so taken, and such adjustment of liability to tax shall be made, by means of an assessment or otherwise, as may be necessary, and may be so made at any time at which it could be made if it related only to tax for the chargeable period in which the reconveyance or grant takes place.

### **135 Deduction for debts proving irrecoverable after event treated as discontinuance**

Where section 154 or 251(1) of this Act applies to treat a trade, profession or vocation as discontinued by reason of any event, then, in computing for tax purposes the profits or gains of the trade, profession or vocation in any period after the event there may be deducted a sum equal to any amount proved during that period to be irrecoverable in respect of any debts credited in computing for tax purposes the profits or gains for any period before the event (being debts the benefit of which was assigned to the persons carrying on the trade, profession or vocation after the event), in so far as the total amount proved to be irrecoverable in respect of those debts exceeds any deduction allowed in respect of them under section 130(f) above in a computation for any period before the event.

### **136 Debts set off against profits and subsequently released**

Where, in computing for tax purposes the profits or gains of a trade, profession or vocation, a deduction has been allowed for any debt incurred for the purposes of the trade, profession or vocation, then, if the whole or any part of the debt is thereafter released, the amount released shall be treated as a receipt of the trade, profession or vocation arising in the period in which the release is effected.

### **137 Valuation of trading stock on discontinuance of trade**

- (1) In computing for any tax purpose the profits or gains of a trade which has been discontinued, any trading stock belonging to the trade at the discontinuance shall be valued as follows—
  - (a) if the stock is sold or transferred for valuable consideration to a person who carries on, or intends to carry on, a trade in the United Kingdom, and the cost thereof may be deducted by the purchaser as an expense in computing for any

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- such purpose the profits or gains of that trade, the value thereof shall be taken to be the amount realised on the sale or the value of the consideration given for the transfer, and
- (b) if the stock does not fall to be valued under paragraph (a) above, its value shall be taken to be the amount which it would have realised if it had been sold in the open market at the discontinuance of the trade.
- (2) Any question arising under subsection (1)(a) above shall be determined as follows, for the purpose of computing as aforesaid the profits or gains of both the trades concerned—
- (a) in a case where the same body of General Commissioners have jurisdiction with respect to both the trades concerned, the question shall be determined by those Commissioners unless all parties concerned agree that it shall be determined by the Special Commissioners,
- (b) in any other case, the question shall be determined by the Special Commissioners, and
- (c) the General or Special Commissioners shall determine the question in like manner as an appeal.
- (3) Where, by virtue of section 154 or 251(1) of this Act, a trade is treated as having been discontinued for the purpose of computing tax, it shall also be so treated for the purposes of this section ; but this section shall not apply in a case where a trade carried on by a single individual is discontinued by reason of his death.
- (4) For the purposes of this section, " trading stock ", in relation to any trade, means property of any description, whether real or personal, being either—
- (a) property such as is sold in the ordinary course of the trade, or would be so sold if it were mature or if its manufacture, preparation or construction were complete, or
- (b) materials such as are used in the manufacture, preparation or construction of any such property as is referred to in paragraph (a) above.

For the purposes of this section " trading stock ", in relation to a trade, includes also any services, article or material which would, if the trade were a profession or vocation, be treated as work in progress thereof for the purposes of section 138 below, and references to the sale or transfer of trading stock shall be construed accordingly.

### **138 Valuation of work in progress at discontinuance of profession or vocation**

- (1) Where, in computing for any tax purpose the profits or gains of a profession or vocation which has been discontinued a valuation is taken of the work of the profession or vocation in progress at the discontinuance, that work shall be valued as follows—
- (a) if the work is transferred for money or any other valuable consideration to a person who carries on, or intends to carry on, a profession or vocation in the United Kingdom, and the cost of the work may be deducted by that person as an expense in computing for any such, purpose the profits or gains of that profession or vocation, the value of the work shall be taken to be the amount paid or other consideration given for the transfer, and
- (b) if the work does not fall to be valued under paragraph (a) above, its value shall be taken to be the amount which would have been paid for a transfer thereof on the date of the discontinuance as between parties at arm's length.

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- (2) Section 137(2) above shall apply to the determination of any question arising under subsection (1)(a) of this section as it applies to the determination of any question arising under subsection (1)(a) of that section, but with the substitution of references to professions and vocations for references to trades.
- (3) Where a profession or vocation is discontinued, and the person by whom it was carried on immediately before the discontinuance so elects by notice in writing sent to the inspector at any time within twelve months after the discontinuance, the amount (if any) by which the value of the work in progress at the discontinuance (as ascertained under subsection (1) above) exceeds the actual cost of the work shall not be brought into account in computing the profits or gains of the period immediately before the discontinuance, but the amount by which any sums received for the transfer of the work exceed the actual cost of the work shall be included in the sums chargeable to tax by virtue of section 143 below as if it were a sum to which that section applies received after the discontinuance.
- (4) Subsections (1) to (3) above shall apply where a profession or vocation is treated under section 154 or 251(1) of this Act as permanently discontinued as they apply in the case of an actual discontinuance, but shall not apply in a case where a profession or vocation carried on by a single individual is discontinued by reason of his death.
- (5) References in this section to work in progress at the discontinuance of a profession or vocation shall be construed as references to—
  - (a) any services performed in the ordinary course of the profession or vocation, the performance of which was wholly or partly completed at the time of the discontinuance and for which it would be reasonable to expect that a charge would have been made on their completion if the profession or vocation had not been discontinued, and
  - (b) any article produced, and any such material as is used, in the performance of any such services,and references in this section to the transfer of work in progress shall include references to the transfer of any benefits and rights which accrue, or might be reasonably expected to accrue, from the carrying out of the work.

#### *Special provisions*

#### **139 Treatment of farm animals etc.**

Schedule 6 to this Act shall have effect with respect to the treatment, in computing profits or gains for the purposes of Case I of Schedule D, of animals and other living creatures kept for the purposes of farming or of any other trade.

#### **140 Tied premises**

- (1) In computing for tax purposes the profits or gains or losses of a trade carried on by a lessor of tied premises—
  - (a) there shall be taken into account as a trading receipt any rent payable for the premises to him, and there shall be allowed as deduction any rent paid for the premises by him, but
  - (b) no deduction shall be allowed in respect of the premises either by reference to his being entitled to a rent for the premises which is less than the rent which

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might have been obtained (or less than their annual value or the rent payable by him for them) or in respect of the annual value of the premises.

- (2) For the purposes of this section, premises shall be deemed to be tied premises in relation to any lessor thereof, and in relation to any trade carried on by him, if, but only if, in the course of that trade, he is concerned (whether as principal or agent) in the supply of goods sold or used on the premises, and accordingly deals with the premises or his interest therein as property employed for the purposes of that trade; and in this section " the relevant trade ", in relation to any tied premises and to any lessor thereof, means any trade carried on by him in relation to which they are tied premises.
- (3) Where part only of premises in respect of which rent is paid by or payable to a lessor of the premises are tied premises in relation to him, the rent paid or payable for the tied premises shall for the purposes of this section be taken to be that part of the entire rent which, on a fair and just apportionment, is attributable to them.
- (4) Subject to subsection (5) below, a lessor of tied premises who is chargeable to tax for any chargeable period in respect of the profits or gains of the relevant trade shall not be liable for that period (or for the part of it during which he carries on the said trade) to any tax in respect of the premises under Schedule A.
- (5) Where, for any chargeable period or part of a chargeable period, a lessor of tied premises becomes entitled to any rent under a lease comprising the tied premises and other premises, but is by virtue of subsection (4) above relieved of liability to tax in respect of the tied premises under Schedule A, his liability in respect of the rent shall be computed in the first instance as it would be apart from this section, but his total liability (so computed) in respect thereof shall be reduced by the part which, on a fair and just apportionment, is attributable to the tied premises for the chargeable period or part thereof for which he is so relieved of liability in respect of them.
- (6) If the lessor of tied premises outside the United Kingdom is chargeable to tax for any chargeable period in respect of the profits or gains of the relevant trade, he shall not be liable for that period (or for the part of it during which he carries on the said trade) to tax under Case V of Schedule D in respect of any rent for the premises.
- (7) Where the person carrying on a trade is, in the case of any premises, entitled in equity to the interest of any lessor of those premises, then, in relation to that person, subsections (1) to (3) above shall apply as if he were the lessor of the premises, and as if any rent payable to or paid by the lessor were payable to or paid by him ; and, in relation to the lessor of the premises, subsections (4) and (5) above (or, in the case of premises outside the United Kingdom, subsection (6) above) shall apply as they would apply to the person carrying on the trade if the lessor's interest in the premises and in any other relevant land were vested in him.
- (8) In this section " lease " includes an agreement for a lease if the term to be covered by the lease has begun, and any tenancy, but does not include a mortgage or heritable security, and " lessor " shall be construed accordingly, and includes the successors in title of a lessor.

#### **141 Cemeteries etc.: deduction of certain capital expenditure**

- (1) In computing the profits or gains or losses for any period of a trade which consists of or includes the carrying on of a cemetery, there shall be allowed as a deduction—

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- (a) any capital expenditure incurred by the person engaged in carrying on the trade in providing any land in the cemetery sold during that period for the purpose of interments, and
  - (b) the appropriate fraction of the residue at the end of that period of the capital expenditure defined in subsection (2) below.
- (2) The said expenditure is capital expenditure incurred for the purposes of the trade in question by the person engaged in carrying it on, being—
- (a) expenditure on any building or structure other than a dwelling-house, being a building or structure in the cemetery likely to have little or no value when the cemetery is full, and
  - (b) expenditure incurred in providing land taken up by any such building or structure, and any other land in the cemetery not suitable or adaptable for use for interments and likely to have little or no value when the cemetery is full:

Provided that it does not include expenditure incurred on buildings or structures which have been destroyed before the beginning of the first period to which subsection (1) above applies in the case of the trade, and only includes that fraction of other expenditure incurred before that time which is equal to the number of grave-spaces which at that time were or could have been made available in the cemetery for sale divided by that number plus the number already sold.

- (3) For the purposes of this section—
- (a) the residue of any expenditure at the end of a period is the amount incurred before that time which remains after deducting—
    - (i) any amount allowed in respect of that expenditure under subsection (1)(b) above in computing the profits or gains or losses of the trade for any previous period, and
    - (ii) if, after the beginning of the first period to which subsection (1) above applies in the case of the trade and before the end of the period mentioned at the beginning of this subsection, any asset representing that expenditure is sold or destroyed, the net proceeds of sale or, as the case may be, any insurance money or other compensation of any description received by the person carrying on the trade in respect of the destruction and any money received by him for the remains of the asset, and
  - (b) the appropriate fraction of the residue of any expenditure at the end of any period is that represented by the number of grave-spaces in the cemetery sold in the period divided by that number added to the number of grave-spaces which at the end of the period are or could be made available in the cemetery for sale.
- (4) Where, in any chargeable period, there is a change in the persons engaged in carrying on a trade which consists of or includes the carrying on of a cemetery, any allowance to be made under this section to the persons carrying on the trade after the change shall, whether or not it is to be assumed for other purposes that the trade was discontinued and a new trade set up and commenced, be computed as if they had at all times been engaged in carrying on the trade, as if everything done to or by any of their predecessors in carrying on the trade had been done to or by them, and without regard to the price paid on any sale on the occasion of any such change.
- (5) No expenditure shall be taken into account both under paragraph (a) and paragraph (b) of subsection (1) above, whether for the same or different periods.

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- (6) This section shall apply in relation to a trade which consists of or includes the carrying on of a crematorium and, in connection therewith, the maintenance of memorial garden plots, as it applies in relation to a trade which consists of or includes the carrying on of a cemetery, but subject to the modifications that—
- (a) references to the cemetery or land in the cemetery shall be taken as references to the land which is devoted wholly to memorial garden plots, and
  - (b) references to grave-spaces shall be taken as references to memorial garden plots, and
  - (c) references to the sale or use of land for interments shall be taken as references to its sale or use for memorial garden plots.
- (7) In this section references to the sale of land include references to the sale of a right of interment in land, and to the appropriation of part of a memorial garden in return for a dedication fee or similar payment, and references to capital expenditure incurred in providing land shall be taken as references to the cost of purchase and to any capital expenditure incurred in levelling or draining it or otherwise rendering it suitable for the purposes of a cemetery or memorial garden.
- (8) Section 84 of the Capital Allowances Act 1968 (which relates to expenditure which is reimbursed to a person carrying on a trade) shall apply for the purposes of this section as it applies for the purposes of Part I of that Act.

**142 Dealers in land: purchase and sale of woodlands, and special rules where premiums etc. taxable**

- (1) In computing for tax purposes the profits or gains of a trade of dealing in land, there shall be disregarded—
- (a) so much of the cost of woodlands in the United Kingdom purchased in the course of the trade as is attributable to trees or saleable underwood growing on the land, and
  - (b) where any amount has been disregarded under paragraph (a) above and, on a subsequent sale of the woodlands in the course of the trade, all or any of the trees or underwood to which the amount disregarded was attributable are still growing on the land, so much of the price for the land as is equal to the amount so disregarded in respect thereof:

Provided that this section shall not apply where the purchase was made under a contract entered into before 1st May 1963.

- (2) In computing the profits or gains of a trade of dealing in land, any trading receipt falling within subsection (1), (3) or (4) of section 80 of this Act shall be treated as reduced by the amount on which tax is chargeable by virtue of that section.
- (3) In a case falling within subsection (6) of the said section 80—
- (a) if no claim is made under that subsection, subsection (2) above shall have effect as if it provided that so much only of any instalment falling within subsection (1), (3) or (4) of the said section 80 shall be treated as a trading receipt as exceeds the fraction of

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

the amount on which tax is chargeable by virtue of that section, where—

A is the amount of the instalment, and

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B is the amount of the sum of which it is an instalment;

- (b) if a claim is made, subsection (2) above shall not apply, but no part of any instalment shall be treated as a trading receipt:

Provided that where a claim is made under the said subsection (6), and the instalments to which it relates are reduced for the purposes of that subsection by virtue of paragraph 1(2) of Schedule 4 to this Act (allowances for betterment levy), paragraph (b) above shall apply only to such part of each instalment as is taxed under the said subsection (6).

- (4) In computing the profits or gains of a trade of dealing in land, any trading receipts falling within section 81 or 82 of this Act shall be treated as reduced by the amount on which tax is chargeable by virtue of that section, but where, on a claim being made under subsection (2)(b) of the said section 82, the amount on which tax was chargeable by virtue of that section is treated as reduced, this subsection shall be deemed to have applied to the amount as reduced, and any such adjustment of liability to tax shall be made (for all relevant chargeable periods) whether by means of an assessment or otherwise, as may be necessary, and may be so made at any time at which it could be made if it related only to tax for the chargeable period in which the said claim is made.

## CHAPTER V

### TRADES, PROFESSIONS AND VOCATIONS : POST-CESSATION ETC. RECEIPTS

#### *Case VI charges on receipts after discontinuance or change in basis of computation*

#### **143 Receipts after discontinuance: earnings basis charge, and related charge affecting conventional basis**

- (1) Where any trade, profession or vocation the profits or gains of which are chargeable to tax under Case I or Case II of Schedule D has been permanently discontinued, tax shall be charged under Case VI of that Schedule in respect of any sums; to which this section applies which are received after the discontinuance.
- (2) Subject to subsection (3) below, this section applies to the following sums arising from the carrying on of the trade, profession or vocation during any period before the discontinuance (not being sums otherwise chargeable to tax)—
- (a) where the profits or gains for that period were computed by reference to earnings, all such sums in so far as their value was not brought into account in computing the profits or gains for any period before the discontinuance, and
- (b) where those profits or gains were computed on a conventional basis (that is to say, were computed otherwise than by reference to earnings), any sums which, if those profits or gains had been computed by reference to earnings, would not have been brought into the computation for any period before the discontinuance because the date on which they became due, or the date on which the amount due in respect thereof was ascertained, fell after the discontinuance.
- (3) This section does not apply to any of the following sums—
- (a) sums received by a person beneficially entitled thereto who is not resident in the United Kingdom, or by a person acting on his behalf, which represent

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income arising directly or indirectly from a country or territory outside the United Kingdom, or

- (b) a lump sum paid to the personal representatives of the author of a literary, dramatic, musical or artistic work as consideration for the assignment by them, wholly or partially, of the copyright in the work, or
- (c) sums realised by the transfer of trading stock belonging to a trade at the discontinuance thereof, or by the transfer of the work of a profession or vocation in progress at the discontinuance thereof.

(4) Where—

- (a) in computing for tax purposes the profits or gains of a trade, profession or vocation, a deduction has been allowed for any debt incurred for the purposes of the trade, profession or vocation, and
- (b) the whole or any part of that debt is thereafter released, and
- (c) the trade, profession or vocation has been permanently discontinued at or after the end of the period for which the deduction was allowed and before the release was effected,

subsections (1) to (3) above shall apply as if the amount released were a sum received after the discontinuance.

- (5) For the purposes of this section, the value of any sum received in payment of a debt shall be treated as not brought into account in the computation of the profits or gains of a trade, profession or vocation to the extent that a deduction has been allowed in respect of that sum under section 130(i) above (bad and doubtful debts).

#### **144 Conventional basis: general charge on receipts after discontinuance or change of basis**

- (1) Where any trade, profession or vocation the profits or gains of which are chargeable to tax under Case I or Case II of Schedule D has been permanently discontinued, and the profits or gains for any period before the discontinuance were computed on a conventional basis, tax shall be charged under Case VI of that Schedule in respect of sums to which this subsection applies which are received on or after the discontinuance.

This subsection applies to all sums arising from the carrying on of the trade, profession or vocation during any period before the discontinuance, not being—

- (a) sums otherwise chargeable to tax (including sums to which section 143 above applies despite the words "(not being sums otherwise chargeable to tax)" in subsection (2) of that section), or
- (b) sums to which the said section 143 would have applied but for paragraphs (a) and (b) of subsection (3) of that section,

in so far as the amount or value of the sums was not brought into account in computing the profits or gains for any period before the discontinuance.

- (2) Where, in the case of any trade, profession or vocation the profits or gains of which are chargeable to tax under Case I or Case II of Schedule D, there has been—
  - (a) a change from a conventional basis to the earnings basis, or
  - (b) a change of conventional basis which may result in receipts dropping out of computation,



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tax shall be charged under Case VI of that Schedule in respect of sums to which this subsection applies which are received after the change, and before the trade, profession or vocation is permanently discontinued.

This subsection applies to all sums arising from the carrying on of the trade, profession or vocation during any period before the change (not being sums otherwise chargeable to tax) in so far as their amount or value was not brought into account in computing the profits or gains for any period.

- (3) It is hereby declared that where work in progress at the discontinuance of a profession or vocation, or the responsibility for its completion, is transferred, the sums to which subsection (1) above applies include any sums received by way of consideration for the transfer, and any sums received by way of realisation by the transferee, on behalf of the transferor, of the work in progress transferred.
- (4) Where, in the case of any profession or vocation, the profits or gains of which are chargeable to tax under Case I or Case II of Schedule D—
  - (a) there has been a change from a conventional basis to the earnings basis, or a change of conventional basis, and
  - (b) the value of the work in progress at the time of the change was debited in the accounts and allowed as a deduction in computing profits for tax purposes for a period after the change,then, in so far as no counterbalancing credit was brought into account in computing profits for tax purposes for any period ending before or with the date of the change, tax shall be charged under subsection (2) above in respect of that amount for the year of assessment in which the change occurred as if that amount were a sum to which the said subsection (2) applies, and the change of basis were a change of the kind described in that subsection.
- (5) Subsection (1) above shall not apply where the permanent discontinuance fell before 19th March 1968; and subsection (2) above shall not apply where the change took place before the said 19th March, and, before that date—
  - (a) the decision had been taken to prepare accounts reflecting the change, or
  - (b) the trade, profession or vocation had been permanently discontinued.

## **145 Allowable deductions**

- (1) In computing the charge to tax in respect of sums received by any person which are chargeable to tax by virtue of section 143 or 144(1) above (including amounts treated as sums received by him by virtue of subsection (4) of the said section 143), there shall be deducted from the amount which, apart from this subsection, would be chargeable to tax—
  - (a) any loss, expense or debit (not being a loss, expense or debit arising directly or indirectly from the discontinuance itself) which, if the trade, profession or vocation had not been discontinued, would have been deducted in computing for tax purposes the profits or gains of the person by whom it was carried on before the discontinuance, or would have been deducted from or set off against those profits or gains as so computed, and
  - (b) any capital allowance to which the person who carried on the trade, profession or vocation was entitled immediately before the discontinuance and to which effect has not been given by way of relief before the discontinuance.

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- (2) No amount shall be deducted under subsection (1) above if that amount has been allowed under any other provision of the Tax Acts.
- (3) No amount shall be deducted more than once under subsection (1) above; and—
- (a) any expense or debit shall be apportioned between a sum chargeable under the said section 143 and a sum chargeable under the said section 144(1) in such manner as may be just,
  - (b) as between sums chargeable, whether under the said section 143 or the said section 144(1), for one chargeable period and sums so charged for a subsequent chargeable period, any deduction in respect of a loss or capital allowance shall be made against sums chargeable for the earlier chargeable period,
  - (c) subject to paragraph (b) above, as between sums chargeable for any chargeable period under the said section 143 and sums so chargeable under the said section 144(1), any deduction in respect of a loss or capital allowance shall be made against the last-mentioned sums rather than the first-mentioned, but, in the case of a loss which is to be allowed after the discontinuance, not so as to authorise its deduction from any sum chargeable for a chargeable period preceding that in which the loss is incurred.
- (4) In computing the charge to tax in respect of sums received by any person which are chargeable to tax by virtue of section 144(2) above, there shall be deducted any expense or debit which is not otherwise allowable and which, but for the change in basis, would have been deducted in computing for tax purposes the profits or gains of the trade, profession or vocation, but no amount shall be deducted more than once under this subsection.

#### **146 Application of charges on events treated as discontinuances**

For the purposes of this Chapter, any reference to the permanent discontinuance of a trade, profession or vocation includes a reference to the occurring of any event which, under section 154 or 251(1) of this Act, is to be treated as equivalent to the permanent discontinuance of a trade, profession or vocation.

#### **147 Application of charges where rights to payments transferred**

- (1) Subject to subsection (2) below, in the case of a transfer for value of the right to receive any sum to which section 143, 144(1) or 144(2) above applies, any tax chargeable by virtue of the said section 143 or 144 shall be charged in respect of the amount or value of the consideration (or, in the case of a transfer otherwise than at arm's length, in respect of the value of the right transferred as between parties at arm's length), and references in this Chapter to sums received shall be construed accordingly.
- (2) Where a trade, profession or vocation is treated as permanently discontinued by reason of a change in the persons carrying it on, and the right to receive any sum to which section 143 or 144(1) above applies is or was transferred at the time of the change to the persons carrying on the trade, profession or vocation after the change, tax shall not be charged by virtue of the said section 143 or 144, but, except where the change took place before the relevant date, any sum received by those persons by virtue of the transfer shall be treated for all purposes as a receipt to be brought into the computation of the profits or gains of the trade, profession or vocation in the period in which it is received.

- (3) In subsection (2) above " the relevant date " is—
- (a) in the case of a sum to which section 143 above applies, 6th April 1960, and
  - (b) in the case of a sum to which section 144(1) above applies, 19th March 1968.

### *Reliefs*

#### **148 Treatment of receipts as earned income**

Where an individual is chargeable to tax by virtue of section 143 or 144 above, and the profits or gains of the trade, profession or vocation to which he was entitled before the discontinuance or, as the case may be, change of basis fell to be treated as earned income for the purposes of income tax the sums in respect of which he is so chargeable shall also be treated as earned income for those purposes (but, in the case of sums chargeable by virtue of the said section 144, after any reduction therein under section 150 below).

#### **149 Election for carry-back**

Where any sum chargeable to tax by virtue of section 143 or 144 above is received in any year of assessment beginning not later than six years after the discontinuance or, as the case may be, change of basis by the person by whom the trade, profession or vocation was carried on before the discontinuance or change, or by his personal representatives, that person or (in either case) his personal representatives may, by notice in writing sent to the inspector within two years after that year of assessment, elect that the tax chargeable as aforesaid shall be charged as if the sum in question were received on the date on which the discontinuance took place or, as the case may be, on the last day of the period at the end of which the change of basis took place; and, in any such case, an assessment shall (notwithstanding anything in the Tax Acts) be made accordingly, and, in connection with that assessment, no further deduction or relief shall be made or given in respect of any loss or allowance deducted in pursuance of section 145 above.

#### **150 Charge under s. 144: relief for individuals born before 6th April 1917**

- (1) If an individual born before 6th April 1917, or the personal representative of such an individual, is chargeable to tax under section 144 above, and—
- (a) the individual was engaged in carrying on the trade, profession or vocation on 18th March 1968, and
  - (b) the profits or gains of the trade, profession or vocation were not computed by reference to earnings in the period in which the said 18th March fell, or in any subsequent period ending before or with the relevant date,
- the net amount with which he is so chargeable to tax shall be reduced by multiplying that net amount by the fraction given below.
- (2) Where section 144(2) above applies in relation to a change of basis taking place on a date before 19th March 1968, then, in relation to tax chargeable by reference to that change of basis, that earlier date shall be substituted for the date in subsection (1)(a) above and subsection (1)(b) above shall be omitted.
- (3) The said fraction is—

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- (a) where on 5th April 1968 the individual had not attained the age of fifty-two, nineteen-twentieths,
  - (b) where on that date he had attained the age of fifty-two, but had not attained the age of fifty-three, eighteen-twentieths, and so on reducing the fraction by one-twentieth for each year he had attained, up to the age of sixty-four,
  - (c) where on that date he had attained the age of sixty-five, or any greater age, five-twentieths.
- (4) In this section—
- " the net amount " with which a person is chargeable to tax under the said section 144 means the amount with which he is so chargeable after making any deduction authorised by section 145 above, but before giving any relief under this section, and
  - " relevant date "—
    - (a) in relation to tax under section 144(1) above, means the date of the permanent discontinuance, and
    - (b) in relation to tax under section 144(2) above, means the date of the change of basis.
- (5) The preceding provisions of this section shall apply as follows as respects the net amount of any sum chargeable under the said section 144 which is assessed by reference to a sum accruing to a partnership—
- (a) the part of that net amount which is apportioned to any partner (who is an individual), or the personal representative of such an individual, shall be a net amount with which that person is chargeable under the said section 144, and
  - (b) if the part of the said net amount which is so apportioned is a greater proportion of that amount than is the individual's share (that is to say, the part to be included in his total income) of the total amount of the partnership profits assessed to income tax for the three years of assessment ending with the year in which the discontinuance or change of basis took place, the amount of the reduction to be given by way of relief shall not exceed the amount of relief which would have been so given if the apportionment had been made by reference to his share of that total amount.
- (6) For the purposes of this section, the trade, profession or vocation carried on before a permanent discontinuance shall not be treated as the same as any carried on after the discontinuance.

### *Supplemental*

#### **151 Interpretation etc.**

- (1) The following provisions have effect for the purposes of this Chapter.
- (2) The profits or gains of a trade, profession or vocation in any period shall be treated as computed by reference to earnings where all credits and liabilities accruing during that period as a consequence of the carrying on of the trade, profession or vocation, are brought into account in computing those profits or gains for tax purposes, and not otherwise, and " earnings basis " shall be construed accordingly.

- (3) "Conventional basis" has the meaning given by section 143(2) above, so that profits or gains are computed on a conventional basis if computed otherwise than by reference to earnings.
- (4) There is a change from a conventional basis to the earnings basis at the end of a period the profits or gains of which were computed on a conventional basis if the profits or gains of the next succeeding period are computed by reference to earnings; and, if the profits or gains of two successive periods are computed on different conventional bases, a change of conventional basis occurs at the end of the earlier period.
- (5) In sections 143 and 144—
  - (a) "trading stock" has the meaning given by section 137(4) above,
  - (b) references to work in progress at the discontinuance of a profession or vocation, and to the transfer of work in progress, are to be construed in accordance with section 138(5) above, and
  - (c) the reference to work in progress at the time of a change of basis is also to be construed in accordance with section 138(5) above, substituting therein for this purpose references to the change of basis for references to the discontinuance.

## CHAPTER VI

### PARTNERSHIPS AND SUCCESSIONS

#### **152 Partnership assessments to income tax**

Where a trade or profession is carried on by two or more persons jointly, income tax in respect thereof shall be computed and stated jointly, and in one sum, and shall be separate and distinct from any other tax chargeable on those persons or any of them, and a joint assessment shall be made in the partnership name.

#### **153 Partnerships controlled abroad**

- (1) Where any trade or business is carried on by two or more persons in partnership, and the control and management of the trade or business is situated abroad, the trade or business shall be deemed to be carried on by persons resident outside the United Kingdom, and the partnership shall be deemed to reside outside the United Kingdom, notwithstanding the fact that some of the members of the partnership are resident in the United Kingdom and that some of its trading operations are conducted within the United Kingdom.
- (2) Where any part of the trade or business of a partnership firm whose management and control is situated abroad consists of trading operations within the United Kingdom, the firm shall be chargeable in respect of the profits of those trading operations within the United Kingdom to the same extent as, and no further than, a person resident abroad is chargeable in respect of trading operations by him within the United Kingdom, notwithstanding the fact that one or more members of the firm are resident in the United Kingdom:

Provided that, for the purpose of charging any such firm in respect of the profits of the said trading operations within the United Kingdom, an assessment may be made

on the firm in respect of those profits in the name of any partner resident in the United Kingdom.

- (3) Section 155(7) below has effect as respects the application of this section where the partners in a partnership include a company.

**154 Effect, for income tax, of change in ownership of trade, profession or vocation**

- (1) Where there is a change in the persons engaged in carrying on any trade, profession or vocation chargeable under Case I or Case II of Schedule D, then, subject to the provisions of this section and of section 155(3)(6) below, the amount of the profits or gains thereof on which income tax is chargeable for any year of assessment, and the persons on whom it is chargeable, shall be determined as if the trade, profession or vocation had been permanently discontinued at the date of the change, and a new trade, profession or vocation had been then set up and commenced.
- (2) Subject to the said section 155(3)(6), where there is such a change as is mentioned in subsection (1) above, and a person engaged in carrying on the trade, profession or vocation immediately before the change continues to be so engaged immediately after it, the persons so engaged immediately before and the persons so engaged immediately after the change may, by notice signed by them and sent to the inspector at any time within twelve months after the date of the change, elect that that subsection shall not apply to treat the trade, profession or vocation as discontinued or a new trade, profession or vocation as set up and commenced.
- (3) Where there is in any year of assessment a change in the persons engaged in carrying on a trade, profession or vocation, and subsection (1) above does not apply by reason of a notice under subsection (2) above, then—
- (a) income tax in respect of the trade, profession or vocation for that year shall be assessed and charged separately on those so engaged before the change and on those so engaged after it, but the amount on which tax is chargeable shall be computed as if there had been no such change in that year, and shall be apportioned as may be just, and
  - (b) if, after the change but before the end of the second year of assessment following that in which the change occurred, there is a permanent discontinuance of the trade, profession or vocation (including a change treated as such), then, on that discontinuance, section 118 of this Act shall apply, as respects any period before the first-mentioned change, to the persons charged or chargeable for that period as it would apply if no such change had taken place and they had been charged to tax accordingly for the subsequent period up to the discontinuance.
- (4) There shall be made any such assessment, reduction of an assessment or, on the making of a claim therefor, repayment of income tax as may in any case be necessary for giving effect to this section.
- (5) Any question which arises as to the manner in which any sum is to be apportioned under subsection (3)(a) above shall be determined, for the purposes of the tax of all of the persons as respects whose liability to tax the apportionment is material—
- (a) in a case where the same body of General Commissioners have jurisdiction with respect to all those persons, by those Commissioners, unless all those persons agree that it shall be determined by the Special Commissioners,
  - (b) in a case where different bodies of Commissioners have jurisdiction with respect to those persons, by such of those bodies as the Board may direct,

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unless all those persons agree that it shall be determined by the , Special Commissioners, and

(c) in any other case, by the Special Commissioners,  
and any such Commissioners shall determine the question in like manner as an appeal :

Provided that all the said persons shall be entitled to appear and be heard by the Commissioners who are to make the determination, or to make representations to them in writing.

- (6) In the case of the death of a person who, if he had not died, would under the provisions of this section have become chargeable to tax for any year, the tax which would have been so chargeable shall be assessed and charged upon his executors or administrators, and shall be a debt due from and payable out of his estate ; and where under those provisions an election may be made by any person, it may in the case of his death be made by his executors or administrators instead of him.
- (7) For the purposes of this section, a change in the personal representatives of any person, or in the trustees of any trust, shall not be treated as a change in the persons engaged in carrying on any trade, profession or vocation carried on by those personal representatives or trustees as such.

## **155 Special rules for partnerships involving companies**

- (1) So long as a trade is carried on by persons in partnership, and any of those persons is a company, the profits of the trade and any loss (including a terminal loss) incurred therein shall be computed for the purposes of corporation tax in like manner, and by reference to the like accounting periods, as if the partnership were a company, and without regard to any change in the persons carrying on the trade:

Provided that—

- (a) references to distributions shall not apply, and
- (b) no deduction or addition shall be made for charges on income, or for capital allowances and charges, nor in any accounting period for losses incurred in any other period, and
- (c) a change in the persons engaged in carrying on the trade shall be treated as the transfer of the trade to a different company if there continues to be a company so engaged after the change, but not a company that was so engaged before the change.
- (2) A company's share in the profits or loss of any accounting period, or in any matter excluded from the computation by proviso (b) to subsection (1) above, shall be determined according to the interests of the partners during that period, and corporation tax shall be chargeable as if that share derived from a trade carried on by it alone ; and the company shall be assessed and charged to tax accordingly:

Provided that, for the purposes of any relief from tax which may be given against total profits, a company may claim that any profits in respect of which it is chargeable in accordance with this section, and, so far as it cannot be relieved against those profits, any matter for which relief may be given against them in accordance with this section, shall be dealt with as if they derived from a separate trade carried on by it otherwise than in partnership (any necessary apportionments being made where accounting periods of the company do not coincide with those of the partnership).

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- (3) Where any of the persons engaged in carrying on the trade is an individual, income tax shall be chargeable in respect of his share of the profits, and he shall be entitled to relief for his share of any loss, as if all the partners had been individuals, except that—
- (a) income tax shall be chargeable, and any relief from income tax shall be given, by reference to the computations made for corporation tax, but so that the amounts so computed for an accounting period of the capital allowances and charges falling to be made in taxing the trade shall (as regards the individual's share of them) be given or made for the year or years of assessment comprising that period and, where necessary, apportioned accordingly, and
  - (b) section 154 above shall not apply by reason of any change in the persons engaged in carrying on the trade unless an individual begins or ceases to be so engaged, and, where it does apply, an election under subsection (2) thereof shall be made only by the individuals so engaged, and only if an individual so engaged before the change continues to be so engaged after it, and
  - (c) section 174 below (terminal loss: income tax) shall not apply except where section 178 below (terminal loss: corporation tax) applies to the partnership as a whole.
- (4) Section 152 above shall apply to income tax chargeable in accordance with this section, matters relevant only to corporation tax being omitted from the assessment.
- (5) The following provisions also have effect as respects income tax chargeable in accordance with this section for any year of assessment throughout all or any part of which one or more of the persons engaged in carrying on the trade is an individual—
- (a) notwithstanding any difference between the partners' interests during the basis period and their interests during the year of assessment, the amount of the individual's income from the partnership for the year of assessment, or the total of the amounts of the individuals' incomes from the partnership for that year, shall be deemed to be not less than the profits of the basis period, reduced, where any share was apportioned to a company under subsection (2) above, by the amount of that company's share, and
  - (b) where there are two or more individuals, and, but for paragraph (a) above, the total of the amounts of the individuals' incomes from the partnership for the year would fall short of the profits of the basis period reduced as aforesaid, that that amount shall be apportioned—
    - (i) according to the individuals' interests during the year of assessment, disregarding any company's interest, and
    - (ii) in so far as that does not determine, or fully determine, the apportionment, between the individuals in equal shares.
- (6) Where a trade or business is carried on by two or more persons in partnership, and the control and management of the trade or business is situated abroad but those persons include a company resident in the United Kingdom, then, as regards that company, this section shall have effect as if the partnership were resident in the United Kingdom, and an assessment may be made on the company accordingly.
- (7) Subject to subsection (6) above, where the partners in a partnership include a company, section 153 above shall apply whether for corporation tax or for income tax, and this section shall have effect accordingly.
- (8) In this section—



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" basis period ", in relation to a year of assessment, means any accounting period or part of an accounting period which is, or forms part of, the period on the profits or gains of which income tax for the year of assessment in question falls to be computed under Schedule D in respect of the trade, and

" capital allowances and charges " means any allowances or charges under the Capital Allowances Act 1968 (including the enactments which under this Act are to be treated as contained in Part I of that Act), not being allowances or charges which, for income tax, are given or made by deduction or addition in the computation of profits or gains ;

and references in subsection (5) of this section to an individual's income from the partnership are references to that income before deduction of capital allowances or charges on income.

- (9) This section shall be construed as one with Part XI of this Act, but " profits " in this section shall not be taken as including chargeable gains.

## CHAPTER VII

### MINING ETC. RENTS AND ROYALTIES: FOREIGN DIVIDENDS

#### **156 Rent etc. payable in connection with mines, quarries and similar concerns**

- (1) Where rent is payable in respect of any land or easement, and either—
- the land or easement is used, occupied or enjoyed in connection with any of the concerns specified in section 112(2) of this Act, or
  - the lease or other agreement under which the rent is payable provides for the recoupment of the rent by way of reduction of royalties or payments of a similar nature in the event of the land or easement being so used, occupied or enjoyed,

the rent shall be charged to tax under Schedule D, and, subject to subsection (2) below, shall be subject to deduction of income tax under Part II of this Act as if it were a royalty or other sum paid in respect of the user of a patent.

- (2) Where the rent is rendered in produce of the concern, it shall, instead of being treated as provided by subsection (1) above, be charged under Case III of Schedule D, and the value of the produce so rendered shall be taken to be the amount of the profits or income arising therefrom.

- (3) For the purposes of this section—

" easement " includes any right, privilege or benefit in, over or derived from land, and

" rent " includes a rent service, rentcharge, fee farm rent, feu duty or other rent, toll, duty, royalty or annual or periodical payment in the nature of rent, whether payable in money or money's worth or otherwise.

#### **157 Rent etc. payable in respect of electric line wayleaves**

- (1) Where rent is payable in respect of any easement enjoyed in the United Kingdom in connection with any electric, telegraphic or telephonic wire or cable (not being such an easement as is mentioned in section 156(1) above), the rent shall be charged to tax under Schedule D, and, subject to the following provisions of this section, shall be

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subject to deduction of income tax under Part II of this Act as if it were a royalty or other sum paid in respect of the user of a patent.

- (2) Any payment of rent to which subsection (1) above applies which does not exceed £2 10s. Od. per year may, if the payer so elects, be treated as not affected by so much of that subsection as provides that the rent shall be subject to deduction of income tax, and shall in that event be made without deduction of income tax accordingly.
- (3) Any payment of rent to which subsection (1) above applies which is made without deduction of income tax, whether by virtue of subsection (2) above or otherwise, shall, unless income tax is assessed thereon under section 53 of this Act (payments not out of profits or gains brought into charge to income tax), be chargeable to tax under Case III of Schedule D.
- (4) Any payment of rent to which subsection (1) above applies which is made subject to deduction of income tax shall, if it is paid by a person carrying on a trade which consists of or includes the provision of a radio relay service and the wire or cable in question is used by that person for the purposes of that service—
  - (a) be deductible (notwithstanding anything in section 130(o) of this Act) in computing the amount of the profits or gains of the trade to be charged under Case I of Schedule D, and
  - (b) be deemed for the purposes of sections 52 and 53 of this Act not to be payable out of profits or gains brought into charge to income tax.

- (5) In this section—

" easement " and " rent " have the same meanings as in section 156 above, and the reference to easements enjoyed in connection with any electric, telegraphic or telephonic wire or cable includes (without prejudice to the generality of that expression) references to easements enjoyed in connection with any pole or pylon supporting any such wire or cable, or with any apparatus (including any transformer) used in connection with any such wire or cable, and

" radio relay service " means the retransmission by wire to their customers of broadcast programmes (which may or may not be television programmes) which the persons carrying on the service receive either by wire or by wireless from the British Broadcasting Corporation or from the persons outside the United Kingdom who broadcast the programmes in question.

## **158 Management expenses of owner of mineral rights**

- (1) Where for any year of assessment rights to work minerals in the United Kingdom are let, the lessor shall be entitled, on making a claim for the purpose, to be repaid so much of the income tax paid by him by deduction or otherwise in respect of the rent or royalties for that year as is equal to the amount of the tax on any sums proved to have been wholly, exclusively and necessarily disbursed by him as expenses of management or supervision of those minerals in that year:

Provided that no repayment of tax shall be made if, or to such extent as, the said expenses have been otherwise allowed as a deduction in computing income for the purposes of income tax.

- (2) In computing for the purposes of corporation tax the income of a company for any accounting period from the letting of rights to work minerals in the United Kingdom,

there may be deducted any sums disbursed by the company wholly, exclusively and necessarily as expenses of management or supervision of those minerals in that period.

- (3) References in subsections (1) and (2) above to sums disbursed as expenses of management include references to sums to be treated as so disbursed by virtue of paragraph 7 of Schedule 4 to this Act (allowances for betterment levy).

## **159 Foreign dividends**

- (1) In this section—

- (a) " foreign dividends " means any interest, dividends or other annual payments payable out of or in respect of the stocks, funds, shares or securities of any body of persons not resident in the United Kingdom (but not including any payment to which section 52 or 53 of this Act applies), and references to dividends shall be construed accordingly.
- (b) " banker " includes a person acting as a banker, and
- (c) references to coupons include, in relation to any dividends, warrants for or bills of exchange purporting to be drawn or made in payment of those dividends.

- (2) Where foreign dividends are entrusted to any person in the United Kingdom for payment to any persons in the United Kingdom, they shall be assessed and charged to income tax under Schedule D by the Board, and Parts III and IV of Schedule 5 to this Act shall apply in relation to the income tax to be so assessed and charged.

- (3) Where—

- (a) a banker or any other person in the United Kingdom, by means of coupons received from any other person or otherwise on his behalf, obtains payment of any foreign dividends elsewhere than in the United Kingdom, or
- (b) any banker in the United Kingdom sells or otherwise realises coupons for foreign dividends, and pays over the proceeds to any person or carries them to his account, or
- (c) any dealer in coupons in the United Kingdom purchases any such coupons otherwise than from a banker or another dealer in coupons,

tax under Schedule D shall extend, in the case mentioned in paragraph (a) above, to the dividends, and, in the cases mentioned in paragraphs (b) and (c) above, to the proceeds of the sale or other realisation, and income tax shall be assessed and charged and paid under this subsection in accordance with Parts III and IV of Schedule 5 to this Act.

- (4) In the cases mentioned in subsections (2) and (3) above, no tax shall be chargeable if it is proved, on a claim in that behalf made to the Board, that the person owning the stocks, funds, shares or securities and entitled to the dividends or proceeds is not resident in the United Kingdom.

- (5) Where stocks, funds, shares or securities are held under a trust, and the person who is the beneficiary in possession under the trust is the sole beneficiary in possession and can, by means either of the revocation of the trust or of the exercise of any powers under the trust, call upon the trustees at any time to transfer the stocks, funds, shares or securities to him absolutely free from the trust, that person shall, for the purposes of subsection (4) above, be deemed to be the person owning the stocks, funds, shares or securities.

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- (6) Where any income of any person is, by virtue of any provision of the Tax Acts (and in particular, but without prejudice to the generality of the preceding words, by virtue of Chapter III of Part XVII of this Act) to be deemed to be income of any other person, that income is not exempt from tax by virtue of subsection (4) above by reason of the first mentioned person not being resident in the United Kingdom.

## CHAPTER VIII

### CASE VII: INCOME TAX ON SHORT TERM CAPITAL GAINS

#### **160 Scope of charge under Case VII**

- (1) The charge to tax under Case VII of Schedule D (in this Chapter referred to as "Case VII") is a charge to income tax only, and income tax under that Case for any year of assessment shall be charged, subject to and in accordance with the rules contained in this Chapter, in respect of all gains accruing to any person resident and ordinarily resident for the year in the United Kingdom from his acquisition and disposal of any chargeable assets, not being gains which accrue as profits of a trade, profession, vocation, office or employment:

Provided that there shall be no acquisition and disposal within the meaning of this Chapter where the disposal occurs more than twelve months after the acquisition.

- (2) The tax with which a person is chargeable under Case VII for any year of assessment shall be computed on the gains accruing to him in that year after deducting any losses allowable under that Case against those gains, and the amount or net amount on which tax is charged in accordance with this subsection shall be deemed for income tax purposes to be income for the year of assessment of the person chargeable.
- (3) Subject to subsection (6) below, a gain on the acquisition and disposal of an asset shall for the purposes of Case VII be treated as accruing at the time of the disposal or, if that precedes the acquisition, the time of the acquisition.
- (4) Subject to the provisions of this Chapter, the losses allowable under Case VII against gains accruing to a person in any year of assessment shall consist of any losses accruing to him in that or any previous year from any chargeable acquisition and disposal, that is to say, from his acquisition and disposal of assets in such circumstances that a gain accruing from it would have been chargeable under that Case; and a loss shall be treated as accruing at the same time, and be computed in the same manner, as a gain would be.
- (5) The preceding provisions of this section with respect to losses allowable under Case VII shall not prejudice any right to relief in respect of other losses from tax chargeable under that Case, or otherwise affect any other provision of the Income Tax Acts with respect to losses; but no deduction shall be made under that Case of a loss, or part of a loss, in respect of which relief from tax has already been allowed by such a deduction or otherwise, and, where such a deduction is made, no relief from tax in respect of the loss or that part of it shall be allowed under any other provision of the Income Tax Acts.
- (6) In the case of individuals resident and ordinarily resident, but not domiciled, in the United Kingdom, tax under Case VII shall not be charged in respect of gains arising to them out of the United Kingdom, except that tax shall be charged on the amounts (if any) received in the United Kingdom in respect of those gains, any such amounts

being treated as gains accruing when they are received in the United Kingdom; and accordingly losses arising out of the United Kingdom to any such individual shall not be allowable under Case VII.

For the purposes of this subsection, there shall be treated as received in the United Kingdom in respect of any gain all amounts paid, used or enjoyed in, or in any manner or form transmitted or brought to, the United Kingdom, and subsections (4) to (7) of section 122 of this Act (under which income applied outside the United Kingdom in payment of debts is, in certain cases, treated for the purposes of Cases IV and V of Schedule D as received in the United Kingdom) shall apply as they would apply for the purposes of subsection (3) of that section if the gain were income arising from possessions out of the United Kingdom.

## **161 Chargeable assets**

- (1) Subject to the provisions of this section, all forms of property, whether situated in the United Kingdom or not, (including options, debts and incorporeal property generally) shall be chargeable assets for the purposes of Case VII.
- (2) The dwelling-house, or part of a dwelling-house, which is an individual's only or main residence shall not be a chargeable asset in relation to any acquisition and disposal of it by him, nor shall land which he has for his own occupation and enjoyment with that residence as its garden or grounds up to an area (inclusive of the site of the dwelling-house) of one acre, or such larger area as the Commissioners concerned may in any particular case determine on being satisfied that, regard being had to the size and character of the dwelling-house, the larger area is required for the reasonable enjoyment of it, or of the part in question, as a residence.

This subsection shall not apply by reason of a person's use of any dwelling-house, part of a dwelling-house or land for a purpose within the subsection unless his acquisition of it was made for that purpose, and not wholly or partly for the purpose of realising a gain from the disposal of it; but where a person acquires land as a site for a dwelling-house, and disposes of it after the erection of the dwelling-house, this subsection shall not be prevented from applying by reason of his not having acquired the land with the dwelling-house on it.

In the case where part of the land occupied with the residence is, and part is not, to be treated under this subsection as a chargeable asset, then, up to the permitted area, that part shall be taken not to be a chargeable asset which, if the remainder were separately occupied, would be the most suitable for occupation and enjoyment with the residence.

- (3) Chargeable assets shall not include any asset which is tangible movable property and is a wasting asset, or any interest in tangible movable property which is a wasting asset:

Provided that this exception shall not apply to a disposal of commodities of any description by a person dealing on a terminal market, or dealing with or through a person ordinarily engaged in dealing on a terminal market.

- (4) Currency of any description other than sterling shall be chargeable assets, except in relation to an acquisition and disposal by an individual for the personal expenditure outside the United Kingdom of himself or his family or dependants (including expenditure on the provision or maintenance of any residence outside the United Kingdom).

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- (5) Patent rights (that is to say, the right to do or authorise the doing of anything which would, but for that right, be an infringement of a patent) shall not be chargeable assets, nor shall rights to acquire in the future patent rights as respects any invention in respect of which the patent has not yet been granted.

## **162 General operation of charge**

- (1) Subject to the provisions of this section, any acquisition of an interest or right in or over assets (whether it continues after or ceases on the acquisition), or any disposal of such an interest or right (whether it subsists before or is created by the disposal), shall be deemed for the purposes of Case VII to be an acquisition or a disposal of the assets, and, except in so far as the context otherwise requires, the expressions "acquire" and "dispose of" shall be construed accordingly.
- (2) For the purposes of Case VII, where a contract is made to acquire or dispose of an asset (including an asset not in existence or not ascertained at the time of the contract), the contract shall be deemed to be the acquisition or disposal of the asset (for the consideration provided for by the contract), and the conveyance or transfer of an asset, or of an interest or right in or over an asset, in pursuance of a contract previously made shall not be deemed to be an acquisition or disposal of the asset.
- (3) The conveyance or transfer by way of security of an asset, or of an interest or right in or over an asset, or the transfer of a subsisting interest or right by way of security in or over an asset (including a retransfer on redemption of the security), shall not be treated for the purposes of Case VII as involving any acquisition or disposal of the asset.
- (4) Subject to subsection (5) below, and to the provisions of Schedule 7 to this Act, a person's acquisition of any asset, and the disposal of it to him, shall for the purposes of Case VII be deemed to be for a consideration equal to the market value of the asset or of the interest or right in or over it received by him—
- (a) where he acquires the asset otherwise than by way of a bargain made at arm's length, and (in particular) where he acquires it by way of gift, or by way of distribution from a company in respect of shares in the company, or
  - (b) where he acquires the asset wholly or partly for a consideration that cannot be valued, or in connection with his own or another's loss of office or employment or diminution of emoluments, or otherwise in consideration for or recognition of his or another's services or past services in any office or employment or of any other services rendered or to be rendered by him or another.
- (5) Where, on a person's acquisition of an asset, the asset or the interest or right in or over it received by him falls to be taken into account for the purposes of tax as a receipt of an income nature (whether as his receipt or another's), or would fall to be so taken into account if he (or, as the case may be, that other) were chargeable to tax in respect of the whole of his income, his acquisition shall for the purposes of Case VII be deemed to be for a consideration equal to the amount or value attributed to the asset, or the interest or right in or over it, for that purpose.

## **163 Operation in special cases (trust assets, devolution on death, enforcement of securities etc.)**

- (1) In relation to assets held by a person—
- (a) as nominee for another person, or

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- (b) as trustee for another person absolutely entitled as against the trustee, or for another person who would be so entitled but for being an infant or other person under disability, or for two or more persons who are or would be jointly so entitled,

this Chapter shall apply as if the property were vested in, and the acts of the nominee or trustee in relation to the assets were the acts of, the person or persons for whom he is nominee or trustee (acquisitions from or disposals to him by that person or persons being disregarded accordingly).

- (2) In relation to settled property, the trustees of the settlement shall for the purposes of Case VII be treated as being a single and continuing body of persons (distinct from the persons who may from time to time be the trustees), and that body shall be treated as being resident and ordinarily resident in the United Kingdom unless the general administration of the trusts is ordinarily carried on outside the United Kingdom and the trustees, or a majority of them for the time being, are not resident or not ordinarily resident in the United Kingdom:

Provided that a person carrying on a business which consists of or includes the management of trusts, and acting as trustee of a trust in the course of that business, shall be treated in relation to that trust as not resident in the United Kingdom if the whole of the settled property consists of or derives from property provided by a person not at the time (or, in the case of a trust arising under a testamentary disposition, or on an intestacy or partial intestacy, at his death) domiciled, resident or ordinarily resident in the United Kingdom; and, in relation to disposals of assets after 5th April 1969, if in such a case the trustees or a majority of them are, or are treated in relation to that trust as, not resident in the United Kingdom, the general administration of the trust shall be treated as ordinarily carried on outside the United Kingdom.

For the purposes of this subsection, where part of the property comprised in a settlement is vested in one trustee or set of trustees and part in another (and, in particular, where settled land within the meaning of the Settled Land Act 1925 is vested in the tenant for life, and investments representing capital money are vested in the trustees of the settlement), they shall be treated as together constituting and, in so far as they act separately, as acting on behalf of a single body of trustees.

- (3) Subsection (2) above shall apply in relation to property forming part of the estate of a deceased person and to his personal representatives as it applies in relation to settled property and to trustees of a settlement, but personal representatives shall not be chargeable to tax in respect of an acquisition and disposal by reference to the vesting of the property of the deceased in them.
- (4) A person acquiring assets as legatee shall not be chargeable under Case VII in respect of any acquisition and disposal by reference to that acquisition; nor, in the case of settled property, shall a person be chargeable under that Case in respect of any acquisition and disposal of a beneficial interest under the settlement.
- (5) Where a person entitled to an asset by way of security, or to the benefit of a charge or incumbrance on an asset, deals with the asset for the purpose of enforcing or giving effect to the security, charge or incumbrance, his dealings with it shall be treated for the purposes of Case VII as if they were done through him as nominee by the person entitled to it subject to the security, charge or incumbrance; and this subsection shall apply to the dealings of any person appointed to enforce or give effect to the security, charge or incumbrance as receiver, receiver and manager or judicial factor as it applies to the dealings of the person entitled as aforesaid.

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- (6) For the purposes of subsection (1) above, assets held by a person as trustee or assignee in bankruptcy, or under a deed of arrangement, shall be regarded as assets to which the bankrupt or debtor is absolutely entitled as against the trustee or assignee; and, without prejudice to the general provisions of the Income Tax Acts as to the assessment of any such trustee or assignee, tax in respect of any gain accruing on an acquisition and disposal shall be assessable on and recoverable from any such trustee or assignee not only where the acquisition and disposal were effected by him, but also where either the acquisition or the disposal was effected by him and the other was effected by the bankrupt or debtor.
- (7) Assets vesting in a trustee in bankruptcy after the death of the bankrupt, or held by a trustee or assignee in bankruptcy or under a deed of arrangement at the death of the bankrupt or debtor, shall for the purposes of Case VII be regarded as held by a personal representative of the deceased, and subsection (6) above shall not apply after the death.

#### **164 Computation of gains**

- (1) Subject to the provisions of this Chapter, the gain accruing to a person from his acquisition and disposal of any asset shall be computed for the purposes of Case VII in the same way as it would fall to be computed for the purposes of Case I of Schedule D if the acquisition and disposal (together with anything done by him to or in relation to the asset in connection with the acquisition and disposal, or with a view to the disposal) had been an adventure in the nature of trade (but so that no dividend or interest in respect of which income tax has been borne by deduction or otherwise shall be brought into the computation as a receipt).
- (2) Subsection (1) above shall not be treated as applying for the purposes of Case VII any provision as to the period of computation of profits for the purposes of the said Case I, but the gain accruing on any disposal of an asset shall be computed in one sum as from the relevant acquisition (or first relevant acquisition).
- (3) No interest shall be allowable in computing the amount of a gain under Case VII.
- (4) Subject to the following subsections, the adventure by reference to which the gain on an acquisition and disposal is to be computed—
- (a) shall not be treated as relating to any assets not included in the disposal, or to any interest not so included in assets which are so included, whether or not the assets or interest not so included were or was included in a relevant acquisition of the assets disposed of,
  - (b) shall not be treated as relating to assets included in the disposal which either are not chargeable assets or were not included in a relevant acquisition, and
  - (c) subject to paragraph (b) above shall be treated as relating—
    - (i) to all assets included in the same disposal, whether or not included in the same acquisition, and
    - (ii) to all relevant acquisitions of those assets, and
    - (iii) to the whole interest included in the disposal in any assets to which the adventure relates, whether or not the whole interest was included in any relevant acquisition;

and all necessary apportionments shall be made accordingly of the consideration for any acquisition or disposal, or of any receipts or expenditure, including in particular, in the case of land, apportionments between the interest disposed of and an interest retained of receipts and expenditure in connection with the land.



- (5) If, in the case of any asset, the interest to which the adventure relates does not derive wholly from one or more relevant acquisitions, then the gain shall be computed as if such part of that interest as derives from any other acquisition had been first appropriated to the adventure immediately before the disposal.
- (6) If, in the case of land, there is included in the disposal, besides the land to which the adventure relates, any adjoining or neighbouring land, being chargeable assets and not being land acquired as legatee, so much (if any) of the consideration for the disposal as represents an enhancement due to a relevant acquisition of the first-mentioned land in the value of the adjoining or neighbouring land shall, on the apportionment of the consideration, be apportioned to the first-mentioned land.
- (7) If, in the case of land, the disposal is subject to an interest created by any such letting of the land as is excepted from Case VII by section 166(2) below, and the letting was made by the person disposing of the land, and made by him since a relevant acquisition, the adventure shall be treated as extending to that letting to the same extent as if the interest thereby created had been included in the disposal.
- (8) An asset shall be treated as having been acquired free of any interest or right by way of security subsisting at the time of any relevant acquisition of it, and as being disposed of free of any such interest or right subsisting at the time of the disposal.
- (9) For the purposes of this section—
  - (a) " relevant acquisition " means, in relation to any disposal of an asset, an acquisition which, with that disposal, amounts to an acquisition and disposal within the meaning of this Chapter, except that it does not include an acquisition by reference to which tax is not chargeable, nor an acquisition from which no interest included in the disposal derives, and
  - (b) an interest included in a disposal shall be treated as deriving from an acquisition if, without that acquisition, the whole interest could not have been so included, but so that the part of that interest which does, and the part which does not, derive from relevant acquisitions shall be determined as if any interest of temporary duration subsisting at the time of the first relevant acquisition (other than an interest of such a duration as to expire before the time of the disposal) had been of the same duration at the time of the disposal.

## **165 Exemption for chattels sold for $\bar{n}$ ,000 or less, and marginal relief**

- (1) There shall be exempt from tax chargeable under Case VII a gain accruing from the acquisition and disposal of an asset which is tangible movable property if the amount or value of the consideration for the disposal does not exceed £1,000 ; and the amount of income tax (including surtax) chargeable under that Case in respect of a gain accruing from the acquisition and disposal of any such asset for a consideration exceeding £1,000 shall not exceed half the difference between that consideration and £1,000.

Subject to section 529 of this Act, the amount of the gain on which income tax is so chargeable shall be deemed for the purposes of this subsection to be the highest part of the income of the person charged for the year of assessment in question.

- (2) Subsection (1) above shall not affect subsection (4) of section 160 of this Act (Case VII losses), but, for the purposes of the said subsection (4), the consideration for the disposal of any asset which is tangible movable property shall, if less than £1,000 be

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deemed to be £1,000, and losses allowable under that subsection shall be restricted accordingly.

- (3) If two or more assets which have formed part of a set of articles of any description all owned at one time by one person are disposed of by that person, whether on the same or different occasions—

- (a) to the same person, or
- (b) to persons who are acting in concert, or are connected persons within the terms of section 533 of this Act,

those assets shall be treated for the purposes of subsections (1) and (2) above as a single asset, but with any necessary apportionments of the reductions in tax, and in allowable losses, under those subsections.

- (4) In applying subsections (1) and (2) above in a case where the disposal is of a right or interest in or over tangible movable property—

- (a) in the first instance, those subsections shall be applied in relation to the asset as a whole, taking the consideration as including the market value of what remains undisposed of, in addition to the actual consideration,
- (b) where the sum of the actual consideration and that market value exceeds £1,000, the limitation on the amount of income tax (including surtax) in subsection (1) shall be to half the difference between that sum and £1,000 multiplied by the fraction equal to the actual consideration divided by the said sum, and
- (c) where that sum is less than £1,000, any loss shall be restricted under subsection (2) by deeming the actual consideration to be the actual consideration plus the said fraction of the difference between the said sum and £1,000.

- (5) Subsections (1) and (2) above shall not apply—

- (a) in relation to a disposal of commodities of any description by a person dealing on a terminal market, or dealing with or through a person ordinarily engaged in dealing on a terminal market, or
- (b) in relation to a disposal of currency of any description.

## **166 Miscellaneous exemptions and reliefs**

- (1) Where an individual disposes by way of gift of an asset the market value of which at the time of the gift does not exceed £100, any gains accruing to the donor on the disposal shall be exempt from tax chargeable under Case VII, but this subsection, taken together with section 27(2) of the Finance Act 1965 (which confers a similar exemption for the purposes of capital gains tax), shall not apply to gifts made by the same individual in the same year of assessment the total market value of which exceeds £100, taking the market value of any gift at the time of the gift.

- (2) Except as provided by section 164(7) above, a person disposing of land by letting it for a term of less than twenty-one years shall not be chargeable under Case VII in respect of any acquisition and disposal by reference to that disposal, unless the letting is accompanied by another letting, or agreement for another letting, such that the combined terms amount to twenty-one years or over, or by an agreement to dispose of the land otherwise than by letting it.

- (3) If a claim is made under subsection (1) or (2) of section 33 of the Finance Act 1965 (capital gains tax relief in connection with replacement of business assets)—

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- (a) that section shall apply as if references in those subsections to the purposes of Part III of that Act included references to the purposes of this Chapter, and
  - (b) tax shall not be chargeable under Case VII on a gain accruing to the claimant from the acquisition and disposal of, or of the interest in, the new assets unless the period between the date when the claimant acquired the old assets, or the interest in the old assets, and the date when he disposed of the new assets, or the interest in the new assets, is twelve months or less.
- (4) This Chapter has effect subject to the provisions of paragraph 15 of Schedule 19 to the Finance Act 1969 (postponement of charge in respect of business assets where business transferred to company as going concern).
- (5) A gain shall be exempt from tax chargeable under Case VII if accruing from the acquisition and disposal by any person of a decoration awarded for valour or gallant conduct which he acquired otherwise than for consideration in money or money's worth.

## **167 Interpretation, and other supplementary provisions**

- (1) For the purposes of this Chapter—

" control " has the meaning given by section 534 of this Act,

" deed of arrangement " means a deed of arrangement to which the Deeds of Arrangement Act 1914, or any corresponding enactment forming part of the law of Scotland or Northern Ireland, applies,

" legatee " includes any person taking under a testamentary disposition, or on an intestacy or partial intestacy, whether he takes beneficially or as trustee, and—

- (a) a donatio mortis causa shall be treated as a testamentary disposition, and shall not be treated as a gift, and

- (b) for the purposes of this definition and of any reference to a person acquiring an asset " as legatee ", property taken under a testamentary disposition or an intestacy or partial intestacy includes, in the case of a death occurring after 5th April 1969, any asset appropriated by the personal representatives in or towards satisfaction of a pecuniary legacy or any other interest or share in the property devolving under the disposition or intestacy,

" market value ", in relation to any property, means the price which that property might reasonably be expected to fetch on a sale in the open market,

" personal representatives " has the meaning given by section 432(4) of this Act,

" settled property " means, subject to subsection (3) below, any property held in trust other than property to which section 163(1) of this Act applies,

" shares " includes stock, and shares or debentures comprised in any letter of allotment or similar instrument shall be treated as issued unless the right to the shares or debentures thereby conferred remains provisional until accepted and there has been no acceptance, and

" wasting asset " means—

- (a) plant and machinery, and
- (b) any other asset with a predictable life not exceeding fifty years, " life ", for this purpose, meaning useful life having regard to the purpose for which the asset was acquired or provided by the person making

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the disposal, and the question what is the predictable life of an asset, so far as not immediately determined by the nature of the asset, being determined in relation to any disposal thereof by reference to the facts as they were known or ascertainable at the time when the asset was acquired or provided by the person making the disposal;

and references in this Chapter to any asset held by a person as trustee for another person absolutely entitled as against the trustee are references to a case where that other person has the exclusive right, subject only to satisfying any outstanding charge, lien or other right of the trustees to resort to the asset for payment of duty, taxes, costs or other outgoings, to direct how that asset shall be dealt with.

- (2) Where two or more persons carry on a business in partnership, gains accruing to them on the disposal of any partnership assets shall, in Scotland as well as elsewhere in the United Kingdom, be assessed and charged on them under Case VII separately, and any partnership dealings shall be treated as dealings by the partners and not by the firm as such.
- (3) The provisions of this Chapter shall apply in relation to any unit trust scheme (as denned in section 26(1) of the Prevention of Fraud (Investments) Act 1958) as if the trustees were a company, and as if the rights of the unit holders were shares in the company; but this subsection shall not be taken as excluding from the charge under Case VII (by reason of its extending to income tax only) any unit trust scheme which is not an authorised unit trust as defined in section 358 of this Act.
- (4) Where it appears to the Board that a person is or may be chargeable to tax under Case VII in respect of his acquisition and disposal of assets, they may, by notice in writing served on any person, require him within such time not less than twenty-eight days as may be specified in the notice—
  - (a) to state whether he has acted on behalf of the first mentioned person in connection with any acquisition or disposal of assets by that person, and
  - (b) if so, to furnish information in his possession with respect to the acquisition or disposal, being information as to—
    - (i) the assets comprised in the acquisition or disposal, and the consideration for the acquisition or disposal, and
    - (ii) the date and manner of the acquisition or disposal, including any condition to which it was subject and the satisfaction or otherwise of any such condition.
- (5) Where any question arises under Case VII as to a person's residence, ordinary residence or domicile, it shall be referred to and determined by the Board; but any person who is aggrieved by their decision on the question may, by notice in writing to that effect given to them within three months from the date on which notice of the decision is given to him, make an application to have the question heard and determined by the Special Commissioners, and where an application is so made, the Special Commissioners shall hear and determine the question in like manner as an appeal.
- (6) The rules contained in Schedule 7 to this Act shall have effect with respect to the operation of Case VII in relation to the matters there dealt with, and with respect to matters arising out of the charge to tax under this Chapter, and the preceding provisions of this Chapter shall have effect subject to those rules.

**PART VII**

## LOSS RELIEF

**CHAPTER I**

## INCOME TAX

*Trade etc. losses***168 Set-off against general income**

- (1) Where any person sustains a loss in any trade, profession, employment or vocation carried on by him either solely or in partnership, he may, by notice in writing given within two years after the year of assessment, make a claim for relief from income tax on an amount of his income equal to the amount of the loss.
- (2) Relief may be given under subsection (1) above in respect of a person's loss sustained in the last preceding year of assessment in any trade, profession, employment or vocation still carried on by him in the year for which the claim is made, in so far as relief in respect of that loss has not already been given under that subsection or otherwise; and where relief is claimed by virtue of this subsection, it shall be given in priority to any relief under the said subsection (1) in respect of a loss sustained in the year for which the relief is claimed.
- (3) A claim for relief under this section may contain either or both of the following requirements—
  - (a) that the relief be given only by reference to the income of the person sustaining the loss, without extending to the income of that person's wife or husband ;
  - (b) that the relief be given without any reference to income treated by virtue of Chapter V of Part I of this Act (aggregation of child's income with that of parent) as income of the person sustaining the loss or of that person's wife or husband.
- (4) Subject to any requirement under subsection (3) above, relief under this section shall be given in respect of a loss sustained by any person by treating the loss as reducing first his income of the corresponding class, then his other income, then the income of the corresponding class of that person's wife or husband, then the wife or husband's other income, and then income treated by virtue of the said Chapter V as income of that person or that person's wife or husband.

For the purposes of this subsection, "income of the corresponding class" means earned or unearned income according as income arising during the same period as the loss to the person sustaining it from profits or gains of the same trade, profession, employment or vocation would have been that person's earned or unearned income.

- (5) Where relief under this section has been given to a person for any year of assessment, he shall not be entitled, in computing the amount of the assessment for any subsequent year, to a deduction of any portion of the amount in respect of which such relief has been obtained.
- (6) Where there is in any year of assessment a change on which a trade, profession or vocation is treated under section 154(1) of this Act as permanently discontinued, and

a person engaged in carrying on the trade, profession or vocation immediately before the change continues to be so engaged immediately after it, the trade, profession or vocation carried on by him immediately before and immediately after the change shall, notwithstanding the discontinuance, be treated as the same trade, profession or vocation for the purposes of subsection (2) above, except as respects the computation of profits or gains and losses.

- (7) For the purposes of this section, the amount of a loss sustained in a trade shall be computed in like manner as the profits or gains arising or accruing from the trade are computed under the provisions of the Income Tax Acts applicable to Case I of Schedule D.
- (8) This section applies in relation to losses sustained in the occupation of woodlands in respect of which a person has elected under section 111 of this Act to be charged to income tax under Schedule D as it applies in relation to losses sustained in a trade.

### **169 Extension of right of set-off, to capital allowances**

- (1) Subject to the provisions of this section, any claim made under section 168 above for relief in respect of a loss sustained by the claimant in any trade in any year of assessment (hereafter referred to as " the year of loss ") may require the amount of that loss to be determined as if an amount equal to the capital allowances for the year of assessment for which the year of loss is the basis year were to be deducted in computing the profits or gains or losses of the trade in the year of loss; and a claim may be so made notwithstanding that, apart from those allowances, the claimant has not sustained a loss in the trade in the year of loss.
- (2) Capital allowances for any year of assessment shall be taken into account by virtue of this section only if and so far as they are not required to offset balancing charges for the year; and, for the purposes of this subsection, the capital allowances for a year of assessment shall be treated as required to offset balancing charges for the year up to the amount on which the balancing charges fall to be made after deducting from that amount the amount (if any) of capital allowances for earlier years which is carried forward to that year and would, without the balancing charges, be non-effective in that year.
- (3) Where the capital allowances taken into account by virtue of this section are those for the year of assessment for which the claim is made or for the preceding year (the year of loss being the basis year for that year itself, or the claim being made by way of carry-forward of the loss by virtue of section 168(2) above), relief shall not be given by reference to those allowances in respect of an amount greater than the amount non-effective in the year for which the claim is made, or, in the case of allowances for the preceding year, the amount non-effective in both years.
- (4) For the purposes of this section—
  - (a) where the end of the basis period for a year of assessment (as defined in section 72 of the Capital Allowances Act 1968) falls in, or coincides with the end of, any year of assessment, that year is the basis year for the first-mentioned year of assessment, but so that, if a year of assessment would under the foregoing provision be the basis year both for that year itself and for another year of assessment, it shall be the basis year for the year itself and not for the other year,
  - (b) any reference to the capital allowances or balancing charges for a year of assessment shall be construed as a reference to those falling to be made in

taxing the trade for that year (but not including, in the case of allowances, any part of the allowances for an earlier year carried forward under section 70(4) of the said Act of 1968),

- (c) any reference to an amount of capital allowances non effective in a year shall be construed as referring to the amount to which, by reason of an insufficiency of profits or gains, effect cannot be given in taxing the trade for the year, and
  - (d) effect shall be deemed to be given in taxing the trade to allowances carried forward from an earlier year before it is given to allowances arising in a later year.
- (5) Where, on a claim made by virtue of this section, relief is not given under section 168 above for the full amount of the loss determined as mentioned in subsection (1) of this section, the relief shall be referred as far as may be to the loss sustained by the claimant in the trade rather than to the capital allowances in respect of the trade.
- (6) Subject to subsection (7) below, where for any year of assessment relief is given under section 168 above by reference to any capital allowances, then, for all the purposes of the Income Tax Acts, effect shall be deemed to have been given to those allowances up to the amount in respect of which relief is so given, as if (in accordance with section 70(2) of the Capital Allowances Act 1968) a deduction in respect thereof had been allowed in taxing the trade for that year, or, in the case of allowances for the following year, in taxing the trade for that following year; and any relief previously given for a subsequent year on the basis that effect had not been given to the allowances as aforesaid shall be adjusted where necessary by an assessment.
- (7) Where, in any year of assessment, a trade is permanently discontinued, or is treated for the purposes of section 154 above as permanently discontinued, and, immediately before the discontinuance, the trade was being carried on in partnership, then, notwithstanding subsection (6) above, for the purposes of any claim for relief made by virtue of section 171(4)(c) or 174 below and relating to that discontinuance, effect shall not be deemed to have been given either—
- (a) to any part of the capital allowances falling to be made in taxing the trade for that year by reason of relief given under section 168 above by reference to those allowances, or
  - (b) to any part of the capital allowances falling to be made in taxing the trade for the preceding year by reason of relief so given by reference to them, in so far as that relief must be referred to the part of the allowances apportionable to the part of the year within twelve months of the discontinuance on an apportionment made by reference to the comparative lengths of the two parts of the year,

but where the same partner claims relief both under section 168 above and under one or other of sections 171(4) and 174 below in respect of the same allowances, the total amount for which relief is to be given to him by reference thereto shall not exceed the greater of the amounts for which, apart from any deficiency of income, relief might have been given under either section separately, and the total amount for which relief is to be given to all the partners under those sections in respect of any allowances shall not in any event exceed the amount of the allowances to which effect has not been given apart from those sections.

- (8) Where a person claiming relief under section 168 above has, since the end of the year for which the claim is made, carried on the trade in question in partnership, effect shall not be given to this section in relation to that claim except with the written consent

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of, or of the personal representatives of, every other person who has been engaged in carrying on the trade between the end of that year and the making of the claim:

Provided that, where the claim is for a loss sustained before an event treated as the permanent discontinuance of the trade, this subsection shall not require the consent of any person as having been so engaged since that discontinuance, or as the personal representative of such a person.

- (9) Relief from tax may be given by virtue of this section by reference to capital allowances for a year of assessment before the passing of any Act granting income tax for that year, as if income tax had been granted for the year without alteration; but if relief given to a person by virtue of this section for any year of assessment is affected by a subsequent alteration of the law, or by any discontinuance of the trade or other event occurring after the end of the year, any necessary adjustment may be made, and so much of any repayment of tax as exceeded the amount repayable in the events that happened may, if not otherwise made good, be assessed under Case VI of Schedule D and recovered from that person accordingly.
- (10) This section applies (with any necessary adaptations) in relation to a profession, employment or vocation, and in relation to the occupation of woodlands the profits or gains of which are assessable under Schedule D by virtue of an election under section 111 of this Act, as it applies in relation to a trade.

#### **170 Restrictions on right of set-off**

- (1) A loss (including any amount in respect of capital allowances which, by virtue of section 169 above, is to be treated as a loss) shall not be available for relief under section 168 above unless it is shown that, for the year of assessment in which the loss is claimed to have been sustained, the trade was being carried on a commercial basis and with a view to the realisation of profits in the trade or, where the carrying on of the trade formed part of a larger undertaking, in the undertaking as a whole:

Provided that this subsection shall not apply—

- (a) to a loss made, or an allowance in respect of expenditure incurred, by any person in the exercise of functions conferred by or under any enactment (including an enactment contained in a local or private Act), or
- (b) to an allowance in respect of expenditure incurred before 6th April 1960.
- (2) Where during a year of assessment there is a change in the manner in which a trade is being carried on, it shall be treated for the purposes of this section as having been carried on throughout the year in the way in which it was being carried on by the end of the year.
- (3) Subject to subsection (4) below, where a trade is (or falls to be treated as being) carried on for a part only of a year of assessment by reason of its being (or falling to be treated as being) set up and commenced, or discontinued, or both, in that year, subsections (1) and (2) above shall have effect in relation to the trade as regards that part of that year as if any reference to the manner of carrying on the trade for or by the end of that year were a reference to the manner of carrying it on for or by the end of the said part thereof.
- (4) Where in any year of assessment there is a change in the persons engaged in carrying on a trade, then, for the purposes of the application of subsections (1) to (3) above in the case of any person who, being engaged in carrying on the trade immediately before the change, continues to be so engaged immediately after it, the trade carried



on by that person immediately before the change shall be treated as continuing to be carried on by him notwithstanding the change, whether or not it falls to be treated for any other purpose as having been discontinued on the change.

- (5) For the purposes of this section, the fact that a trade was being carried on at any time so as to afford a reasonable expectation of profit shall be conclusive evidence that it was then being carried on with a view to the realisation of profits.
- (6) This section—
  - (a) applies to professions and vocations as it applies to trades, with references to a commercial basis construed accordingly, and
  - (b) has effect without prejudice to section 180 below (special restrictions for farming and market gardening).

## **171 Carry-forward against subsequent profits**

- (1) Where a person has, in any trade, profession or vocation carried on by him either solely or in partnership, sustained a loss (to be computed in the same way as profits or gains under the provisions of the Income Tax Acts applicable to Cases I and II of Schedule D) in respect of which relief has not been wholly given either under section 168 above or under any other provision of those Acts, he may make a claim requiring that any portion of the loss for which relief has not been so given shall be carried forward and, as far as may be, deducted from or set off against the amount of profits or gains on which he is assessed to income tax under Schedule D in respect of that trade, profession or vocation for subsequent years of assessment.

In the application of this section to a loss sustained by a partner in a partnership, "the amount of profits or gains on which he is assessed" shall, in respect of any year, be taken to mean such portion of the amount on which the partnership is assessed to income tax under Schedule D in respect of the trade, profession or vocation as he would be required to include in a return of his total income for that year.

- (2) Any relief under this section shall be given as far as possible from the first subsequent assessment, and, so far as it cannot be so given, then from the next assessment, and so on.
- (3) Where in any year of assessment relief cannot be given, or cannot be wholly given, in respect of a loss carried forward under this section because the amount of the profits or gains of the trade assessed under Case I of Schedule D for that year is insufficient, any interest or dividends on investments arising in that year, being interest or dividends which would fall to be taken into account as trading receipts in computing the profits or gains of the trade for the purpose of assessment under that Case but for the fact that they have been subjected to tax under other provisions of the Income Tax Acts, shall be treated for the purposes of the application of this section as if they were profits or gains on which the person carrying on the trade was assessed under the said Case I in respect of that trade for that year of assessment, and relief shall be given accordingly by repayment or otherwise.
- (4) Where there is in any year of assessment a change on which a trade, profession or vocation is treated under section 154 above as permanently discontinued, and a person engaged in carrying on the trade, profession or vocation immediately before the change continues to be so engaged immediately after it, then—
  - (a) the trade, profession or vocation carried on by him immediately before and immediately after the change shall, notwithstanding the discontinuance, be

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- treated as the same trade, profession or vocation for the purposes of this section, except as respects the computation of profits or gains and losses, and
- (b) in respect of a loss sustained by him in the trade, profession or vocation in the part of the said year before the change, relief shall be given under this section from the assessment relating to the part of the year after the change as if it were an assessment for a subsequent year, and
  - (c) for the purposes of this section, there shall be treated as a loss so sustained in the part of the year before the change his share of the non-effective amount (if any) of any capital allowances falling to be made in taxing the trade, profession or vocation for that part of that year.

For the purposes of paragraph (c) above, the persons engaged in carrying on the trade, profession or vocation immediately before the change shall be treated as entitled to capital allowances in the shares in which they are then entitled to the profits of the trade, profession or vocation, and "the non-effective amount" means, in relation to any such allowances, the amount to which, because of an insufficiency of profits or gains, effect cannot be given in taxing the trade, profession or vocation.

- (5) Where a loss is sustained by a person in the occupation of woodlands, and that person, if he had made a profit, would by reason of his election under section 111 of this Act have been chargeable for the following year to income tax under Schedule D computed on the amount of that profit, this section shall apply so as to give relief in respect of that loss in the same manner, and to the same extent, as if it were a loss sustained in a trade.
- (6) In so far as relief in respect of any loss has been given to any person under this section, that person shall not be entitled to claim relief in respect of that loss under any other provision of the Income Tax Acts.
- (7) So far as a claim under this section concerns the amount of the loss for any year of assessment after the year 1964-65, it must be made within six years after the year of assessment in question; but the question whether any and, if so, how much relief on that amount should be given under this section against tax for any year of assessment may be the subject of a separate claim made not later than six years after that year of assessment.

## **172 Carry-forward where business transferred to a company**

- (1) Where—
  - (a) a business carried on by any individual, or any individuals in partnership, has been transferred to a company in consideration solely or mainly of the allotment of shares of the company to that individual or those individuals, and
  - (b) in the case of any individual to whom, or to whose nominee or nominees, shares have been so allotted, his total income for any year of assessment throughout which he is the beneficial owner of the shares, and throughout which the company carries on the business, includes any income derived by him from the company, whether by way of dividends on those shares or otherwise,

then, subject to subsection (2) below, section 171 above (except subsection (4)) shall apply as if the income so derived were profits or gains on which that individual was assessed under Schedule D in respect of that business for that year.

- (2) Where, under the said section 171 as applied by subsection (1) above, a loss falls to be deducted from or set off against any income for any year of assessment, the deduction or set-off shall be made in the first place against that part, if any, of the income in respect of which the individual has been, or is liable to be, assessed to tax for that year.
- (3) This section, in its application to the year of assessment in which a business is transferred, shall have effect as if, for the reference in subsection (1)(b) to the year of assessment throughout which the individual is the beneficial owner of the shares and the business is carried on by the company, there were substituted a reference to the period from the date of transfer to the following 5th April.
- (4) Where a change to which section 171(4) above applies has occurred before a transfer to which this section applies, paragraph (a), but not paragraph (c), of the said section 171(4) shall for the purposes of this section apply in relation to the earlier change as it applies for the purposes of the said section 171.

### **173 Carry-forward as losses of amounts taxed under s. 53**

- (1) Subject to the provisions of this section, where under section 53 of this Act (payments not out of profits or gains brought into charge to income tax) a person has been assessed to income tax in respect of a payment made wholly and exclusively for the purposes of a trade, profession or vocation, the amount on which tax has been paid under that assessment shall be treated for the purposes of sections 171 and 172 above as though it were a loss sustained in that trade, profession or vocation, and relief in respect thereof shall be allowed accordingly.
- (2) Relief shall not be allowed by virtue of this section in respect of any payment, or part of a payment, which is not ultimately borne by the person assessed, or which is charged to capital.
- (3) This section shall not apply—
  - (a) to any payment to which the said section 53 applies by virtue of section 89(1) of this Act (Schedule A, and associated charges: non-residents),
  - (b) to any such payment of rent as is referred to in section 157(4) of this Act (easements in connection with radio relay services),
  - (c) to any capital sum paid in respect of any patent rights assessed under the said section 53 by virtue of section 380 of this Act,
  - (d) to any payment of, or on account of, copyright royalties to which section 391 of this Act applies, or
  - (e) to any payment to which the said section 53 applies by virtue of section 477 of this Act (manufactured dividends).

### **174 Carry-back of terminal losses**

- (1) Where a trade, profession or vocation is permanently discontinued, and any person then carrying it on, either solely or in partnership, has sustained therein a loss to which this section applies (hereafter referred to as a "terminal loss"), that person may, subject to the provisions of this section, make a claim requiring that the amount of the terminal loss shall, as far as may be, be deducted from or set off against the amount of profits or gains on which he has been charged to income tax under Schedule D in respect of the trade, profession or vocation for the three years of assessment last preceding that

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in which the discontinuance occurs; and there shall be made all such reductions of assessments or repayments of tax as may be necessary to give effect to the claim :

Provided that relief shall not be given in respect of the same matter both under this section and under some other provision of the Income Tax Acts.

- (2) Any relief under this section shall be given as far as possible from the assessment for a later rather than an earlier year.
- (3) Where a claim under this section is made in respect of a terminal loss sustained in a trade, and relief cannot be given, or cannot be wholly given, against the profits or gains of the trade charged to income tax under Schedule D for any year because the amount of those profits or gains is insufficient, any interest or dividends on investments arising in that year, being interest or dividends which would fall to be taken into account as trading receipts in computing the profits or gains of the trade for the purpose of assessment under Case I of that Schedule but for the fact that they have been subjected to tax under other provisions of the Income Tax Acts, shall be treated for the purposes of the application of this section as if they were profits or gains on which the person carrying on the trade was assessed under the said Case I in respect of that trade for that year of assessment, and relief shall be given accordingly by repayment or otherwise.
- (4) The profits or gains on which a person or partnership has been charged to income tax for any year of assessment shall be treated for the purposes of any relief under this section from the assessment for that year as reduced by the amount of those profits or gains applied in making any payment from which income tax was deducted, but was not accounted for because the payment was made out of profits or gains brought into charge to income tax; and the like reduction shall be made in the amount of the terminal loss for which relief may be given under this section from the assessments for earlier years unless the payment was one which, if not made out of profits or gains brought into charge to income tax, could have been assessed to income tax under section 53 of this Act, and, if so assessed, could have been treated as a loss by virtue of section 173 above.
- (5) The question whether a person has sustained any and, if so, what terminal loss in a trade, profession or vocation shall be determined for the purposes of this section by taking the amounts (if any) of the following, in so far as they have not otherwise been taken into account so as to reduce or relieve any charge to tax—
  - (a) the loss sustained by him in the trade, profession or vocation in the year of assessment in which it is permanently discontinued,
  - (b) the relevant capital allowances for that year of assessment,
  - (c) the loss sustained by him in the trade, profession or vocation in the part of the preceding year of assessment beginning twelve months before the date of the discontinuance, and
  - (d) the same fraction of the relevant capital allowances for that preceding year of assessment as the part thereof beginning twelve months before the discontinuance is of a year.
- (6) In subsection (5) above " the relevant capital allowances " means, in relation to any year of assessment, any capital allowances falling to be made in taxing the trade, profession or vocation for that year, excluding amounts carried forward from an earlier year; and, for the purposes of paragraphs (a) and (c) of that subsection, the amount of a loss shall, subject to the provisions of this section, be computed in the same way as profits or gains under the provisions of the Income Tax Acts applicable to Cases I and II of Schedule D.

- (7) Section 173 above, and sections 324 and 328 of this Act (capital redemption business, non-resident banks etc.), shall apply to the computation of losses, or of profit or loss, for any purpose of this section as they apply to the computation thereof for the corresponding purposes of section 171 above.
- (8) Where, on the permanent discontinuance of a trade which consists of or includes the working of a mine, oil well or other source of mineral deposits within the meaning of Chapter III of Part I of the Capital Allowances Act 1968, a claim for relief is made both under this section and under section 15(1) of that Act (carry-back of balancing allowances), the balancing allowance in respect of which the claim is made under the said section 15(1) shall be left out of account for the purposes of subsection (5) above, but relief under this section shall be given in priority to relief under the said section 15(1).
- (9) Where a person claiming relief under this section on a discontinuance has, since the beginning of the third year of assessment preceding that in which the discontinuance occurs, carried on the trade, profession or vocation in partnership—
- (a) in subsection (1) above, " the amount of profits or gains on which he has been charged to income tax " shall be taken to mean, in respect of any year or part of a year for which the partnership was assessed in respect of the trade, profession or vocation, such portion of the amount of the profits or gains on which the partnership has been, or is treated by virtue of subsection (4) above as having been, charged to income tax in respect of it for that year or part of a year as would be required to be included in a return of his total income for that year,
  - (b) any reduction in the amount of his terminal loss which falls to be made under the said subsection (4) by reason of profits or gains having been applied by the partnership in any such year or part of a year in making any payment shall be limited to the same proportion of the profits or gains brought into charge which were so applied, and
  - (c) if he was carrying on the trade, profession or vocation immediately before the discontinuance, the amounts to be included in his terminal loss by virtue of subsection (5)(b) or (d) above shall be such part only of the amounts therein mentioned (in so far as they have not otherwise been taken into account so as to reduce or relieve any charge to tax) as would fall to his share on a division made according to the shares in which the partners were then entitled to the profits of the trade, profession or vocation.
- (10) For all the purposes of this section, a trade, profession or vocation shall be treated as discontinued, and a new trade, profession or vocation as set up and commenced, when it is so treated for the purposes of section 154 of this Act; but—
- (a) a person who continues to be engaged in carrying it on immediately after such a discontinuance shall not be entitled to relief in respect of any terminal loss on that discontinuance, and
  - (b) on any discontinuance, a person not continuing to be so engaged may be given relief in respect of a terminal loss against profits or gains on which he was charged in respect of the same trade, profession or vocation for a period before a previous discontinuance, if he has been continuously engaged in carrying it on between the two discontinuances, and, in his case, if the previous discontinuance occurred within twelve months before the other—
    - (i) it shall be disregarded for the purposes of paragraphs (a) and (c) of subsection (5) above, except that those paragraphs shall be taken to

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include any amount on which relief could have been allowed to him as for a loss sustained before the previous discontinuance by virtue of section 171(4)(c) above, so far as it is referable to a period within those twelve months, and

- (ii) paragraph (d) of the said subsection (5) shall be taken to include the whole amount of the allowances in question, instead of the fraction there mentioned.
- (11) Where a trade, profession or vocation is being carried on by any persons in partnership immediately before it is permanently discontinued, relief under this section given to one of them on the discontinuance shall not, in relation to a claim made by another of them by virtue of section 171(4)(c) above, be taken to affect the non-effective amount of any allowances within the meaning of the said section 171(4)(c).
- (12) A claim for relief under this section may require that, in so far as they have not been otherwise taken into account so as to reduce or relieve any charge to tax, capital allowances in respect of the trade, profession or vocation under Part I of the Capital Allowances Act 1968, being allowances which fall to be made to the claimant by way of discharge or repayment of tax, and to be so made for the year of assessment in which the discontinuance occurs or the preceding year of assessment, shall be added to the terminal loss sustained by him (or, if he has not sustained a terminal loss computed in accordance with the provisions of this section, shall be treated as a terminal loss so sustained) and the allowances to be taken into account for this purpose may include allowances arising before a previous discontinuance:
- Provided that—
- (a) there shall be taken into account such fraction only of the allowances for the said preceding year of assessment as the part of that year beginning twelve months before the discontinuance giving rise to the claim is of a year, and
- (b) the allowances for any year shall not be treated as including any amounts carried forward from an earlier year.
- (13) Where a person occupying woodlands has elected to be charged to income tax in respect thereof under Schedule D, this section shall apply to a terminal loss sustained by him in the occupation of the woodlands as it applies to a terminal loss sustained in a trade.

## **175 Treatment of interest as a loss for purposes of carry forward and carry-back**

- (1) Where a payment to which this section applies is money wholly and exclusively laid out or expended for the purposes of a trade, profession or vocation the profits of which are chargeable to tax under Case I or Case II of Schedule D, and full effect cannot be given to the relief specified in subsection (2) below as respects the payment by reason of a want or deficiency of income of the year of assessment in which the payment is made, the amount unallowed may be carried forward to succeeding years of assessment as if it were a loss carried forward under section 171 above, or may be treated for the purposes of section 174 above as a loss sustained at the date of payment.
- (2) This section applies to—
- (a) interest eligible for relief under section 57 of this Act (loans for purchase or improvement of land),
- (b) payments of interest eligible for relief under section 62 of this Act (certain pre-1970 loans),

- (c) payments in respect of title redemption annuities to which section 66(2) of this Act applies, and
  - (d) payments of interest to which section 445(3)(b) of the Income Tax Act 1952 (building societies etc.) applied.
- (3) So far as it relates to the carrying forward of payments mentioned in paragraphs (c) and (d) of subsection (2) above, this section shall be deemed always to have had effect.

### *Case VI losses*

#### **176 Case VI losses**

- (1) Where in any year of assessment a person sustains a loss in any transaction, whether he was engaged therein solely or in partnership, being a transaction of such a nature that, if any profits had arisen therefrom, he would have been liable to be assessed to income tax in respect thereof under Case VI of Schedule D, he may make a claim requiring that the amount of the loss sustained by him shall, as far as may be, be deducted from or set off against the amount of any profits or gains arising from any transaction in respect of which he is assessed for that year under the said Case VI, and that any portion of the loss for which relief is not so given shall, as far as may be, be carried forward and deducted from or set off against the amount of any profits or gains arising from any transaction in respect of which he is assessed to income tax under the said Case VI for any subsequent year of assessment.
- (2) In the application of this section to a loss sustained by a partner in a partnership, " the amount of any profits or gains arising from any transaction in respect of which he is assessed " shall be taken to mean in respect of any year such portion of the amount on which the partnership is assessed under Case VI of Schedule D in respect of any transaction as falls to be taken into account in computing his total income for that year.
- (3) Any relief under this section by way of the carrying forward of the loss shall be given as far as possible from the first subsequent assessment in respect of any such profits or gains as aforesaid for any year, and, so far as it cannot be so given, then from the next such assessment, and so on.
- (4) This section does not apply to any loss sustained in a transaction falling within section 80, 81 or 82 of this Act (premiums, leases at undervalue, etc.).
- (5) So far as a claim under this section concerns the amount of the loss for any year of assessment after the year 1964-65, it must be made within six years after the year of assessment in question ; but the question whether any and, if so, how much relief on that amount should be given under this section against tax for any year of assessment may be the subject of a separate claim made not later than six years after that year of assessment.

## CHAPTER II

### CORPORATION TAX

#### *Trade etc. losses*

#### **177 Losses other than terminal losses**

- (1) Where in any accounting period a company carrying on a trade incurs a loss in the trade, the company may make a claim requiring that the loss be set off for the purposes of corporation tax against any trading income from the trade in succeeding accounting periods; and (so long as the company continues to carry on the trade) its trading income from the trade in any succeeding accounting period shall then be treated as reduced by the amount of the loss, or by so much of that amount as cannot, on that claim or on a claim (if made) under subsection (2) below, be relieved against income or profits of an earlier accounting period.
- (2) Where in any accounting period a company carrying on a trade incurs a loss in the trade, then (subject to subsection (4) below) the company may make a claim requiring that the loss be set off for the purposes of corporation tax against profits (of whatever description) of that accounting period and, if the company was then carrying on the trade and the claim so requires, of preceding accounting periods ending within the time specified in subsection (3) below; and, subject to that subsection and to any relief for an earlier loss, the profits of any of those periods shall then be treated as reduced by the amount of the loss, or by so much of that amount as cannot be relieved under this subsection against profits of a later accounting period.
- (3) The time referred to in subsection (2) above is a time equal in length to the accounting period in which the loss is incurred; but the amount of the reduction which may be made under that subsection in the profits of an accounting period falling partly before that time shall not exceed a part of those profits proportionate to the part of the period falling within that time.
- (4) Subsection (2) above shall not apply to trades falling within Case V of Schedule D; and, except in so far as it represents an excess in respect of expenditure incurred before the year 1960-61 of capital allowances over balancing charges, a loss incurred in a trade in any accounting period shall not be relieved under that subsection unless the trade is one carried on in the exercise of functions conferred by or under any enactment (including an enactment contained in a local or private Act), or it is shown that for that accounting period the trade was being carried on a commercial basis and with a view to the realisation of gain in the trade or in any larger undertaking of which the trade formed part.

This subsection has effect without prejudice to section 180 below (special restrictions for farming and market gardening).

- (5) For the purposes of subsection (4) above, the fact that a trade was being carried on at any time so as to afford a reasonable expectation of gain shall be conclusive evidence that it was then being carried on with a view to the realisation of gain; and where in an accounting period there is a change in the manner in which a trade is being carried on, it shall for those purposes be treated as having throughout the accounting period been carried on in the way in which it was being carried on by the end of that period.



- (6) The amount of a loss incurred in a trade in an accounting period shall be computed for the purposes of this section in the same way as trading income from the trade in that period would have been computed.
- (7) For the purposes of this section " trading income " means, in relation to any trade, the income which falls or would fall to be included in respect of the trade in the total profits of the company; but where in an accounting period a company incurs a loss in a trade in respect of which it is within the charge to corporation tax under Case I or Case V of Schedule D, and in any later accounting period to which the loss or any part of it is carried forward under subsection (1) above relief in respect thereof cannot be given, or cannot wholly be given, because the amount of the trading income of the trade is insufficient, any interest or dividends on investments which would fall to be taken into account as trading receipts in computing that trading income but for the fact that they have been subjected to tax under other provisions shall be treated for the purposes of subsection (1) above as if they were trading income of the trade.
- (8) Where in an accounting period the charges on income paid by a company—
- (a) exceed the amount of the profits against which they are deductible, and
  - (b) include payments made wholly and exclusively for the purposes of a trade carried on by the company,
- then, up to the amount of that excess or of those payments, whichever is the less, the charges on income so paid shall in computing a loss for the purposes of subsection (1) above be deductible as if they were trading expenses of the trade.
- (9) In this section references to a company carrying on a trade refer to the company carrying it on so as to be within the charge to corporation tax in respect of it.
- (10) A claim under subsection (1) above must be made within six years after the end of the accounting period in which the loss is incurred, and must be so made notwithstanding that relief cannot be given in respect of the loss until after the end of that period of six years; and a claim under subsection (2) above must be made within two years from the end of the accounting period in which the loss is incurred.

## 178 Terminal losses

- (1) Where a company ceasing to carry on a trade has in any accounting period falling wholly or partly within the previous twelve months incurred a loss in the trade, the company may make a claim requiring that the loss be set off for the purposes of corporation tax against trading income from the trade in accounting periods falling wholly or partly within the three years preceding those twelve months (or within any less period throughout which the company has carried on the trade); and, subject to subsections (2) to (5) below and to any relief for earlier losses, the trading income of any of those periods shall be then treated as reduced by the amount of the loss, or by so much of that amount as cannot be relieved under this subsection against income of a later accounting period:

Provided that relief shall not be given under this subsection in respect of any loss in so far as the loss has been or can be otherwise taken into account so as to reduce or relieve any charge to tax.

- (2) Where a loss is incurred in an accounting period falling partly outside the twelve months mentioned in subsection (1) above, relief shall be given under that subsection in respect of a part only of that loss proportionate to the part of the period falling within

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those twelve months; and the amount of the reduction which may be made under that subsection in the trading income of an accounting period falling partly outside the three years there mentioned shall not exceed a part of that income proportionate to the part of the period falling within those three years.

- (3) A claim for relief under this section may require that capital allowances in respect of the trade, being allowances which fall to be made to the company by way of discharge or repayment of tax, and to be so made for an accounting period falling wholly or partly within the twelve months ending when the company ceases to carry on the trade, shall (so far as they cannot be otherwise taken into account so as to reduce or relieve any charge to corporation tax) be added to the loss incurred by the company in that accounting period or, if the company has not incurred a loss in the period, shall be treated as a loss so incurred:

Provided that the allowances for any period shall not be treated as including amounts carried forward from an earlier period.

- (4) Subsections (6) to (9) of section 177 above shall apply for the purposes of this section as they apply for the purposes of subsection (1) of that section; and relief shall not be given under this section in respect of a loss incurred in a trade so as to interfere with any relief under section 248 of this Act (charges on income) in respect of payments made wholly and exclusively for the purposes of that trade.
- (5) A claim under this section must be made within six years from the time when the company ceases to carry on the trade.

#### *Case VI losses*

### **179 Case VI losses**

- (1) Subject to subsection (2) below, where in any accounting period a company incurs a loss in a transaction in respect of which the company is within the charge to corporation tax under Case VI of Schedule D, the company may make a claim requiring that the loss be set off against the amount of any income arising from transactions in respect of which the company is assessed to corporation tax under that Case for the same or any subsequent accounting period; and the company's income in any accounting period from such transactions shall then be treated as reduced by the amount of the loss, or by so much of that amount as cannot be relieved under this section against income of an earlier accounting period.
- (2) This section shall not apply to a loss incurred in a transaction falling within section 80, 81 or 82 of this Act (premiums, leases at under-value, etc.).
- (3) A claim under this section must be made within six years after the end of the accounting period in which the loss is incurred, and must be so made notwithstanding that relief cannot be given in respect of the loss until after the end of that period of six years.

## CHAPTER III

### INCOME TAX AND CORPORATION TAX

#### **180 Restriction of relief under ss. 168 and 177 in case of farming and market gardening**

- (1) Any loss incurred in a trade of farming or market gardening shall be excluded from section 168 above if in each of the prior five years a loss was incurred in carrying on that trade; and where a loss is so excluded any related capital allowance shall also be excluded from that section.
- (2) Any loss incurred in any accounting period by a company in carrying on a trade of farming or market gardening shall be excluded from section 177(2) above if a loss, computed without regard to capital allowances, was incurred in carrying on that trade in that accounting period, and in each of the chargeable periods wholly or partly comprised in the prior five years.
- (3) Subsections (1) and (2) above shall not restrict relief for any loss or for any capital allowance, if it is shown by the claimant that the whole of his farming or market gardening activities in the year next following the prior five years are of such a nature, and carried on in such a way, as would have justified a reasonable expectation of the realisation of profits in the future if they had been undertaken by a competent farmer or market gardener, but that, if that farmer or market gardener had undertaken those activities at the beginning of the prior period of loss, he could not reasonably have expected the activities to become profitable until after the end of the year next following the prior period of loss.
- (4) Subsections (1) and (2) above shall not restrict relief where the carrying on of the trade forms part of, and is ancillary to, a larger trading undertaking.
- (5) In this section—
  - "basis year", in relation to any capital allowance, shall be construed in accordance with section 169(4)(a) above,
  - "chargeable period", in relation to a company, means any accounting period, or any basis period ending before its first accounting period, "basis period" having the meaning given in section 72 of the Capital Allowances Act 1968,
  - "prior five years"—
    - (a) in relation to a loss incurred in a year of assessment, means the last five years of assessment before that year, and
    - (b) in relation to a loss incurred in a company's accounting period, means the last five years before the beginning of the accounting period,
  - "prior period of loss" means the prior five years, except that, if losses were incurred in the trade in successive years of assessment or chargeable periods amounting in all to a period longer than five years (and ending when the prior five years end), it means that longer period, and in applying this definition to a chargeable period of a company "losses" means losses computed without regard to capital allowances, and
  - "farming" and "market gardening" shall be construed in accordance with the definitions of those terms under section 526(5) of this Act, but as if those definitions were not restricted to activities in the United Kingdom.

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- (6) For the purposes of this section, a capital allowance is related to a loss incurred in a trade if it falls to be made in taxing that trade and its basis year is the year of assessment in which the loss was incurred.
- (7) In ascertaining for the purposes of this section whether a loss was incurred in any part of the prior five years, or earlier, the rules applicable to Case I of Schedule D shall be applied; and in this section " loss computed without regard to capital allowances " means, in relation to a chargeable period of a company, a loss so ascertained, but so that, notwithstanding section 73(2) of the Capital Allowances Act 1968, no account shall be taken of any allowance or charge under that Act (including the enactments which under this Act are to be treated as contained in Part I of that Act).
- (8) Subsections (1) and (2) above shall not restrict relief for any loss or capital allowance if the trade was set up and commenced within the prior five years, and, for the purposes of this subsection, a trade shall be treated as discontinued, and a new trade set up, in any event which under any of the provisions of the Tax Acts is to be treated as equivalent to the permanent discontinuance or setting up of a trade:

Provided that a trade shall not be treated as discontinued if, under section 252(2) of this Act or section 17 of the Finance Act 1954 (company reconstructions) it is not to be treated as discontinued for the purpose of capital allowances and charges.

- (9) Where at any time there has been a change in the persons engaged in carrying on a trade, this section shall, notwithstanding subsection (8) above, apply to any person who was engaged in carrying on the trade immediately before and immediately after the change as if the trade were the same before and after without any discontinuance, and as if—
- (a) a husband and his wife were the same person, and
  - (b) a husband or his wife were the same person as any company of which either the husband or the wife has control, or of which the two of them have control,
- and accordingly relief from income tax or from corporation tax may be restricted under this section by reference to losses some of which are incurred in years of assessment and some, computed without regard to capital allowances, are incurred in a company's chargeable periods.

In this subsection " control" has the same meaning as in Chapter III of Part XI of this Act (close companies).

## PART VIII

### SCHEDULE E

## CHAPTER I

### THE CHARGE

#### *The Schedule*

## 181 Schedule E

- (1) The Schedule referred to as Schedule E is as follows:—

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## “SCHEDULE E

1 Tax under this Schedule shall be charged in respect of any office or employment on emoluments therefrom which fall under one, or more than one, of the following Cases—

Case I: where the person holding the office or employment is resident and ordinarily resident in the United Kingdom, and does not perform the duties of the office or employment wholly outside the United Kingdom in the chargeable period (and the emoluments are not excepted as foreign emoluments), any emoluments for the chargeable period ;

Case II: where that person is not resident or, if resident, then not ordinarily resident in the United Kingdom (and the emoluments are not excepted as foreign emoluments), any emoluments for the chargeable period in respect of duties performed in the United Kingdom;

Case III: where that person is resident in the United Kingdom (whether ordinarily resident there or not), any emoluments received in the United Kingdom in the chargeable period, being emoluments either for that period or for an earlier period in which he has been resident there, and any emoluments for that period received in the United Kingdom in an earlier period;

and tax shall not be chargeable in respect of emoluments of an office or employment under any other paragraph of this Schedule.

The emoluments excepted from Cases I and II as foreign emoluments are emoluments of a person not domiciled in the United Kingdom from an office or employment under or with any person, body of persons or partnership resident outside, and not resident in, the United Kingdom.

2 Tax under this Schedule shall be charged in respect of every annuity, pension or stipend payable by the Crown or out of the public revenue of the United Kingdom or of Northern Ireland, other than annuities charged under Schedule C

3 Tax under this Schedule shall also be charged in respect of any pension which is paid otherwise than by or on behalf of a person outside the United Kingdom.

4 Where—

(a) any pension or annuity is payable in the United Kingdom by or through any public department, officer or agent of the government of a territory to which this paragraph applies (but otherwise than out of the public revenue of the United Kingdom or the public revenue of Northern Ireland) to a person who has been employed in relevant service outside the United Kingdom in respect of that service, or

(b) any pension or annuity is so payable to the widow, child, relative or dependant of any such person as aforesaid,

and the person in receipt of the pension or annuity is chargeable to tax as a person resident in the United Kingdom, the pension or annuity shall be chargeable to tax under this Schedule.

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The territories to which this paragraph applies are—

- (i) any country forming part of Her Majesty's dominions,
- (ii) any other country for the time being mentioned in section 1(3) of the British Nationality Act 1948, and
- (iii) any territory under Her Majesty's protection,

and in this paragraph "relevant service" means the service of the Crown, or service under the government of a territory to which this paragraph applies.

5 The preceding provisions of this Schedule are without prejudice to any other provision of the Tax Acts directing tax to be charged under this Schedule, and tax so directed to be charged shall be charged accordingly."

- (2) References in the Tax Acts to Cases I, II and III of Schedule E shall be taken as referring to the Cases under which tax is chargeable under paragraph 1 of that Schedule.

*Supplementary charging provisions*

**182 Voluntary pensions**

(1) Where—

- (a) a person has ceased to hold any office or employment, and
- (b) a pension or annual payment is paid to him, or to his widow or child, or to any relative or dependant of his, by the person under whom he held the office or by whom he was employed, or by the successors of that person, and
- (c) that pension or annual payment is paid otherwise than by or on behalf of a person outside the United Kingdom,

then, notwithstanding that the pension or payment is paid voluntarily, or is capable of being discontinued, it shall be deemed to be income for the purposes of assessment to tax, and shall be assessed and charged under Schedule E.

- (2) For the avoidance of doubt, it is hereby declared that the expressions "annuity" and "pension" in Schedule E include respectively an annuity and a pension which is paid voluntarily or is capable of being discontinued.

**183 Offices and employments: scope of charge**

- (1) Tax under Case I, II or III of Schedule E shall, except as hereinafter mentioned, be chargeable on the full amount of the emoluments falling under that Case, subject to such deductions only as may be authorised by the Tax Acts, and the expression "emoluments" shall include all salaries, fees, wages, perquisites and profits whatsoever.
- (2) Tax under Case III of Schedule E shall be chargeable whether or not tax is chargeable in respect of the same office or employment under Case I or II of that Schedule, but shall not be chargeable on any emoluments falling under the said Case I or II for the same or another chargeable period (or on any emoluments charged under Schedule E for a chargeable period earlier than the year 1956-57).

**184 Offices and employments: place of performance, and meaning of emoluments received in United Kingdom**

- (1) Where a person ordinarily performs the whole or part of the duties of his office or employment in the United Kingdom, then, for the purposes of Cases I and II of Schedule E his emoluments for any period of absence from the office or employment shall be treated as emoluments for duties performed in the United Kingdom, except in so far as it is shown that, but for that absence, they would have been emoluments for duties performed outside the United Kingdom.
- (2) Where an office or employment is in substance one the duties of which fall in the chargeable period to be performed outside the United Kingdom, then, for the purposes of Cases I and II of Schedule E, there shall be treated as so performed any duties performed in the United Kingdom the performance of which is merely incidental to the performance of the other duties outside the United Kingdom.
- (3) For the purposes of Cases I and II of Schedule E the following duties shall be treated as performed in the United Kingdom, namely—
  - (a) the duties of any office or employment under the Crown which is of a public nature and the emoluments of which are payable out of the public revenue of the United Kingdom or of Northern Ireland, and
  - (b) any duties which a person performs on a vessel engaged on a voyage not extending to a port outside the United Kingdom, or which a person resident in the United Kingdom performs on a vessel or aircraft engaged on a voyage or journey beginning or ending in the United Kingdom, or on a part beginning or ending in the United Kingdom of any other voyage or journey.
- (4) For the purposes of Case III of Schedule E, emoluments shall be treated as received in the United Kingdom if they are paid, used or enjoyed in, or in any manner or form transmitted or brought to, the United Kingdom, and subsections (4) to (7) of section 122 of this Act (under which income applied outside the United Kingdom in payment of debts is, in certain cases, treated for the purposes of Cases IV and V of Schedule D as received in the United Kingdom) shall apply for the purposes of this subsection as they apply for the purposes of subsection (3) of the said section 122.

**185 Accommodation occupied by holder of office or employment**

- (1) Where any premises in the United Kingdom are available to the occupier by reason of his or his wife's holding an office or employment, and—
  - (a) he pays no rent for the premises, or
  - (b) the rent which he pays for them is less than the annual value of the premises, determined in accordance with section 531 of this Act,

the holder of the office or employment shall be treated for the purpose of tax under Schedule E as being in receipt (in addition to any other emoluments) of emoluments at an annual rate equal to the annual value of the premises, determined as aforesaid, reduced by the annual amount of any rent which he pays for them:

Provided that this section shall not apply if the rent is not less than might reasonably be expected to have been obtained at the time when the tenancy was granted, having regard to the terms of the tenancy, and, if at any subsequent time the landlord of the premises had the power (whether by terminating the tenancy or otherwise) to obtain a higher rent, the rent is not less than might reasonably be expected to have been obtained as aforesaid at that subsequent time.

- (2) Where the occupier of premises holds them under a tenancy from or by the leave of the person from whom he or his wife holds an office or employment, or any other person with whom that person is within the terms of section 533 of this Act, connected, the premises shall be conclusively presumed to be available to him by reason of his or his wife's holding the office or employment.
- (3) Subsection (1) above shall not apply in the case of premises provided by a local authority if the occupier proves that the terms on which he occupies are no more favourable than those on which similar premises provided by that authority are available to persons similarly circumstanced apart from the identity of the employer.
- (4) For the purposes of this section any person who under section 198(1) below would be a director of a body corporate shall be treated as holding an office from the body corporate.
- (5) This section shall apply to an occupier being a woman as it applies to an occupier being a man, with the substitution of " her husband " for " his wife ".
- (6) In this section " terms of the tenancy " does not include any obligation imposed on the occupier or his wife in connection with his or her office or employment.

#### **186 Directors and employees of companies granted rights to acquire shares**

- (1) Where a person realises a gain by the exercise, or by the assignment or release, of a right to acquire shares in a body corporate obtained by that person as a director or employee of that or any other body corporate, he shall be chargeable to tax under Schedule E on an amount equal to the amount of his gain, as computed in accordance with this section.
- (2) Where tax may by virtue of this section become chargeable in respect of any gain which may be realised by the exercise of a right, tax shall not be chargeable under any other provision of the Tax Acts in respect of the receipt of the right.
- (3) Subject to subsection (8) below—
  - (a) the gain realised by the exercise of any such right at any time shall be taken to be the difference between the amount that a person might reasonably expect to obtain from a sale in the open market at that time of the shares acquired and the amount or value of the consideration given whether for them or for the grant of the right, and
  - (b) the gain realised by the assignment or release of any such right shall be taken to be the difference between the amount or value of the consideration for the assignment or release and the amount or value of the consideration given for the grant of the right,
 (a just apportionment being made of any entire consideration given for the grant of the right to acquire those shares and other shares or otherwise for the grant of the right to acquire those shares and for something besides):

Provided that neither the consideration given for the grant of the right nor any such entire consideration shall be taken to include the performance of any duties in or in connection with the office or employment by reason of which the right was granted, and no part of the amount or value of the consideration given for the grant shall be deducted more than once under this subsection.



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- (4) Subject to subsection (5) below a person shall, in the case of a right granted by reason of his office or employment, be chargeable to tax under this section in respect of a gain realised by another person—
- (a) if the right was granted to that other person, or
  - (b) if the other person acquired the right otherwise than by or under an assignment made by way of a bargain at arm's length, or if the two are connected persons at the time when the gain is realised,
- but in a case within paragraph (b) above the gain realised shall be treated as reduced by the amount of any gain realised by a previous holder on an assignment of the right.
- (5) A person shall not be chargeable to tax by virtue of subsection (4)(6) above in respect of any gain realised by another person if the first mentioned person was divested of the right by operation of law on his bankruptcy or otherwise, but the other person shall be chargeable to tax in respect of the gain under Case VI of Schedule D.
- (6) If a right to acquire shares in a body corporate is assigned or released in whole or in part for a consideration which consists of or comprises another right to acquire shares in that or any other body corporate, that other right shall not be treated as consideration for the assignment or release, but this section shall apply in relation to it as it applies in relation to the right assigned or released and as if the consideration for its acquisition did not include the value of the right assigned or released but did include the amount or value of the consideration given for the grant of the right assigned or released so far as that has not been offset by any valuable consideration for the assignment or release other than the consideration consisting of the other right.
- (7) If as a result of two or more transactions a person ceases to hold a right to acquire shares in a body corporate and he or a connected person comes to hold another right to acquire shares in that or any other body corporate (whether or not acquired from the person to whom the other right was assigned) and any of those transactions was effected under arrangements to which two or more persons holding rights in respect of which tax may be chargeable under this section were parties, those transactions shall be treated for the purposes of the last preceding subsection as a single transaction whereby the one right is assigned for a consideration which consists of or comprises the other right.
- This subsection applies in relation to two or more transactions whether they involve an assignment preceding, coinciding with, or subsequent to, an acquisition.
- (8) In the case of a right to acquire shares granted before 3rd May 1966—
- (a) the amount of the gain realised at any time by the exercise, or by the assignment or release, of the right shall not exceed the difference between the market value of those shares at that time and their market value on 3rd May 1966 (and no gain shall be treated as so realised unless the later value exceeds the earlier value), and
  - (b) subsection (2) above shall not affect tax chargeable under Case I of Schedule E in respect of the receipt of the right, but the amount, if any, on which tax is so chargeable shall be taken into account under subsection (3)(a) and (b) above in relation to the gain realised by the exercise, or by the assignment or release, of the right as if that amount formed part (in addition to any other amount) of the consideration for the grant of the right.
- (9) For the purposes of this section a right to acquire shares is obtained by a person as a director or employee of a body corporate—

- (a) if it is granted to him by reason of his office or employment as a director or employee of the body corporate who is chargeable to tax in respect of that office or employment under Case I of Schedule E, or
- (b) if the right is assigned to him and was granted by reason of any such office or employment of his to some other person,

and paragraph (a) above shall apply to a right granted by reason of a person's office or employment after he has ceased to hold it if it would apply to a right so granted in the last chargeable period in which he did hold it.

(10) For the purposes of this section—

- (a) references to the release of a right include references to agreeing to the restriction of the exercise of the right,
- (b) any question whether a person is connected with another shall be determined in accordance with section 533 of this Act,
- (c) " director " and " employee " have the meanings given by section 224(1) of this Act, and
- (d) in so far as the context permits, " shares " includes stock,

and this section shall apply in relation to any securities (as defined in section 237(5) of this Act) issued by a body corporate as it applies to shares in that body corporate.

(11) Where in any year of assessment a body corporate grants a right in respect of which tax may become chargeable under this section, or allots or transfers any shares in pursuance of such a right, or gives any consideration for the assignment or for the release in whole or in part of such a right, or receives written notice of the assignment of such a right, it shall deliver particulars thereof in writing to the inspector not later than thirty days after the end of that year.

(12) If a gain chargeable to tax under subsection (1) or subsection (4) of this section is realised by the exercise of a right to acquire shares—

- (a) paragraph 4(1)(a) of Schedule 6 to the Finance Act 1965 (computation of chargeable gains: allowable expenditure) shall apply as if a sum equal to the amount of the gain so chargeable to tax formed part of the consideration given by the person acquiring the shares for their acquisition by him, and
- (b) without prejudice to section 162(5) above (Case VII of Schedule D: acquisition of assets taken into account as receipts for tax purposes), the amount of the gain or loss accruing to that person on the acquisition and disposal of any of the shares shall be computed for the purposes of the said Case VII as if the acquisition of the shares were for a consideration equal to their market value at the time when the right is exercised.

## **187 Payments on retirement or removal from office or employment**

- (1) Subject to the provisions of this section and section 188 below, tax shall be charged under Schedule E in respect of any payment to which this section applies which is made to the holder or past holder of any office or employment, or to his executors or administrators, whether made by the person under whom he holds or held the office or employment or by any other person.
- (2) This section applies to any payment (not otherwise chargeable to tax) which is made, whether in pursuance of any legal obligation or not, either directly or indirectly in consideration or in consequence of, or otherwise in connection with, the termination of the holding of the office or employment or any change in its functions or emoluments,

including any payment in commutation of annual or periodical payments (whether chargeable to tax or not) which would otherwise have been made as aforesaid.

- (3) For the purposes of this section and the said section 188. any payment made to the spouse or any relative or dependant of a person who holds or has held an office or employment, or made on behalf of or to the order of that person, shall be treated as made to that person, and any valuable consideration other than money shall be treated as a payment of money equal to the value of that consideration at the date when it is given.
- (4) Any payment which is chargeable to tax by virtue of this section shall be treated as income received on the following date, that is to say—
  - (a) in the case of a payment in commutation of annual or other periodical payments, the date on which the commutation is effected, and
  - (b) in the case of any other payment, the date of the termination or change in respect of which the payment is made,and shall be treated as emoluments of the holder or past holder of the office or employment assessable to tax under Schedule E ; and any such payment shall be treated for all the purposes of the Income Tax Acts as earned income.
- (5) In the case of the death of any person who, if he had not died, would have been chargeable to tax in respect of any such payment, the tax which would have been so chargeable shall be assessed and charged upon his executors or administrators and shall be a debt due from and payable out of his estate.
- (6) This section does not apply to any payment made in pursuance of an obligation incurred before 6th April 1960.
- (7) Where any payment chargeable to tax under this section is made to any person in any year of assessment, it shall be the duty of the person by whom it is made to deliver particulars thereof in writing to the inspector not later than thirty days after the end of that year.

## **188 Exemptions and reliefs in respect of tax under s. 187**

- (1) Tax shall not be charged by virtue of section 187 above in respect of the following payments, that is to say—
  - (a) any payment made in connection with the termination of the holding of an office or employment by the death of the holder, or made on account of injury to or disability of the holder of an office or employment,
  - (b) any sum chargeable to surtax under section 34 of this Act (consideration for certain restrictive covenants),
  - (c) a benefit provided in pursuance of any such scheme or agreement as is referred to in section 220 of this Act (retirement benefits etc. for directors and employees of bodies corporate), where the holder of the office or employment was chargeable to tax in respect of sums paid, or treated as paid, with a view to the provision of the benefit,
  - (d) a benefit paid in pursuance of any such scheme or fund as is described in subsections (1) and (2) of section 221 of this Act (exemptions from charge to tax under the said section 220),
  - (e) any terminal grant, gratuity or other lump sum paid under any Royal Warrant, Queen's Order, or Order in Council relating to members of Her Majesty's

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forces, and any payment made in commutation of annual or other periodical payments authorised by any such Warrant or Order,

- (f) a payment of benefit under any superannuation scheme administered by the government of an overseas territory within the Commonwealth, or of compensation for loss of career, interruption of service or disturbance made in connection with any change in the constitution of any such overseas territory to persons who, before the change, were employed in the public services of that territory,

and references in paragraph (f) above to an overseas territory, to the government of such a territory, and to employment in the public services of such a territory shall be construed as if they occurred in the Overseas Service Act 1958, and subsections (2) and (3) of section 7 of that Act (which relate to the construction of such references) shall apply accordingly.

- (2) Tax shall not be charged by virtue of section 187 above in respect of a payment in the case of which any of the following conditions is satisfied, that is to say—
- (a) in any case, that on the relevant date the holder of the office or employment was domiciled elsewhere than in the United Kingdom, and that immediately before that date he held the office or employment under or with any person, body of persons or partnership then resident outside, and not resident in, the United Kingdom, or
- (b) in the case of a payment of compensation for loss of office—
- (i) that the holder of the office or employment held it under a contract which did not require him to perform any of the duties of the office or employment in the United Kingdom, or
- (ii) there being no express requirement in the contract as to the place of performance of those duties, that he did not perform any of them in the United Kingdom during the three years immediately preceding the relevant date, or
- (c) in the case of a payment in respect of an office or employment in which the holder's service included foreign service, not being a payment of compensation for loss of office, that the foreign service comprised either—
- (i) in any case, three-quarters of the whole period of service down to the relevant date, or
- (ii) where the period of service down to the relevant date exceeded ten years, the whole of the last ten years, or
- (iii) where the period of service down to the relevant date exceeded twenty years, one-half of that period, including any ten of the last twenty years ;

and where an office or employment was in substance one the duties of which fell in any year to be performed outside the United Kingdom, there shall, for the purposes of paragraph (b) above, be treated as so performed any duties performed in the United Kingdom the performance of which was merely incidental to the performance of the other duties outside the United Kingdom.

- (3) Tax shall not be charged by virtue of section 187 above in respect of a payment of an amount not exceeding £5,000, and in the case of a payment which exceeds that amount shall be charged only in respect of the excess:

Provided that, where two or more payments in respect of which tax is chargeable by virtue of that section, or would be so chargeable apart from the preceding provisions of this subsection, are made to or in respect of the same person in respect of the same

office or employment, or in respect of different offices or employments held under the same employer or under associated employers, this subsection shall apply as if those payments were a single payment of an amount equal to that aggregate amount; and the amount of any one payment chargeable to tax shall be ascertained as follows, that is to say—

- (a) where the payments are treated as income of different chargeable periods, the said sum of £5,000 shall be deducted from a payment treated as income of an earlier period before any payment treated as income of a later period, and
  - (b) subject as aforesaid, the said sum shall be deducted rateably from the payments according to their respective amounts.
- (4) The person chargeable to tax by virtue of section 187 above in respect of any payment may make a claim for such relief in respect of the payment as is applicable thereto under Schedule 8 to this Act.
- (5) For the purposes of this section and the said Schedule 8 offices or employments in respect of which payments to which section 187 above applies are made shall be treated as held under associated employers if, on the date which is the relevant date in relation to any of those payments, one of those employers is under the control of the other or of a third person who controls or is under the control of the other on that or any other such date ("control" here having the meaning given by section 534 of this Act).
- (6) In this section "the relevant date", "payment of compensation for loss of office" and "foreign service" have the same meaning as in the said Schedule 8, and references to an employer or to a person controlling or controlled by an employer include references to his successors.

### *Reliefs*

#### **189 Relief for necessary expenses**

- (1) If the holder of an office or employment is necessarily obliged to incur and defray out of the emoluments thereof the expenses of travelling in the performance of the duties of the office or employment, or of keeping and maintaining a horse to enable him to perform the same, or otherwise to expend money wholly, exclusively and necessarily in the performance of the said duties, there may be deducted from the emoluments to be assessed the expenses so necessarily incurred and defrayed.
- (2) Subject to subsection (3) below, where the emoluments for any duties do not fall within Case I or II of Schedule E, then in relation to those or any other emoluments of the office or employment, subsection (1) above and Chapter II of Part I of the Capital Allowances Act 1968 (capital allowances in respect of machinery and plant) shall apply as if the performance of those duties did not belong to that office or employment.
- (3) There may be deducted from any emoluments chargeable under Case III of Schedule E the amount of any expenses defrayed out of those emoluments, and of any other expenses defrayed in the United Kingdom in the chargeable period or in an earlier chargeable period in which the holder of the office or employment has been resident in the United Kingdom, being in either case expenses for which a deduction might have been made under subsection (1) above from emoluments of the office or employment if they had been chargeable under Case I of Schedule E for the chargeable period in which the expenses were incurred; but a deduction shall not be made twice, whether

under this subsection or otherwise, in respect of the same expenses from emoluments of the office or employment.

### **190 Interest on loans to purchase machinery or plant**

- (1) Subject to the provisions of this section, where the holder of an office or employment—
  - (a) is under Chapter II of Part I of the Capital Allowances Act 1968 entitled to a capital allowance, or liable to a balancing charge, for any year of assessment in respect of machinery or plant belonging to him and in use for the purposes of the office or employment, and
  - (b) pays interest in that year on a loan to defray money applied as capital expenditure on the provision of that machinery or plant,there may be deducted from the emoluments to be assessed for that year the amount of the interest so paid.
- (2) No relief shall be given under this section in respect of interest falling due and payable more than three years after the end of the year of assessment in which the debt was incurred, or in respect of interest at more than a reasonable commercial rate.
- (3) Where the machinery or plant is in use partly for the purposes of the office or employment and partly for other purposes, section 28 of the Capital Allowances Act 1968 (part-time use) shall apply in relation to relief under this section as it applies in relation to writing-down allowances.
- (4) Where credit is given for any money payable to defray any capital expenditure, that shall be treated for the purposes of this section as the making of a loan to defray that capital expenditure.
- (5) Section 63 of this Act (overdrafts) shall have effect as if this section were included in sections 57 to 61 of this Act.

### **191 Expenses necessarily incurred, and defrayed from official emoluments**

Where the Minister for the Civil Service is satisfied with respect to any class of persons in receipt of any salary, fees or emoluments payable out of the public revenue that such persons are obliged to lay out and expend money wholly, exclusively and necessarily in the performance of the duties in respect of which such salary, fees or emoluments are payable, the Minister for the Civil Service may fix such sum as in his opinion represents a fair equivalent of the average annual amount laid out and expended as aforesaid by persons of that class, and in charging income tax on the said salary, fees or emoluments there shall be deducted from the amount thereof the sums so fixed by the Minister for the Civil Service:

Provided that if any person would, but for the provisions of this section, be entitled to deduct a larger amount than the sum so fixed, that amount may be deducted instead of the sum so fixed.

### **192 Fees and subscriptions to professional bodies, learned societies etc.**

- (1) Subject to the following provisions of this section, the following may be deducted from the emoluments of any office or employment to be assessed to tax, if defrayed out of those emoluments, that is to say—

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- (a) any fee or contribution mentioned in subsection (2) below, and
  - (b) any annual subscription paid to a body of persons approved for the purposes of this section by the Board.
- (2) The fees and contributions referred to in subsection (1)(a) above are—
- (a) the fee payable in respect of the retention of a name in the Register of Architects,
  - (b) the fee payable in respect of the retention of a name in the dentists register or in a roll or record kept for a class of ancillary dental workers,
  - (c) the fee payable in respect of the retention of a name in either of the registers of ophthalmic opticians or in the register of dispensing opticians,
  - (d) the annual fee payable by a registered patent agent,
  - (e) the fee payable in respect of the retention of a name in the register of pharmaceutical chemists,
  - (f) the fee and contribution to the Compensation Fund or Guarantee Fund payable on the issue of a solicitor's practising certificate, and
  - (g) the annual fee payable by a registered veterinary surgeon or by a person registered in the Supplementary Veterinary Register.
- (3) The Board may, on the application of the body, approve for the purposes of this section any body of persons not of a mainly local character whose activities are carried on otherwise than for profit and are solely or mainly directed to all or any of the following objects—
- (a) the advancement or spreading of knowledge (whether generally or among persons belonging to the same or similar professions or occupying the same or similar positions),
  - (b) the maintenance or improvement of standards of conduct and competence among the members of any profession,
  - (c) the indemnification or protection of members of any profession against claims in respect of liabilities incurred by them in the exercise of their profession.
- (4) If the activities of a body approved for the purposes of this section are to a significant extent directed to objects other than those mentioned in subsection (3) above, the Board may determine that such specified part only of any annual subscription paid to the body may be deducted under this section as corresponds to the extent to which its activities are directed to objects mentioned in that subsection ; and in doing so the Board shall have regard to all relevant circumstances and, in particular, to the proportions of the body's expenditure attributable to the furtherance of objects so mentioned and other objects respectively.
- (5) A fee, contribution or subscription shall not be deducted under this section from the emoluments of any office or employment unless—
- (a) the fee is payable in respect of a registration (or retention of a name in a roll or record) or certificate which is a condition, or one of alternative conditions, of the performance of the duties of the office or employment or, as the case may be, the contribution is payable on the issue of such a certificate, or
  - (b) the subscription is paid to a body the activities of which, so far as they are directed to the objects mentioned in subsection (3) above, are relevant to the office or employment, that is to say, the performance of the duties of the office or employment is directly affected by the knowledge concerned or involves the exercise of the profession concerned.

- (6) Any approval given and any determination made under this section may be withdrawn, and any such determination varied, so as to take account of any change of circumstances; and where a body is approved for the purposes of this section in pursuance of an application made before the end of any year of assessment, a deduction may be made under this section in respect of a subscription paid to the body in that year, whether the approval is given before or after the end of the year.
- (7) Any body aggrieved by the failure of the Board to approve the body for the purposes of this section, or by their withdrawal of the approval, or by any determination made by them under this section or the variation of or refusal to withdraw or vary such a determination may, by notice in writing given to the Board within thirty days from the date on which the body is notified of their decision, require the matter to be determined by the Special Commissioners, and the Special Commissioners shall thereupon hear and determine the matter in like manner as an appeal.

### **193 Travelling expenses due to war of 1939**

If it is shown in the case of a person assessed to income tax under Schedule E in respect of any office or employment—

- (a) that his place of work or his residence has changed through circumstances connected with the war which began in the year 1939, and
- (b) that in consequence he is obliged to incur, and defray out of the salary, fees, wages, perquisites or profits or gains arising from the office or employment, additional expense in travelling between his residence and his work,

the additional expense so incurred and defrayed shall be allowed as a deduction from the salary, fees, wages, perquisites or profits or gains of the office or employment in computing the amount of the assessment, so, however, that not more than £10 shall be allowed in the case of any person in any year.

### **194 Expenditure and houses of ministers of religion**

- (1) For the purposes of section 185 of this Act, any premises an interest in which belongs to a charity or any ecclesiastical corporation, and in which (in right of that interest)—
- (a) the persons from time to time holding any full-time office as clergyman or minister of any religious denomination, or
  - (b) any particular person holding such an office,
- have or has a residence from which to perform the duties of the office, shall be treated as occupied otherwise than by the holder of the office, whether apart from this section they would be so treated for those purposes or not.
- (2) Where a clergyman or minister of any religious denomination has such a residence as aforesaid in any premises, and has it in right of such an interest as aforesaid, then, for the purposes of income tax with which he may be chargeable under Schedule E, there shall be disregarded—
- (a) the making good to him, in consequence of his being the holder of his office, of statutory amounts payable in connection with the premises or statutory deductions falling to be made in connection therewith, except in so far as an amount or deduction is properly attributable to a part of the premises in respect of which he receives rent,
  - (b) the payment on his behalf, except as aforesaid, of such a statutory amount, and



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- (c) the value to him of any expenses incurred in connection with the provision in the premises of living accommodation for him, being expenses incurred in consequence of his being the holder of his office.
- (3) In assessing the income tax chargeable (whether under Schedule E or any other Schedule) upon a clergyman or minister of any religious denomination, the following deductions may be made from any profits, fees, or emoluments of his profession or vocation—
- (a) any sums of money paid or expenses incurred by him wholly, exclusively and necessarily in the performance of his duty as a clergyman or minister,
  - (b) such part of the rent (not exceeding one-quarter) as the inspector by whom the assessment is made may allow, paid by him in respect of a dwelling-house any part of which is used mainly and substantially for the purposes of his duty as such clergyman or minister, and
  - (c) in respect of expenses borne by him in the maintenance, repairs, insurance or management of any premises in which, in right of such an interest as is mentioned in subsection (1) above, he has such a residence as is therein mentioned, such part of the expenses as, together with any deduction allowable in respect of such expenses under paragraph (a) above, is equal to one-quarter of the amount of the expenses.

On an appeal to the General Commissioners or the Special Commissioners, the Commissioners shall have jurisdiction to review the inspector's decision under paragraph (b) above.

- (4) In this section, "statutory amount" and "statutory deduction" mean an amount paid and a deduction made in pursuance of any provision contained in or having the force of an Act.

## CHAPTER II

### EXPENSES ALLOWANCES TO DIRECTORS AND OTHERS

#### **195 Expenses allowances, etc.**

- (1) Subject to the provisions of this Chapter, any sum paid in respect of expenses by a body corporate to any of its directors, or to any person employed by it in an employment to which this Chapter applies, shall, if not otherwise chargeable to tax as income of that director or employee, be treated for the purposes of section 183 above as a perquisite of the office or employment of that director or employee and included in the emoluments thereof assessable to tax accordingly:

Provided that nothing in this subsection shall prevent a claim for a deduction being made under section 189 above in respect of any money expended wholly, exclusively and necessarily in performing the duties of the office or employment, or under section 192 above in respect of any such fee, contribution or subscription as is mentioned in that section.

- (2) In this section, and, in relation to any director or person employed in an employment to which this Chapter applies, in so much of section 15 of the Taxes Management Act 1970 as requires employers in certain cases to give particulars of payments to directors and employees in respect of expenses, any reference to a sum paid in respect

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of expenses includes a reference to any sum put by a body corporate at the disposal of a director or employee and paid away by him.

## **196 Benefits in kind to be taken into account**

- (1) Subject to the following provisions of this Chapter, where a body corporate incurs expense in or in connection with the provision, for any of its directors or for any person employed by it in an employment to which this Chapter applies, of living or other accommodation, of entertainment, of domestic or other services or of other benefits or facilities of whatsoever nature, and, apart from this section, the expense would not be chargeable to tax as income of the director or employee, section 195 above, and section 15 of the Taxes Management Act 1970, shall have effect in relation to so much of the said expense as is not made good to the body corporate by the director or employee as if the expense had been incurred by the director or employee and the amount thereof had been refunded to him by the body corporate by means of a payment in respect of expenses:

Provided that, where in the case of any premises any amount falls under section 185(1) of this Act to be treated as a person's emoluments, then, if this subsection applies to expense incurred in the provision of accommodation for him in the premises, the expense shall be treated for the purposes of this section as reduced by that amount (or, if that amount is greater than the expense, shall be treated as not having been incurred).

- (2) The provisions of subsection (1) above shall not apply to expense incurred by the body corporate in or in connection with the provision for a director or employee, in any of its business premises, of any accommodation, supplies or services provided for the director or employee himself and used by him solely in performing the duties of his office or employment.
- (3) The provisions of subsection (1) above shall not apply to expense incurred by the body corporate in or in connection with the provision of living accommodation for an employee in part of any of its business premises which include living accommodation if the employee is, for the purpose of enabling him properly to perform his duties, required by the terms of his employment to reside in the accommodation and either—
- (a) the accommodation is provided in accordance with a practice which since before 30th July 1928 has commonly prevailed in trades of the class in question as respects employees of the class in question, or
  - (b) it is necessary, in the case of trades of the class in question, that employees of the class in question should reside on premises of the class in question:

Provided that this subsection shall not apply where the employee is a director of the body corporate in question or of any other body corporate over which that body corporate has control or which has control over that body corporate or which is under the control of a person who also has control over that body corporate.

- (4) The provisions of subsection (1) above shall not apply to expense incurred by the body corporate in or in connection with the provision of meals in any canteen in which meals are provided for the staff generally.
- (5) The provisions of subsection (1) above shall not apply to expense incurred by the body corporate in or in connection with the provision for a director or employee himself, or for his spouse, children or dependants, of any pension, annuity, lump sum, gratuity or other like benefit to be given on his death or retirement.

- (6) Any reference in this section to expense incurred in or in connection with any matter includes a reference to a proper proportion of any expense incurred partly in or in connection with that matter.

### **197 Valuation of benefits in kind**

- (1) Any expense incurred by a body corporate in the acquisition or production of an asset which remains its own property shall be left out of account for the purposes of section 196 above.
- (2) Where the making of any such provision as is mentioned in subsection (1) of the said section 196 takes the form of a transfer of the property in any asset of the body corporate, and, since the acquisition or production thereof by the body corporate, the asset has been used or has depreciated, the body corporate shall be deemed to have incurred in the making of the said provision expense equal to the value of the asset at the time of the transfer.
- (3) Where an asset which continues to belong to the body corporate is used wholly or partly in the making of any such provision as is mentioned in subsection (1) of the said section 196, the body corporate shall be deemed for the purposes of that section to incur (in addition to any other expense incurred by it in connection with the asset, not being expense to which subsection (1) of this section applies) annual expense in connection therewith of an amount equal to the annual value of the use of the asset:

Provided that, where any sum by way of rent or hire is payable by the body corporate in respect of the asset—

- (a) if the annual amount of the rent or hire is equal to or greater than the annual value of the use of the asset, this subsection shall not apply, and
- (b) if the annual amount of the rent or hire is less than the annual value of the use of the asset, the rent or hire shall be left out of account for the purposes of the said section 196.

In the case of an asset being land, the annual value of the use of the asset shall be taken for the purposes of this subsection to be the annual value of the land determined in accordance with section 531 of this Act.

### **198 Meaning of " director ", " employment ", and " employment to which this Chapter applies "**

- (1) In this Chapter " director " means—
- (a) in relation to a body corporate the affairs whereof are managed by a board of directors or similar body, a member of that board or similar body,
- (b) in relation to a body corporate the affairs whereof are managed by a single director or similar person, that director or person,
- (c) in relation to a body corporate the affairs whereof are managed by the members themselves, a member of the body corporate,

and includes any person in accordance with whose directions or instructions the directors of the body corporate, defined in accordance with the preceding provisions of this subsection, are accustomed to act:

Provided that a person shall not, within the meaning of this subsection, be deemed to be a person in accordance with whose directions or instructions the directors of a body

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corporate are accustomed to act by reason only that the said directors act on advice given by him in a professional capacity.

- (2) In this Chapter "employment" means an employment such that any emoluments thereof would fall to be assessed under Schedule E, and references to persons employed by, or employees of, a body corporate include any person who takes part in the management of the affairs of the body corporate and is not a director thereof.
- (3) Subject to the proviso to this subsection and to subsections (4) and (5) below the employments to which this Chapter applies are employments the emoluments of which, calculated on the basis that they are employments to which this Chapter applies, and without any deduction being made under section 189 of this Act in respect of money expended in performing the duties thereof, or under section 192 of this Act in respect of any fee, contribution or subscription, are at the rate of £2,000 a year or more:
- Provided that—
- (a) where a person is employed in several employments by the same body corporate, and the total of the emoluments of those employments, calculated as aforesaid, is at the rate of £2,000 a year or more, all those employments shall be treated as employments to which this Chapter applies, and
  - (b) where a person is a director of a body corporate, all employments in which he is employed by the body corporate shall be treated as employments to which this Chapter applies.
- (4) All the directors of, and persons employed by, a body corporate over which another body corporate has control, shall be treated for the purposes of the proviso to subsection (3) above (but not for any other purpose) as if they were directors of, or, as the case may be, as if the employment were an employment by, that other body corporate.
- (5) Notwithstanding anything in the preceding provisions of this section, no employment of a person by a body corporate at a school or other educational establishment carried on by that body corporate shall be an employment to which this Chapter applies, or be taken into account in determining whether any other employment is an employment to which this Chapter applies.

## **199 Saving for certain payments and expenses**

If a body corporate furnishes to the inspector a statement of the cases and the circumstances in which payments of a particular nature are made, or things of a particular nature are provided, for any of its directors or employees, and the inspector is satisfied that no additional tax would fall to be paid if this Chapter were to apply in relation to payments made or things provided by the body corporate in accordance with the statement, he shall notify the body corporate accordingly and, where such a notification is given, this Chapter shall not apply in relation to payments made or things provided by the body corporate in accordance with the statement:

Provided that the inspector may, if in his opinion there is reason so to do, by notice in writing served on the body corporate revoke any such notification, either as from the date of the making of the notification or as from such later date as may be specified in the notice, and thereupon all such tax shall become chargeable, and all such returns shall be made by the body corporate and by the directors or employees in question, as would have been chargeable or would have had to be made in the first instance if

the notification had never been given or, as the case may be, if it had ceased to have effect on the specified date.

## **200 Additional information**

Where, for the purposes of a return under section 15 of the Taxes Management Act 1970 (payments to directors and other employees), a body corporate apportions expenses incurred partly in or in connection with a particular matter and partly in or in connection with other matters, the return shall contain a statement that the sum included in the return is the result of such an apportionment, and the body corporate, if required so to do by notice from the inspector, shall prepare and deliver to the inspector, within the time limited by the notice, a return containing full particulars as to the amount apportioned and the manner in which and the grounds on which the apportionment has been made.

## **201 Charities and non-trading bodies**

This Chapter shall not apply in relation to any body corporate established for charitable purposes only, or to any other body corporate unless it carries on a trade or its functions consist wholly or mainly in the holding of investments or other property, or, except in relation to persons employed by it in an employment to which this Chapter applies wholly or mainly for the purposes of a trade carried on by it, to any local authority.

## **202 Interpretation**

- (1) In this Chapter " business premises ", in relation to a body corporate, includes all premises occupied by that body for the purposes of any trade carried on by it:

Provided that, except where the reference is expressly to premises which include living accommodation, the said expression does not include so much of any such premises as aforesaid as is used wholly or mainly as living accommodation for any of the directors of the body corporate or for any persons employed by the body corporate in any employment to which this Chapter applies.

- (2) Any reference in this Chapter to anything provided for a director or employee shall, unless the reference is expressly to something provided for the director or employee himself, be construed as including a reference to anything provided for the spouse, family, servants, dependants or guests of that director or employee, and the reference in the proviso to subsection (1) above to living accommodation for directors or employees shall be construed accordingly.
- (3) In this Chapter " control ", in relation to a body corporate, has the meaning given by section 534 of this Act.

## **203 Unincorporated bodies and partnerships**

- (1) The provisions of this Chapter shall apply in relation to unincorporated societies and other bodies as they apply in relation to bodies corporate, and, in connection with those provisions, the definition of " control " in section 534 of this Act shall, with the necessary adaptations, also so apply.
- (2) The said provisions shall apply in relation to any partnership carrying on any trade, profession or vocation as they would apply in relation to a body corporate carrying

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on a trade if so much thereof as relates to directors of the body corporate or persons taking part in the management of the affairs of the body corporate were omitted:

Provided that—

- (a) " control " has, in relation to a partnership, the meaning assigned to it by section 534 of this Act in relation to a partnership, and
  - (b) where such a partnership as aforesaid has control over a body corporate to which this Chapter applies—
    - (i) any employment of any director of the body corporate by the partnership shall be an employment to which this Chapter applies, and
    - (ii) all the employments of any person who is employed both by the partnership and by the body corporate (being employments by the partnership or the body corporate) shall, for the purpose of seeing whether those employments or any of them are employments to which this Chapter applies, be treated as if they were employments by the body corporate.
- (3) Subsection (2) above shall apply in relation to individuals as it applies in relation to partnerships:

Provided that nothing in this subsection shall be construed as requiring an individual to be treated in any circumstances as under the control of another person.

## CHAPTER III

### ASSESSMENT, COLLECTION, RECOVERY AND APPEALS

#### **204 Pay as you earn**

- (1) On the making of any payment of, or on account of, any income assessable to income tax under Schedule E, income tax shall, subject to and in accordance with regulations made by the Board under this section, be deducted or repaid by the person making the payment, notwithstanding that when the payment is made no assessment has been made in respect of the income and notwithstanding that the income is in whole or in part income for some year of assessment other than the year during which the payment is made.
- (2) The Board shall make regulations with respect to the assessment, charge, collection and recovery of income tax in respect of all income assessable thereto under Schedule E, and those regulations may, in particular, include provision—
  - (a) for requiring any person making any payment of, or on account of, any such income, when he makes the payment, to make a deduction or repayment of income tax calculated by reference to tax tables prepared by the Board, and for rendering persons who are required to make any such deduction or repayment accountable to, or, as the case may be, entitled to repayment from, the Board,
  - (b) for the production to and inspection by persons authorised by the Board of wages sheets and other documents and records for the purpose of satisfying themselves that income tax has been and is being deducted, repaid and accounted for in accordance with the regulations,
  - (c) for the collection and recovery, whether by deduction from any such income paid in any later year or otherwise, of income tax in respect of any such income which has not been deducted or otherwise recovered during the year,

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- (d) for the assessment and charge of income tax by the inspector in respect of income to which this section applies, and
- (e) for appeals with respect to matters arising under the regulations which would not otherwise be the subject of an appeal,

and any such regulations shall have effect notwithstanding anything in the Income Tax Acts:

Provided that—

- (i) the deductions of income tax required to be made under paragraph (d) above may be required to be made at the standard rate in such cases or classes of cases as may be provided for by the regulations, and
  - (ii) the regulations shall not affect any right of appeal to the General or Special Commissioners which a person would have apart from the regulations.
- (3) The said tax tables shall be constructed with a view to securing that, so far as possible—
- (a) the total income tax payable in respect of any income assessable under Schedule E for any year of assessment is deducted from such income paid during that year, and
  - (b) the income tax deductible or repayable on the occasion of any payment of, or on account of, any such income is such that the total net income tax deducted since the beginning of the year of assessment bears to the total income tax payable for the year the same proportion that the part of the year which ends with the date of the payment bears to the whole year.

In this subsection references to the total income tax payable for the year shall be construed as references to the total income tax, other than surtax, estimated to be payable for the year in respect of the income in question, subject to a provisional deduction for allowances and reliefs, and subject also, if necessary, to an adjustment for amounts overpaid or remaining unpaid on account of income tax in respect of income assessable under Schedule E for any previous year.

For the purpose of estimating the total income tax payable as aforesaid, it may be assumed in relation to any payment of, or on account of, income assessable under Schedule E that the income paid in the part of the year of assessment which ends with the making of the payment will bear to the income for the whole of that year the same proportion as that part of the year bears to the whole year.

- (4) The powers conferred by this section to make regulations shall be exercisable by statutory instrument, and all regulations under this section shall be subject to annulment in pursuance of a resolution of the House of Commons.

## **205 Formal assessments to be unnecessary in certain cases**

- (1) Subject to the provisions of this section, no assessment under Schedule E need be made on a person in respect of income of his assessable to income tax under that Schedule for any year of assessment if the total net tax deducted in the year in question from that income is the same as it would have been if all the relevant circumstances had been known to all parties throughout the year, and deductions and repayments had throughout the year been made accordingly, and had been so made by reference to cumulative tax tables.

In this subsection—

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- (a) "cumulative tax tables" means tax tables prepared under section 204 above which are so framed as to require the tax which is to be deducted or repaid on the occasion of each payment made in the year to be ascertained by reference to a total of emoluments paid in the year up to the time of making that payment, and
  - (b) references to the total net tax deducted shall be construed as references to the total income tax deducted during the year by virtue of regulations made under the said section 204, less any income tax repaid by virtue of any such regulations.
- (2) Nothing in this section shall be construed as preventing an assessment being made on a person in respect of his income assessable under Schedule E, and, without prejudice to the generality of the preceding provisions of this subsection, an assessment shall be made in respect of the income of a person so assessable for any year of assessment if the person assessable requires an assessment to be made by notice in writing given to the inspector within five years from the end of the year of assessment.

#### **206 Additional provision for certain Schedule E assessments**

Where an assessment to income tax under Schedule E is made as respects income which—

- (a) has been taken into account in the making of deductions or repayments of tax under section 204 above, and
- (b) was received not less than twelve months before the beginning of the year of assessment in which the assessment is made,

then, if the assessment is made after the expiration of the period of twelve months immediately following the year of assessment for which it is made, it shall be made in accordance with the practice generally prevailing at the expiration of that period.

#### **207 Disputes as to domicile or ordinary residence**

Where a dispute arises under paragraph 1 of Schedule E whether a person is or has been ordinarily resident or domiciled in the United Kingdom or under section 188 above as to the domicile of any person, the question shall be referred to and determined by the Board; but any person who is aggrieved by their decision on the question may, by notice in writing to that effect given to them within three months from the date on which notice of the decision is given to him, make an application to have the question heard and determined by the Special Commissioners, and where an application is so made, the Special Commissioners shall hear and determine the question in like manner as an appeal.



## PART IX

### PENSION SCHEMES, LIFE ANNUITIES ETC

#### CHAPTER I

##### PENSION SCHEMES GENERALLY, AND SOCIAL SECURITY BENEFITS AND CONTRIBUTIONS

#### **208 Approved superannuation funds**

- (1) Subject to the provisions of this section and to any regulations made thereunder, exemption from income tax shall, on a claim being made in that behalf, be allowed in respect of income derived from investments or deposits of a superannuation fund ; and subject as aforesaid, any sum paid by an employer or employed person by way of contribution towards a superannuation fund shall, in computing profits or gains for the purpose of an assessment to tax under Case I or II of Schedule D or under Schedule E, be allowed to be deducted as an expense incurred in the chargeable period in which the sum is paid:

Provided that—

- (a) no allowance shall be made under the preceding provision in respect of any contribution by an employed person which is not an ordinary annual contribution, and, where a contribution by an employer is not an ordinary annual contribution, it shall, for the purpose of the preceding provision, be treated, as the Board may direct, either as an expense incurred in the chargeable period in which the sum is paid, or as an expense to be spread over such period of years as the Board think proper, and
- (b) no allowance shall be made under this section in respect of any payments in respect of which relief can be given under section 19 or 20 of this Act (relief for life insurance premiums and certain other payments).
- (2) There shall be exempt from tax chargeable under Case VII of Schedule D any gain accruing to a person from his acquisition and disposal of investments or deposits held by him as part of a superannuation fund, and for the purposes of capital gains tax a gain shall not be a chargeable gain if accruing to a person from his disposal of investments held by him as part of a superannuation fund:

Provided that where part only of a fund is approved as a superannuation fund under this section the gain in question shall be exempt from tax or from being a chargeable gain to the same extent only as income derived from the assets would be exempt under subsection (1) above.

- (3) Income tax chargeable in respect of an annuity paid out of a superannuation fund to a person residing in the United Kingdom shall, if the Board so direct, be assessed and charged on the annuitant under Schedule E instead of being deducted and accounted for under section 53 of this Act (payments not out of profits or gains brought into charge); and where such a direction has been given, the annuity shall be deemed for all the purposes of the Income Tax Acts to be income assessable under that Schedule.
- (4) For the purposes of this section, " superannuation fund " means, unless the context otherwise requires, a fund which is approved for those purposes by the Board, and, subject as hereinafter provided, the Board shall not approve any fund unless it is shown to their satisfaction that—

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- (a) the fund is a fund bona fide established under irrevocable trusts in connection with some trade or undertaking carried on in the United Kingdom by a person residing therein, and
- (b) the fund has for its sole purpose the provision of annuities for all or any of the following persons in the events respectively specified, that is to say, for persons employed in the trade or undertaking, either on retirement at a specified age or on becoming incapacitated at some earlier age, or for the widows, children or dependants of persons who are or have been so employed, on the death of those persons, and
- (c) the employer in the trade or undertaking is a contributor to the fund, and
- (d) the fund is recognised by the employer and employed persons in the trade or undertaking:

Provided that the Board may, if they think fit, and subject to such conditions, if any, as they think proper to attach to the approval, approve a fund, or any part of a fund, as a superannuation fund for the purposes of this section—

- (i) notwithstanding that the rules of the fund provide for the return in certain contingencies of contributions paid to the fund, or
  - (ii) if the main purpose of the fund is the provision of such annuities as aforesaid, notwithstanding that such provision is not its sole purpose, or
  - (iii) notwithstanding that the trade or undertaking in connection with which the fund is established is carried on only partly in the United Kingdom and by a person not residing therein.
- (5) The Board may make regulations generally for the purpose of carrying this section into effect and, in particular, and without prejudice to the generality of the preceding provision, may by such regulations—
- (a) provide for the charging of and accounting for tax in respect of contributions (including interest) repaid to a contributor to a superannuation fund and on lump sums paid in commutation of or in lieu of annuities payable out of a superannuation fund as if any sums so repaid or paid were income of the chargeable period in which they are repaid or paid,
  - (b) require the trustees or other persons having the management of a superannuation fund, or an employer whose employees contribute to a superannuation fund, to deliver to the Board such information and particulars as the Board may reasonably require for the purposes of this section,
  - (c) prescribe the manner in which applications for the approval of a superannuation fund are to be made,
  - (d) provide for the withdrawal of approval in the case of a fund which ceases to satisfy the requirements of this section,
  - (e) provide for determining what contributions to a superannuation fund are to be treated as ordinary annual contributions for the purposes of this section.
- (6) The power conferred by subsection (5) above to make regulations shall be exercisable by statutory instrument.

## **209 Contributions under statutory pension schemes**

- (1) Where, in pursuance of any public general Act of Parliament, superannuation allowances or gratuities are payable to individuals holding an office or employment on their retirement, or to their legal personal representatives on their death, and such individuals are by any such Act required to make contributions towards the expenses

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of providing the allowances and gratuities, the sums so contributed by any such individual for any year may be deducted from the amount of his emoluments to be assessed to income tax for that year.

- (2) Where any such sums as are mentioned in subsection (1) above are to be repaid to any individual under the authority of any such Act as is therein mentioned, the person by or through whom the sums are to be repaid shall deduct from those sums an amount equal to the total amount of the income tax which would have been paid in respect of those sums if they had not been allowed as deductions under the authority of this section, and, if those sums are repaid with any interest thereon, shall also deduct therefrom an amount equal to the total amount of the income tax which would have been paid in respect of that interest if it had actually been paid to the individual in the several years in respect of which it is paid, and the provisions of subsections (2) and (3) of section 53 of this Act (payments not out of profits or gains brought into charge) shall apply in regard to the accounting for and recovery of the amounts so deducted.
- (3) Any person having the custody of the books containing the assessments to income tax on any individual for the several years in respect of which sums are repayable to him as aforesaid shall, notwithstanding anything contained in any declaration made by that person in pursuance of section 6 of the Taxes Management Act 1970, on application by the person by or through whom the sums are repayable, furnish to him such particulars as may be necessary to enable him to compute the appropriate amount of income tax to be deducted and paid over by him as aforesaid.

## **210 Disallowance of contributions for widows' and other pensions**

Relief from income tax shall not be allowed under any provision of the Income Tax Acts to any person in respect of—

- (a) any contributions made by him under Part III or IV of the Superannuation Act 1965, or
- (b) any contributions made by him under any enactments of the Parliament of Northern Ireland corresponding to the said Parts III and IV, and, in particular, under Parts II and III of the Superannuation Act (Northern Ireland) 1967, or
- (c) any contribution under section 8 or 9 of the Administration of Justice (Pensions) Act 1950.

## **211 Parliamentary pension funds**

- (1) The salary of a Member of the House of Commons shall, for all the purposes of the Income Tax Acts, be treated as reduced by the amounts deducted in pursuance of section 1 of the House of Commons Members' Fund Act 1939 ; but a Member shall not by reason of any such deduction be entitled to relief under any other provision of the Income Tax Acts.

In this subsection the reference to salary shall be construed as mentioned in subsection (3) of the said section 1, the reference to amounts deducted includes a reference to amounts required to be set aside under that subsection, and " deduction " shall be construed accordingly.

- (2) The respective trustees of—
  - (a) the House of Commons Members' Fund established under section 1 of the said Act of 1939,

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- (b) the Members' Contributory Pension Fund constituted under section 4(2) of the Ministerial Salaries and Members' Pensions Act 1965, and
- (c) the Members' Contributory Pension (Northern Ireland) Fund constituted under section 3(2) of the Ministerial Salaries and Members' Pensions Act (Northern Ireland) 1965,

shall be entitled to exemption from income tax in respect of all income derived from the said Funds or any investment thereof. A claim under this subsection shall be made to the Board.

- (3) A gain accruing to a person from his acquisition and disposal of assets held by him as part of any Fund mentioned in subsection (2) above shall be exempt from tax chargeable under Case VII of Schedule D, and shall not be a chargeable gain for the purposes of capital gains tax.
- (4) Periodical payments granted out of the House of Commons Members' Fund (including periodical payments granted out of sums appropriated from that Fund or out of the income from those sums) shall be charged to income tax under Schedule
- (5) Any sum payable out of the Members' Contributory Pension Fund or the Members' Contributory Pension (Northern Ireland) Fund under section 13(1) of the Ministerial Salaries and Members' Pensions Act 1965 or, as the case may be, section 12(1) of the Ministerial Salaries and Members' Pensions Act (Northern Ireland) 1965 (transfer to other pension schemes of sums representing accrued pension rights) shall be treated for the purposes of the Income Tax Acts as having been paid in commutation of an annuity payable by a superannuation fund within the meaning of section 208 of this Act; and each such Fund shall be treated as such a superannuation fund for the purposes of any regulations made under the said section 208.

## **212 National insurance supplementary schemes etc.**

- (1) All income receivable from any source whatsoever for the purposes of any supplementary scheme under section 46 of the National Insurance Act 1965, under section 45 of the National Insurance Act (Northern Ireland) 1966, under section 82 of the National Insurance (Industrial Injuries) Act 1965 or under section 77 of the National Insurance (Industrial Injuries) Act (Northern Ireland) 1966 by the body charged with the administration of the scheme shall be exempt from income tax.
- (2) The body incorporated by Royal Charter under the name of the Royal Seamen's Pension Fund or other the persons in whom the seamen's special fund is for the time being vested shall, in respect of the income derived from that Fund, be entitled to exemption from income tax.

In this subsection " the seamen's special fund " means the fund referred to as such in paragraph 19(c) of Schedule 11 to the National Insurance Act 1965.

- (3) A claim under subsection (1) or (2) above shall be made to the Board.
- (4) A gain accruing to a person from his acquisition and disposal of assets held by him as part of a fund of which income is exempt from tax under subsection (1) or (2) above shall be exempt from tax chargeable under Case VII of Schedule D, and shall not be a chargeable gain for the purposes of capital gains tax.

### **213 Indian family pension funds**

- (1) Any interest or dividends received by the Commissioners in whom is vested any of the Family Pension Funds mentioned in section 273 of the Government of India Act 1935 on sums forming part of that fund shall be exempt from income tax.
- (2) A gain accruing to the Commissioners from their acquisition and disposal of assets held by them as part of any such fund shall be exempt from tax chargeable under Case VII of Schedule D, and shall not be a chargeable gain for the purposes of capital gains tax.

### **214 Indian, Pakistan and colonial pensions and pension funds**

- (1) A pension of any of the following descriptions—
  - (a) a pension paid under the authority of the Pensions (India, Pakistan and Burma) Act 1955,
  - (b) a pension paid out of any fund established in the United Kingdom by the government of any country which is, or forms part of, a country mentioned in section 1(3) of the British Nationality Act 1948 by virtue of any enactment passed after 1956, an associated state, a colony, a protectorate, a protected state or a United Kingdom trust territory, or by a government constituted for two or more such countries, if the fund was established for the sole purpose of providing pensions, whether contributory or not, payable in respect of service under that government,
  - (c) a pension paid out of the fund formed under the Overseas Superannuation Scheme (formerly known as the Colonial Superannuation Scheme),

shall not be liable to charge to income tax if it is the income of a person who satisfies the Board that he is not resident in the United Kingdom:

Provided that this subsection shall not apply to so much of any pension falling within paragraph (a) thereof as is paid by virtue of the application to the pension of the Pensions (Increase) Acts.

- (2) Income derived from investments or deposits of any fund referred to in paragraph (b) or (c) of subsection (1) above shall not be charged to income tax, and any income tax deducted from any such income shall be repaid by the Board to the persons entitled to receive the income.
- (3) A claim under subsection (1) or (2) above shall be made to the Board.
- (4) A gain accruing to a person from his acquisition and disposal of assets held by him as part of a fund referred to in paragraph (b) or (c) of subsection (1) above shall be exempt from tax chargeable under Case VII of Schedule D, and shall not be a chargeable gain for the purposes of capital gains tax.
- (5) In this section—
  - " pension " includes a gratuity or any sum payable on or in respect of death, and a return of contributions with or without interest thereon or any other addition thereto,
  - " Pensions (Increase) Acts " means the Pensions (Increase) Acts 1944 and 1947, the Pensions (Increase) Act 1952, the Pensions (Increase) Act 1954, the Pensions (Increase) Act 1956, the Pensions (Increase) Act 1959, the Pensions (Increase) Act 1962, the Pensions (Increase) Act 1965 and any Act passed

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after 3rd August 1966 for purposes corresponding to the purposes of the said Act of 1965,

" United Kingdom trust territory " means a territory administered by the government of the United Kingdom under the trusteeship system of the United Nations, and references to a government constituted for two or more countries include references to any authority established for the purpose of providing or administering services which are common to, or relate to matters of common interest to, two or more countries.

## **215 Pensions under Overseas Service Act 1958**

- (1) So much of any pension paid to or in respect of any person—
- (a) under an order made under section 2 of the Overseas Service Act 1958, or under a pension scheme provided and maintained under such an order, or
  - (b) under section 4(2) of that Act,
- as may be certified by the Secretary of State to be attributable to the employment of that person in the public services of an overseas territory shall not be liable to charge to income tax if it is the income of a person who satisfies the Board that he is not resident in the United Kingdom.

(2) A claim under subsection (1) above shall be made to the Board.

(3) In subsection (1) above—

" pension " includes a gratuity or any sum payable on or in respect of death, and a return of contributions with or without interest thereon or any addition thereto,

" overseas territory " means any territory or country outside the United Kingdom, and the reference in that subsection to employment in the public services of an overseas territory shall be construed as if it occurred in the said Act of 1958, and subsections (2) and (3) of section 7 of that Act shall apply accordingly.

## **216 Central African Pension Fund**

- (1) A pension paid out of the Central African Pension Fund shall not be liable to charge to income tax if it is the income of a person who, on a claim to the Board for relief under this subsection, satisfies the Board that he is not resident in the United Kingdom.
- (2) Income derived from investments or deposits of that Fund shall not be charged to income tax, and any income tax deducted from any such income shall be repaid by the Board to the persons entitled to receive the income.
- (3) A gain accruing to a person from his acquisition and disposal of assets held by him as part of that Fund shall be exempt from tax chargeable under Case VII of Schedule D, and shall not be a chargeable gain for the purposes of capital gains tax.
- (4) In this section " the Central African Pension Fund " means the fund established under that name by section 24 of the Federation of Rhodesia and Nyasaland (Dissolution) Order in Council 1963, and " pension " includes a gratuity or any sum payable on or in respect of death, and a return of contributions with or without interest thereon or any other addition thereto.

## **217 Overseas Service Pensions Fund**

- (1) A pension paid out of the Overseas Service Pensions Fund shall not be liable to charge to income tax if it is the income of a person who, on a claim to the Board for relief under this subsection, satisfies the Board that he is not resident in the United Kingdom.
- (2) In respect of income derived from investments or deposits of that Fund, the Board shall give by way of repayment such relief from income tax as is necessary to secure that the income is exempt to the like extent (if any) as if it were income of a person not domiciled, ordinarily resident or resident in the United Kingdom.
- (3) A gain accruing to a person from his acquisition and disposal of assets held by him as part of that Fund shall be exempt from tax chargeable under Case VII of Schedule D, and shall not be a chargeable gain for the purposes of capital gains tax.
- (4) In this section " the Overseas Service Pensions Fund " means the Fund established under that name pursuant to section 7(1) of the Overseas Aid Act 1966, and "pension" includes a gratuity or any sum payable on or in respect of death or ill-health, and a return of contributions with or without interest thereon or any other addition thereto.

## **218 Pension funds for overseas employees**

- (1) In respect of dividends and other income derived from investments, deposits or other property of a superannuation fund to which this section applies, the Board shall, on a claim being made to them for the purpose, give by way of repayment such relief from income tax as is necessary to secure that they are exempt to the like extent (if any) as if they were income of a person not domiciled, ordinarily resident or resident in the United Kingdom.
- (2) A gain accruing to a person from his acquisition and disposal of assets held by him as part of a fund to which this section applies shall be exempt from tax chargeable under case VII of Schedule D, and shall not be a chargeable gain for the purposes of capital gains tax.
- (3) Where an annuity is paid from a superannuation fund to which this section applies to a person who is not resident in the United Kingdom, income tax shall not be deducted from any payment of the annuity or accounted for under section 53 of dais Act (payments not out of profits or gains brought into charge) by the trustees or other persons having the control of the fund.
- (4) This section applies to any superannuation fund which—
  - (a) is bona fide established under irrevocable trusts in connection with some trade or undertaking carried on wholly or partly outside the United Kingdom,
  - (b) has for its sole purpose the provision of superannuation benefits in respect of persons' employment in the trade or undertaking wholly outside the United Kingdom, and
  - (c) is recognised by the employer and employed persons in the trade or undertaking;

and for the purposes of this subsection duties performed in the United Kingdom the performance of which is merely incidental to the performance of other duties outside the United Kingdom shall be treated as performed outside the United Kingdom.

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## **219 Social security benefits and contributions**

- (1) The following payments shall be charged to income tax under Schedule E—
  - (a) payments of benefit under the National Insurance Act 1965, or the National Insurance Act (Northern Ireland) 1966, except (within the meaning of those Acts) unemployment benefit, sickness benefit, maternity benefit and death grant, and
  - (b) payments on account of allowances under the Family Allowances Act 1965 or the Family Allowances Act (Northern Ireland) 1966.
- (2) Payments of benefit under the Ministry of Social Security Act 1966, or the Supplementary Benefits &c. Act (Northern Ireland) 1966, shall not be treated as income for any purpose of the Income Tax Acts.
- (3) No relief or deduction shall be given or allowed in respect of any contribution paid by any person under the National Insurance Act 1965 or the National Insurance Act (Northern Ireland) 1966:

Provided that nothing in this subsection shall apply to any employer's contribution within the meaning of the said Acts of 1965 and 1966 which is allowable as a deduction in computing profits or gains, in computing expenses of management under section 304 of this Act (investment companies) or that section as applied by section 305 of this Act (insurance companies), or in computing expenses of management or supervision under section 158 of this Act (owners of mineral rights).

## **CHAPTER II**

### **PENSION RIGHTS OF DIRECTORS AND EMPLOYEES**

## **220 Taxation of provision for retirement benefits etc. for directors and employees of bodies corporate**

- (1) Subject to section 221 below, where, pursuant to a scheme for the provision of future retirement or other benefits for persons consisting of or including directors or employees of a body corporate (in this Chapter referred to as " a retirement benefits scheme " ), the (body corporate in any year of assessment pays a sum with a view to the provision of any such benefits for any director or employee thereof, then (whether or not the accrual of the benefits is dependent on any contingency)—
  - (a) the sum paid, if not otherwise chargeable to income tax as income of the director or employee, shall be deemed for all the purposes of the Income Tax Acts to be income of that director or employee for that year of assessment and assessable to tax under Schedule E, and
  - (b) where the payment is made under such an insurance or contract as is mentioned in section 19 or 20 of this Act (relief for life insurance premiums and certain other payments) relief, if not otherwise allowable, shall be given to him under the said section 19 or 20, as the case may be, in respect of the payment to the extent, if any, to which such relief would have been allowable to him if the payment had been made by him and the insurance or contract under which the payment is made had been made with him.
- (2) Subject to section 221 below, where—



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- (a) an agreement is in force between a body corporate and a director or employee of that body for the provision for the director or employee of any future retirement or other benefits afforded by a retirement benefits scheme, or a person is serving as a director or employee of a body corporate in connection with which there is a retirement benefits scheme relating to persons of the class within which he falls under which any such benefits will be provided for him, and
- (b) the body corporate does not, or does not fully, secure the provision of the benefits by the payment of such sums as are mentioned in subsection (1) above, and
- (c) the circumstances in which the benefits are to accrue are not such as will render the benefits assessable to income tax under Schedule E as emoluments of his office as a director or of his employment,

then (whether or not the accrual of the benefits is dependent on any contingency), in each year of assessment in which the agreement is in force or the director or employee is serving as aforesaid, up to and including the year of assessment in which the benefits accrue or there ceases to be any possibility of the accrual thereof, a sum equal to the annual sum which the body corporate would have had to pay in that year under a contract with a third person which secured the provision by that third person of those benefits or, as the case may be, of those benefits so far as not already secured by the payment of such sums as are mentioned in subsection (1) above, shall be deemed for all the purposes of the Income Tax Acts to be income of the director or employee for that year and assessable to income tax under Schedule E.

- (3) Where the body corporate pays any sum as mentioned in subsection (1) above in relation to several directors or employees, the sum so paid shall, for the purpose of that subsection, be apportioned among them by reference to the separate sums which would have had to be paid to secure the separate benefits to be provided for them respectively, and the part of the sum apportioned to each of them shall be deemed for that purpose to have been paid separately in relation to that one of them.

## **221 Exemptions from charge to tax under s. 220**

- (1) The following payments shall be exempted from the operation of section 220(1) above—
  - (a) payments made pursuant to a statutory superannuation scheme, or made to a superannuation fund approved (whether in whole or in part) by the Board for the purposes of section 208 above,
  - (b) payments made pursuant to an excepted provident fund or staff assurance scheme or other similar scheme (as defined in section 224 below), and
  - (c) payments made by way of premium pursuant to a scheme the benefits whereunder are secured by premiums payable by the body corporate, with or without contributions by the directors or employees affected, under life or endowment assurance or life annuity contracts, being a scheme which was in operation before 6th April 1947, and which is not confined, or substantially confined, to directors and persons who, not being directors, are remunerated at a rate exceeding £2,000 a year, or to directors or to such persons.
- (2) Neither subsection (1) nor subsection (2) of section 220 above shall apply so as to cause any sum to be deemed to be income as therein mentioned where the retirement benefits scheme in question is one under which the main benefit afforded to each of

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the persons to whom the scheme relates is the provision for him of a pension or annuity for his life, and either—

- (a) that scheme was in operation before 6th April 1944, or
  - (b) that scheme is for the time being approved by the Board under section 222 below.
- (3) Where, in respect of the provision for a director or employee of any future retirement or other benefits, a sum has been deemed to be income of his by virtue either of subsection (1) or of subsection (2) of section 220 above, and subsequently the director or employee proves to the satisfaction of the Board that no payment in respect of, or in substitution for, the benefits has been made and that some event has occurred by reason of which no such payment will be made, and makes application for relief under this subsection within three years from the time when that event occurred, the Board shall give relief in respect of tax on that sum by repayment or otherwise as may be appropriate; and if the director or employee satisfies the Board as aforesaid in relation to some particular part of the benefits but not the whole thereof, they may give such relief as may seem to them just and reasonable.
- (4) Where, apart from this subsection, any sum would be deemed, by virtue either of subsection (1) or of subsection (2) of section 220 above, to be income of an employee for any year of assessment, but, by reason of his exercising his employment outside the United Kingdom, he is not assessable to tax under Case I or II of Schedule E in respect of the emoluments of his employment for that year, that subsection shall not apply so as to cause that sum to be deemed to be income of his for that year.

## **222 Approval of retirement benefits schemes**

- (1) Subject to section 223 below, the Board shall approve a retirement benefits scheme for the purpose of subsection (2) of section 221 above unless it appears to them that the scheme does not fall within the said subsection (2) by reason of the fact that the main benefit afforded thereby is not such as is therein mentioned, or that, although the main benefit is such as aforesaid, the scheme fails to satisfy some one or more of the following conditions, that is to say—
- (a) that that benefit will accrue only on retirement at a specified age or on earlier retirement through incapacity or on death,
  - (b) that the nature of the benefits afforded by the scheme is the same in relation to all the persons to whom the scheme relates,
  - (c) that the proportion between the value of the pensions or annuities provided for by the scheme, in so far as they are not commutable, and the value of all other benefits afforded thereby, including the value of so much, if any, of the said pensions or annuities as is commutable, is reasonably comparable to the proportion between the values of such benefits respectively as are usually afforded by statutory superannuation schemes,
  - (d) that the aggregate value of the benefits, of whatever nature, afforded by the scheme is reasonably comparable to the aggregate value of the benefits usually afforded by statutory superannuation schemes in like circumstances,
  - (e) that the pensions or annuities provided for by the scheme are not assignable, either in whole or in part, and
  - (f) that no service of a person, in whatever capacity, rendered by him while he is a controlling director of the body corporate is taken into account for any of the purposes of the scheme:

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Provided that the Board may, if they think fit, having regard to the facts of the particular case, approve a scheme, the main benefit afforded whereby is such as is mentioned in subsection (2) of section 221 above notwithstanding that it may not, in one or more respects, satisfy the whole of the aforesaid conditions.

- (2) Where the Board have given their approval to a scheme, they may at any time, by notice in writing to the body corporate in question, withdraw their approval on such grounds, and as from such date, as may be specified in the notice.

### **223 Aggregation and severance of schemes**

- (1) References in this Chapter to a retirement benefits scheme shall be construed in accordance with the following provisions, that is to say—

- (a) references to such a scheme shall, in relation to a deed, agreement, series of agreements, or other arrangements providing for retirement or other benefits for persons of two or more classes, be construed as references to so much thereof as relates to persons of a single class, and accordingly a deed, agreement, series of agreements, or other arrangements so providing shall be treated for the purposes of this Chapter as constituting two or more retirement benefits schemes relating respectively to the different classes, and
- (b) references to such a scheme include references to a deed, agreement, series of agreements, or other arrangements providing for retirement or other benefits for persons consisting of or including a director or employee, or directors or employees, of a body corporate (or, in a case falling within paragraph (a) above, to so much thereof as relates to a person or persons of any one class), notwithstanding that it or they relates or relate only to a small number of directors or employees, or to a single director or employee.

- (2) For the purpose—

- (a) of determining, in the case of a retirement benefits scheme which was in operation before 6th April 1944, whether the scheme falls within subsection (2) of section 221 above as respects the nature of the main benefit afforded thereby, and
- (b) of determining, in the case of a retirement benefits scheme submitted for the approval of the Board, whether the scheme so falls, and whether the conditions specified in subsection (1) of section 222 above are satisfied,

the scheme shall be considered in conjunction with any other retirement benefits scheme or schemes subsisting in connection with the body corporate and relating to persons of the class to which the scheme in question relates, and—

- (i) if the main benefit afforded by all those schemes taken together is such as is mentioned in subsection (2) of the said section 221, each of them shall be taken to fall within that subsection as respects the nature of the main benefit afforded thereby, and, if it is not, none of them shall be taken so to fall, and
- (ii) if the said conditions are satisfied in the case of all of them taken together, those conditions shall be taken to be satisfied in the case of each of them, and, if not, those conditions shall be taken to be satisfied in the case of none of them.

- (3) The Board may, if they think fit—

- (a) approve a part of a retirement benefits scheme, or

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- (b) approve such a scheme notwithstanding that, having regard to another such scheme subsisting in connection with the body corporate, the scheme in question is to be treated by virtue of subsection (2) above as not falling within subsection (2) of the said section 221 or as not satisfying the conditions aforesaid,

and where, under this subsection, the Board approve a part of a scheme, neither subsection (1) nor subsection (2) of section 220 above shall apply so as to cause any sum to be deemed to be income of a director or employee by reference to the provision for him of benefits afforded by that part of the scheme or of any part of such benefits.

## 224 Supplementary provisions

- (1) In this Chapter, except where the context otherwise requires—

"controlling director" means a director of a company, the directors whereof have a controlling interest therein, who is the beneficial owner of, or able either directly or through the medium of other companies or by any other indirect means to control, more than 5 per cent. of the ordinary share capital of the company ("company" meaning, for the purposes of this definition, one within the Companies Act 1948 or the Companies Act (Northern Ireland) 1960);

"director" means—

- (a) in relation to a body corporate the affairs whereof are managed by a board of directors or similar body, a member of that board or similar body,
- (b) in relation to a body corporate the affairs whereof are managed by a single director or similar person, that director or person,
- (c) in relation to a body corporate the affairs whereof are managed by the members themselves, a member of the body corporate,

and includes any person who is to be or has been a director;

"employee", in relation to a body corporate, includes any person taking part in the management of the affairs of the body corporate who is not a director, and includes a person who is to be or has been an employee ;

"excepted provident fund or staff assurance scheme or other similar scheme" means so much as relates to persons remunerated at a rate of £2,000 a year, or at a less rate, of any retirement benefits scheme as to which the following conditions are satisfied, that is to say—

- (a) that the sums paid by the body corporate pursuant to the scheme in question in respect of any person for any period do not exceed ten per cent. of his remuneration for that period, and do not exceed £100 in the case of a period of a year or a correspondingly less or greater amount in the case of a shorter or longer period, and
- (b) that no other retirement benefits scheme which relates to employees of the body corporate who are of the class to which the scheme in question relates, and who are remunerated as aforesaid, is subsisting for the time being, or, if there is any such other scheme subsisting, that it (so far as it relates to persons remunerated as aforesaid) and the scheme in question taken together satisfy the requirement specified in paragraph (a) of this definition ;

"retirement or other benefit" means any pension, annuity, lump sum, gratuity or other like benefit to be given on retirement, or in anticipation of

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retirement, or, in connection with past service, after retirement, or to be given on or in anticipation of or in connection with any change in the nature of the service of the person in question, except that it does not include any pension, annuity, lump sum, gratuity or other like benefit which is to be afforded solely by reason of the death or disability of a person occurring during his service, and for no other reason ;

" service " means service as an employee or director of the body corporate in question, and "retirement" shall be construed accordingly;

" statutory superannuation scheme " means a scheme set up by or approved under any enactment relating to superannuation or set up by or approved under any regulations relating to superannuation made under any enactment by any Minister or Government Department (including a Northern Ireland Minister and a Northern Ireland Government Department).

- (2) Where an alteration has been made in a retirement benefits scheme at any time after 5th April 1947, the scheme shall, for the purposes of this Chapter, be deemed to have become a new scheme coming into being on the date of the alteration:

Provided that this subsection shall not apply to an alteration approved by the Board.

- (3) Any reference in this Chapter to the provision for a person of retirement or other benefits includes a reference to the provision of benefits payable to that person's spouse, children, dependants or personal representatives, and any reference therein to the provision for a person of a pension or annuity for his life includes a reference to the provision (either in addition or as an alternative to the pension or annuity payable for his life) of a pension or annuity payable to that person's spouse or to any child or dependant of that person, for the life of the spouse, child or dependant.
- (4) Any reference in this Chapter to the provision of retirement or other benefits, or of a pension or annuity, by a body corporate includes a reference to the provision thereof by means of a contract with a third person.
- (5) It shall be the duty of a body corporate—
- (a) to deliver to the inspector, within the three months beginning with the date on which the scheme comes into being, particulars of any retirement benefits scheme other than a scheme referred to in section 221(1) above, and
  - (b) when required to do so by notice given by the inspector, to furnish within the time limited by the notice such further particulars as he may require with regard to any retirement benefits scheme subsisting in connection with the body corporate or to the persons to whom it relates.

## **225 Application to unincorporated societies, etc.**

This Chapter shall apply in relation to unincorporated societies or other bodies as it applies in relation to bodies corporate :

Provided that the reference in this section to unincorporated societies or other bodies shall be deemed not to include a reference to individuals in partnership.

## CHAPTER III

### RETIREMENT ANNUITIES

#### 226 Approval of retirement annuity contracts and trust schemes

- (1) Where, in any year of assessment, an individual—
- (a) is (or would but for an insufficiency of profits or gains be) chargeable to income tax in respect of relevant earnings from any trade, profession, vocation, office or employment carried on or held by him, and
  - (b) pays a premium or other consideration under an annuity contract for the time being approved by the Board as having for its main object the provision for the individual of a life annuity in old age (hereafter in this Chapter referred to as "a qualifying premium"),

then relief from income tax may be given in respect of the qualifying premium under section 227 below, and any annuity payable to the same or another individual shall be treated as earned income of the annuitant to the extent to which it is payable in return for any amount on which relief is so given.

- (2) Subject to subsection (3) below, the Board shall not approve a contract unless it appears to them to satisfy the conditions that it is made by the individual with a person lawfully carrying on in the United Kingdom the business of granting annuities on human life, and that it does not—
- (a) provide for the payment by that person during the life of the individual of any sum except sums payable by way of annuity to the individual, or
  - (b) provide for the annuity payable to the individual to commence before he attains the age of sixty or after he attains the age of seventy, or
  - (c) provide for the payment by that person of any other sums except sums payable by way of annuity to the individual's widow or widower and any sums which, in the event of no annuity becoming payable either to the individual or to a widow or widower, are payable to the individual's personal representatives by way of return of premiums, by way of reasonable interest on premiums or by way of bonuses out of profits, or
  - (d) provide for the annuity, if any, payable to a widow or widower of the individual to be of a greater annual amount than that paid or payable to the individual, or
  - (e) provide for the payment of any annuity otherwise than for the life of the annuitant,

and that it does include provision securing that no annuity payable under it shall be capable in whole or in part of surrender, commutation or assignment.

- (3) The Board may, if they think fit, and subject to any conditions they think proper to impose, approve a contract otherwise satisfying the preceding conditions, notwithstanding that the contract provides for one or more of the following matters—
- (a) for the payment after the individual's death of an annuity to a dependant not the widow or widower of the individual,
  - (b) for the payment to the individual of an annuity commencing before he attains the age of sixty, if the annuity is payable on his becoming incapable through infirmity of body or mind of carrying on his own occupation or any occupation of a similar nature for which he is trained or fitted,

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- (c) if the individual's occupation is one in which persons customarily retire before attaining the age of sixty, for the annuity to commence before he attains that age (but not before he attains the age of fifty),
  - (d) for the annuity payable to any person to continue for a term certain (not exceeding ten years), notwithstanding his death within that term, or for the annuity payable to any person to terminate, or be suspended, on marriage (or re-marriage) or in other circumstances,
  - (e) in the case of an annuity which is to continue for a term certain, for the annuity to be assignable by will, and in the event of any person dying entitled to it, for it to be assignable by his personal representatives in the distribution of the estate so as to give effect to a testamentary disposition, or to the rights of those entitled on intestacy, or to an appropriation of it to a legacy or to a share or interest in the estate.
- (4) So much of subsection (1) above as provides that an annuity shall be treated, in whole or in part, as earned income of the annuitant shall apply only in relation to the annuitant to whom the annuity is made payable by the terms of the contract.
- (5) The preceding provisions of this section shall apply in relation to a contribution under a trust scheme approved by the Board as they apply in relation to a premium under an annuity contract so approved, with the modification that, for the condition as to the person with whom the contract is made, there shall be substituted a condition that the scheme—
- (a) is established under the law of any part of, and administered in, the United Kingdom, and
  - (b) is established for the benefit of individuals engaged in or connected with a particular occupation (or one or other of a group of occupations), and for the purpose of providing retirement annuities for them, with or without subsidiary benefits for their families or dependants, and
  - (c) is so established under irrevocable trusts by a body of persons comprising or representing a substantial proportion of the individuals so engaged in the United Kingdom, or of those so engaged in England, Wales, Scotland or Northern Ireland,
- and with the necessary adaptations of other references to the contract or the person with whom it is made.
- (6) Exemption from income tax shall be allowed in respect of income derived from investments or deposits of any fund maintained for the purpose mentioned in subsection (5)(b) above under a scheme for the time being approved under that subsection ; and a gain accruing to a person from his acquisition and disposal of assets held by him as part of any such fund shall be exempt from tax chargeable under Case VII of Schedule D, and shall not be a chargeable gain for the purposes of capital gains tax.
- (7) The Board may at any time, by notice in writing given to the persons by and to whom premiums are payable under any contract for the time being approved under this section, or to the trustees or other persons having the management of any scheme so approved, withdraw that approval on such grounds and from such date as may be specified in the notice.
- (8) For the purposes of this Chapter, a married woman's relevant earnings shall not be treated as her husband's relevant earnings, notwithstanding that her income chargeable to tax is treated as his income.

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- (9) Subject to subsection (8) above, "relevant earnings", in relation to any individual, means for the purposes of this Chapter any income of his chargeable to tax for the year of assessment in question, being either—
- (a) income arising in respect of remuneration from an office or employment held by him other than a pensionable office or employment, or
  - (b) income from any property which is attached to or forms part of the emoluments of any such office or employment held by him, or
  - (c) income which is chargeable under Schedule A, Schedule B or Schedule D and is immediately derived by him from the carrying on or exercise by him of his trade, profession or vocation either as an individual or, in the case of a partnership, as a partner personally acting therein, or
  - (d) income treated as earned income by virtue of section 383 of this Act (patent rights),

but does not include any remuneration as director of a company whose income consists wholly or mainly of investment income (construed in accordance with section 292(1) of this Act), being a company of which he is a controlling director (as defined in section 224(1) above).

- (10) For the purposes of this Chapter, an office or employment is a pensionable office or employment if, and only if, service in it is service to which a sponsored superannuation scheme relates (not being a scheme under which the benefits provided in respect of that service are limited to a lump sum payable on the termination of the service through death or disability before the age of seventy or some lower age); but references to a pensionable office or employment apply whether or not the duties are performed wholly or partly in the United Kingdom or the holder is chargeable to tax in respect of it.

Service in an office or employment shall not for the purposes of this definition be treated as service to which a sponsored superannuation scheme relates by reason only of the fact that the holder of the office or employment might (though he does not) participate in the scheme by exercising or refraining from exercising an option open to him by virtue of that service.

- (11) In subsection (10) above "a sponsored superannuation scheme" means a scheme or arrangement relating to service in particular offices or employments and having for its object or one of its objects to make provision in respect of persons serving therein against future retirement or partial retirement, against future termination of service through death or disability, or against similar matters, being a scheme or arrangement under which any part of the cost of the provision so made is or has been borne otherwise than by those persons by reason of their service (whether it is the cost or part of the cost of the benefits provided, or of paying premiums or other sums in order to provide those benefits, or of administering or instituting the scheme or arrangement); but for this purpose a person shall be treated as bearing by reason of his service the cost of any payment made or agreed to be made in respect of his service, if that payment or the agreement to make it is treated under the Income Tax Acts as increasing his income, or would be so treated if he were chargeable to tax under Case I of Schedule E in respect of his emoluments from that service.
- (12) Nothing in sections 4 and 6 of the Policies of Assurance Act 1867 (which put on assurance companies certain obligations in relation to notices of assignment of policies of life assurance) shall be taken to apply to any contract approved under this section.



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- (13) For the purposes of any provision applying this subsection " approved annuities" means annuities under contracts approved by the Board under this section, being annuities payable wholly in return for premiums or other consideration paid by a person who (when the premiums or other consideration are or is payable) is, or would but for an insufficiency of profits or gains be, chargeable to tax in respect of relevant earnings from a trade, profession, vocation, office or employment carried on or held by him.

## **227 Nature and amount of relief for qualifying premiums**

- (1) Relief shall be given under this section in respect of a qualifying premium paid by an individual only on a claim made for the purpose, and where relief is to be so given, the amount of that premium shall be deducted from or set off against his relevant earnings for the year of assessment in which the premium is paid:

Provided that the amount which may be deducted or set off in any year of assessment (whether in respect of one or more qualifying premiums) shall not be more than the sum of £750, nor more than one-tenth of his net relevant earnings for that year, and, where the condition in section 226(1)(a) above is satisfied as respects part only of that year, then for the said sum of £750 there shall be substituted the sum which bears to it the same proportion as that part bears to the whole year, but so that in the case of individuals holding a pensionable office or employment, and of individuals born in or before the year 1915, this proviso shall have effect subject to the provisions of section 228 below.

- (2) If in any year of assessment a reduction or a greater reduction would be made under this section in the relevant earnings of an individual but for an insufficiency of net relevant earnings, the amount of the reduction which would be made but for that insufficiency, less the amount of any reduction which is made in that year, shall be carried forward to the next following year, and shall be treated for the purposes of relief under this section as the amount of a qualifying premium paid in that following year, and so on for succeeding years (if necessary).
- (3) Where, on the making of an assessment for any year on an individual's relevant earnings or on the profits or gains of a partnership from which he derives relevant earnings, notice of assessment is given after or within six months before the end of the year of assessment, and the individual pays a qualifying premium after the end of that year but within the period beginning with the end of that year and ending six months after the date on which the assessment becomes final and conclusive, he may within that period elect that for the purposes of relief under this section the premium shall be treated as paid in that year and not in the year in which it is paid, and where he does so elect, any relief given in consequence of the election for the earlier year shall be given by repayment of tax:

Provided that where either—

- (a) the amount of that premium, together with any qualifying premiums paid by him in the year to which the assessment relates (or treated as so paid by virtue of any previous election under this subsection), exceeds the maximum amount of the reduction which may be made under this section in his relevant earnings for that year, or
- (b) the amount of that premium itself exceeds the increase in that maximum amount which is due to taking into account the income on which the assessment is made,

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then the election shall have no effect as respects the excess.

- (4) For the purposes of relief under this section, an individual's relevant earnings are those earnings before giving effect to any capital allowances, other than deductions allowable in computing profits or gains, but after taking into account the amounts on which charges fall to be made under the Capital Allowances Act 1968 (including the enactments which under this Act are to be treated as contained in Part I of that Act); and references to income in the following provisions of this section (other than references to total income) shall be construed similarly.
- (5) Subject to the following provisions of this section, " net relevant earnings" means, in relation to an individual, the amount of his relevant earnings for the year of assessment in question, less the amount of any deductions falling to be made from the relevant earnings in computing for the purposes of income tax at the standard rate his total income for that year, being either—
  - (a) deductions in respect of payments made by him, or
  - (b) deductions in respect of losses or of capital allowances, being losses or allowances arising from activities profits or gains of which would be included in computing relevant earnings of the individual or of the individual's wife or husband for the year 1956-57 or a later year of assessment.
- (6) Where, in any year of assessment for which an individual claims and is allowed relief under this section, there falls to be made in computing the total income of the individual or that of the individual's wife or husband a deduction in respect of any such loss or allowance of the individual as is mentioned in subsection (5)(b) above, and the deduction or part of it falls to be so made from income other than relevant earnings, the amount of the deduction made from that other income shall be treated as reducing the individual's net relevant earnings for subsequent years of assessment (being deducted as far as may be from those of the immediately following year, whether or not he claims or is entitled to claim relief under this section for that year, and so far as it cannot be so deducted, then from those of the next year, and so on).
- (7) Where an individual's income for any year of assessment consists partly of relevant earnings and partly of other income, then as far as may be any deductions which fall to be made in computing his total income, and which may be treated in whole or in part either as made from relevant earnings or as made from other income, shall be treated for the purposes of this section as being made from those relevant earnings in so far as they are deductions in respect of any such loss or allowance as is mentioned in subsection (5)(b) above, and otherwise as being made from that other income.
- (8) An individual's net relevant earnings for any year of assessment are to be computed without regard to any relief which falls to be given for that year under this section either to the individual or to the individual's wife or husband.
- (9) An individual's relevant earnings, in the case of partnership profits, shall be taken to be his share of the partnership income, estimated in accordance with the Income Tax Acts, but the amount to be included in respect of those earnings in arriving at his net relevant earnings shall be his share of that income after making therefrom all such deductions (if any) in respect of payments made by the partnership, or in respect of capital allowances falling to be made to the partnership for chargeable periods after the year 1955-56, as would be made in computing the tax payable in respect of that income.
- (10) Where relief under this section for any year of assessment is claimed and allowed (whether or not relief then falls to be given for that year), and afterwards there is

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made any assessment, alteration of an assessment, or other adjustment of the claimant's liability to tax, there shall be made also such adjustments, if any, as are consequential thereon in the relief allowed or given under this section for that or any subsequent year of assessment.

- (11) Where relief under this section is claimed and allowed for any year of assessment in respect of any payment, relief shall not be given in respect of it under any other provision of the Income Tax Acts for the same or a later year of assessment nor (in the case of a payment under an annuity contract) in respect of any other premium or consideration for an annuity under the same contract; and references in the Income Tax Acts to relief in respect of life assurance premiums shall not be taken to include relief under this section.
- (12) The allowances mentioned in subsections (5)(b) and (9) above shall not be treated as including amounts carried forward from a year of assessment earlier than the year 1956-57.
- (13) If any person, for the purpose of obtaining for himself or any other person any relief from or repayment of tax under this section, knowingly makes any false statement or false representation, he shall be liable to a penalty not exceeding £500.

**228 Application of the proviso to s. 227(1) to holders of pensionable offices, etc. and persons born in or before 1915**

- (1) Subject to the provisions of this section, in the case of an individual who is the holder of a pensionable office or employment, the proviso to section 227(1) of this Act shall have effect with the substitution for references to £750 of references to £750 less one-tenth of his pensionable emoluments for the year of assessment.
- (2) Where an individual is the holder of a pensionable office or employment during part only of the year of assessment, then—
  - (a) subsection (1) above shall not apply if the condition in section 226(1)(a) above is not satisfied at any time during that part of the year, but
  - (b) if that condition is satisfied at such a time and is also satisfied at a time during the remainder of the year, subsection (1) above shall apply, but for one-tenth of his pensionable emoluments there shall be substituted therein such less proportion thereof as may be just.
- (3) For the purposes of this subsection and subsections (1) and (2) above, an individual's pensionable emoluments for any year of assessment shall be taken to be the amount, estimated in accordance with the provisions applicable to Case I of Schedule E, of any income of his for the year (but not including in the case of a married man income of his wife), being either—
  - (a) income arising in respect of remuneration from any pensionable office or employment, or
  - (b) income from any property which is attached to or forms part of the emoluments of any pensionable office or employment.
- (4) Subject to subsection (5) below, in the case of an individual born at a time specified in the first column of the Table set out below, the proviso to section 227(1) of this Act and subsections (1) and (2) above shall have effect with the substitution for references to £750 and to the fraction one-tenth of references respectively to such sum and to such percentage as are specified for his case in the second and third columns of the Table.

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TABLE

<i>Year of birth</i>	<i>Sum</i>	<i>Percentage</i>
1914 or 1915	£825	11%
1912 or 1913	£900	12%
1910 or 1911	£975	13%
1908 or 1909	£1,050	14%
1907 or any earlier year	£1,125	15%

- (5) Subsection (4) above shall not apply in relation to any year of assessment in which the individual, in respect of his past services in any office or employment formerly held by him (not being one in which he served part-time only), either—
- (a) receives any income in respect of a pension payable under or in pursuance of a sponsored superannuation scheme or otherwise purchased or provided for him by another person, or
  - (b) has a right under a sponsored superannuation scheme to a pension which is not presently payable, whether because it is suspended or because it is to become payable only at a future time or on the happening of some contingency (but not including a right dependent also on service in an office or employment for the time being held by him).

In this subsection " pension " includes any superannuation or other allowance or deferred pay.

## **229 Annuity premiums of Ministers and other officers**

- (1) For the purposes of this Chapter, so much of the salary of the holder of any office to which this subsection applies who is also a Member of the House of Commons as is equal to the difference between the remuneration payable under any resolution of the House of Commons to a Member who is, and the remuneration so payable to a Member who is not, the holder of such an office shall be treated as remuneration from the office of Member and not from the office to which this subsection applies, and shall accordingly be treated for the purposes of section 228(1) to (3) of this Act as pensionable emoluments from the office of Member.

This subsection applies to any Ministerial office within the meaning of section 2 of the House of Commons Disqualification Act 1957, the offices of Chairman and Deputy Chairman of Ways and Means and the offices of Leader, and Chief Whip, of the Opposition in the House of Commons within the meaning of section 4 of the Ministerial Salaries Consolidation Act 1965.

- (2) For the purposes of this Chapter, so much of the salary of the holder of any office to which this subsection applies who is also a Member of the House of Commons of Northern Ireland as is equal to the salary to which, pursuant to any Resolution of that House relating to the remuneration of Members, he would be entitled if he did not hold that office shall be treated as remuneration from the office of Member, and not from the office to which this subsection applies, and shall accordingly be treated for the purposes of section 228(1) to (3) of this Act as pensionable emoluments from the office of Member.

The offices to which this subsection applies are those of Chairman of Ways and Means of the House of Commons of Northern Ireland and Attorney General for Northern Ireland.

## CHAPTER IV

### PURCHASED LIFE ANNUITIES

#### **230 Purchased life annuities, other than retirement annuities**

- (1) A purchased life annuity (not being of a description excepted by subsection (7) below) shall, for the purposes of the provisions of the Tax Acts relating to tax on annuities and other annual payments, be treated as containing a capital element and, to the extent of the capital element, as not being an annual payment or in the nature of an annual payment; but the capital element in such an annuity shall be taken into account in computing profits or gains or losses for other purposes of the Tax Acts in any circumstances in which a lump sum payment would be taken into account.
- (2) In the case of any purchased life annuity to which this section applies—
  - (a) the capital element shall be determined by reference to the amount or value of the payments made or other consideration given for the grant of the annuity, and
  - (b) the proportion which the capital element in any annuity payment bears to the total amount of that payment shall be constant for all payments on account of the annuity, and
  - (c) where neither the term of the annuity nor the amount of any annuity payment depends on any contingency other than the duration of a human life or lives, that proportion shall be the same proportion which the total amount or value of the consideration for the grant of the annuity bears to the actuarial value of the annuity payments as determined in accordance with the next following subsection, and
  - (d) where paragraph (c) above does not apply, the said proportion shall be such as may be just, having regard to that paragraph and to the contingencies affecting the annuity.
- (3) For the purposes of subsection (2) above—
  - (a) any entire consideration given for the grant of an annuity and for some other matter shall be apportioned as appears just (but so that a right to a return of premiums or other consideration for an annuity shall not be treated for this purpose as a distinct matter from the annuity),
  - (b) where it appears that the amount or value of the consideration purporting to be given for the grant of an annuity has affected, or has been affected by, the consideration given for some other matter, the aggregate amount or value of those considerations shall be treated as one entire consideration given for both and shall be apportioned under paragraph (a) above accordingly, and
  - (c) the actuarial value of any annuity payments shall be taken to be their value as at the date when the first of those payments begins to accrue, that value being determined by reference to the prescribed tables of mortality and without discounting any payment for the time to elapse between that date and the date it is to be made.

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- (4) Where a person making a payment on account of any life annuity has been notified in the prescribed manner of any decision as to its being or not being a purchased life annuity to which this section applies or as to the amount of the capital element (if any), and has not been notified of any alteration of that decision, the notice shall be conclusive as to those matters for the purpose of determining the amount of income tax which he is entitled or required to deduct from the payment, or for which he is chargeable in respect of it.
- (5) Where a person making a payment on account of a purchased life annuity to which this section applies has not been notified in the prescribed manner of the amount of the capital element, the amount of income tax which he is entitled or required to deduct from the payment, or for which he is chargeable in respect of it, shall be the same as if the annuity were not a purchased life annuity to which this section applies.
- (6) For the purposes of this section, " life annuity" means an annuity payable for a term ending with (or at a time ascertainable only by reference (a) the end of a human life, whether or not there is provision for the annuity to end during the life on the expiration of a fixed term or on the happening of any event or otherwise, or to continue after the end of the life in particular circumstances, and " purchased life annuity " means a life annuity granted for consideration in money or money's worth in the ordinary course of a business of granting annuities on human life.
- (7) This section shall not apply—
  - (a) to any annuity which would, apart from this section, be treated for the purposes of the provisions of the Tax Acts relating to tax on annuities and other annual payments as consisting to any extent in the payment or repayment of a capital sum, or
  - (b) to any annuity where the whole or part of the consideration for the grant of the annuity consisted of sums satisfying the conditions for relief from income tax under section 19 or 20 of this Act (relief for life insurance premiums and certain other payments) or under section 227 above (retirement annuities), or
  - (c) to any annuity purchased in pursuance of any direction in a will, or to provide for an annuity payable by virtue of a will or settlement out of income of property disposed of by the will or settlement (whether with or without resort to capital), or
  - (d) to any annuity purchased under or for the purposes of any sponsored superannuation scheme (as defined in section 226(11) above) or any scheme approved under that section or in pursuance of any obligation imposed, or offer or invitation made, under or in connection with any such scheme or to any other annuity purchased by any person in recognition of another's services (or past services) in any office or employment.

## **231 Supplementary**

- (1) Any question whether an annuity is a purchased life annuity to which section 230 above applies, or what is the capital element in such an annuity, shall be determined by the inspector; but a person aggrieved by the inspector's decision on any such question may appeal within the prescribed time to the Special Commissioners.
- (2) Save as otherwise provided in this Chapter, the procedure to be adopted in giving effect thereto shall be such as may be prescribed.

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- (3) The Board may by statutory instrument make regulations for prescribing anything which is to be prescribed under this Chapter, and the regulations may apply for the purposes of this Chapter or of the regulations any provision of the Income Tax Acts, with or without modifications.
- (4) Regulations under subsection (3) above may in particular make provision as to the time limit for making any claim for relief from or repayment of tax under this Chapter and as to all or any of the following matters, that is to say—
  - (a) as to the information to be furnished in connection with the determination of any question whether an annuity is a purchased life annuity to which section 230 above applies, or what is the capital element in an annuity, and as to the persons who may be required to furnish any such information,
  - (b) as to the manner of giving effect to the decision on any such question, and (notwithstanding anything in section 52 of this Act) as to the making of assessments for the purpose on the person entitled to the annuity,
  - (c) as to the extent to which the decision on any such question is to be binding, and the circumstances in which it may be reviewed.
- (5) If any person, for the purpose of obtaining for himself or for any other person any relief from or repayment of tax under this Chapter, knowingly makes any false statement or false representation, he shall be liable to a penalty not exceeding £500.

## PART X

### SCHEDULE F AND COMPANY DISTRIBUTIONS

#### 232 Schedule F

- (1) The Schedule referred to as Schedule F is as follows:—

#### “SCHEDULE F

- 1 Income tax under this Schedule shall be chargeable for any year of assessment in respect of all dividends and other distributions in that year of a company resident in the United Kingdom which are not charged under any other Schedule and are not specially exempted from income tax, and for purposes of income tax all such distributions shall be regarded as income, however they fall to be dealt with in the hands of the recipient.
- 2 Income tax under this Schedule for any year of assessment shall be charged in respect of any distribution made in the year on such sum as, after deduction of income tax thereon at the standard rate, equals the amount or value of the distribution after any deduction of income tax actually made; and, subject to any enactment to the contrary, the distribution shall be deemed for purposes of income tax to represent income, of an amount equal to that sum, on which income tax has been borne by deduction:

Provided that in the case of preference dividends the tax chargeable and the amount of income represented by the dividends shall be determined by reference to the fixed gross rate of dividend.”

- (2) Where, in any year of assessment, a company resident in the United Kingdom makes any distribution, not being a payment of interest other than yearly interest nor a payment in respect of which deductions or repayments of income tax may fall to be made under section 204 of this Act (pay as you earn), the company shall under this subsection, and in accordance with Schedule 9 to this Act, account for and pay income tax in respect of the distribution at the standard rate for that year.
- (3) Where a company is liable under subsection (2) above to account for income tax in respect of any payment made by it, and the company is not otherwise entitled to deduct income tax from the payment, the company on making the payment shall be entitled under this subsection to deduct out of it an amount equal to the income tax for which it is liable to account in respect of the payment; and as against any person entitled to the payment the company shall be acquitted and discharged of so much money as is represented by the deduction, as if that sum had been actually paid.
- (4) Where a company makes any payment which is subject to deduction of tax by virtue of subsection (3) above, then if the recipient so requests in writing the company shall furnish the recipient with a statement in writing showing the gross amount of the payment, the amount of tax deducted and the actual amount paid.

The duty imposed by this subsection shall be enforceable at the suit or instance of the person requesting the statement.

*Meaning of "distribution"*

**233 Matters to be treated as distributions**

- (1) The following provisions in this Part of this Act, together with sections 284 and 285 of this Act, shall subject to section 248(8) of this Act and to any other express exceptions, have effect with respect to the meaning in the Corporation Tax Acts of "distribution", and for determining the persons to whom certain distributions are to be treated as made, but references in the Corporation Tax Acts to distributions of a company shall not apply to distributions made in respect of share capital in a winding-up.
- (2) In relation to any company "distribution" means—
- (a) any dividend paid by the company, including a capital dividend;
  - (b) any other distribution out of assets of the company (whether in cash or otherwise) in respect of shares in the company, except so much of the distribution, if any, as represents a repayment of capital on the shares or is, when it is made, equal in amount or value to any new consideration given for the distribution;
  - (c) any redeemable share capital or any security issued by the company in respect of shares in the company otherwise than wholly for new consideration, or such part of any redeemable share capital or any security so issued as is not properly referable to new consideration ;
  - (d) any interest or other distribution out of assets of the company in respect of securities of the company (except so much, if any, of any such distribution as represents the principal thereby secured), where the securities are either—
    - (i) securities issued as mentioned in paragraph (c) above, but excluding securities issued before 6th April 1965 ; or
    - (ii) securities convertible directly or indirectly into shares in the company and not securities quoted on a recognised stock exchange nor issued



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- on terms which are reasonably comparable with the terms of issue of securities so quoted ; or
- (iii) securities under which the consideration given by the company for the use of the principal secured is to any extent dependent on the results of the company's business or any part of it, or under which the consideration so given represents more than a reasonable commercial return for the use of that principal; or
  - (iv) securities issued by the company and held by a company not resident in the United Kingdom, where the former is a 75 per cent. subsidiary of the latter or both are 75 per cent. subsidiaries of a third company; or
  - (v) securities which are connected with shares in the company, where "connected with" means that in consequence of the nature of the rights attaching to the securities or shares, and in particular of any terms or conditions attaching to the right to transfer the shares or securities, it is necessary or advantageous for a person who has, or disposes of or acquires, any of the securities also to have, or to dispose of or to acquire, a proportionate holding of the shares;
- (e) any such amount as is required to be treated as a distribution by subsection (3) below, or by section 234 below.
- (3) Where on a transfer of assets or liabilities by a company to its members or to a company by its members, the amount or value of the benefit received by a member (taken according to its market value) exceeds the amount or value (so taken) of any new consideration given by him, the company shall be treated as making a distribution to him of an amount equal to the difference:
- Provided that, where the company and the member receiving the benefit are both resident in the United Kingdom and either the former is a subsidiary of the latter or both are subsidiaries of a third company also so resident, the said amount shall not be treated as a distribution.
- (4) The question whether one body corporate is a subsidiary of another for the purpose of subsection (3) above shall be determined as a question whether it is a 51 per cent. subsidiary of that other, except that that other shall be treated as not being the owner—
- (a) of any share capital which it owns directly in a body corporate if a profit on a sale of the shares would be treated as a trading receipt of its trade; or
  - (b) of any share capital which it owns indirectly, and which is owned directly by a body corporate for which a profit on the sale of the shares would be a trading receipt; or
  - (c) of any share capital which it owns directly or indirectly in a body corporate not resident in the United Kingdom.

### **234 Bonus issues following repayment of share capital**

- (1) Where a company—
- (a) repays any share capital, or has done so at any time after 6th April 1965 ; and
  - (b) at or after the time of that repayment issues as paid up otherwise than by the receipt of new consideration any share capital, not being redeemable share capital;

the amount so paid up shall be treated as a distribution made in respect of the shares on which it is paid up, except in so far as that amount exceeds the amount or aggregate

amount of share capital so repaid less any amounts previously so paid up and treated by virtue of this subsection as distributions.

- (2) Subsection (1) above shall not apply where the repaid share capital consists of fully paid preference shares—
- (a) if those shares existed as issued and fully paid preference shares on 6th April 1965 and throughout the period from that date until the repayment those shares continued to be fully paid preference shares, or
  - (b) if those shares were issued after 6th April 1965 as fully paid preference shares wholly for new consideration not derived from ordinary shares and throughout the period from their issue until the repayment those shares continued to be fully paid preference shares.
- (3) In this section—
- " ordinary shares " means shares other than preference shares;
- " preference shares " means shares—
- (a) which do not carry any right to dividends other than dividends at a rate per cent. of the nominal value of the shares which is fixed, or fluctuates only with the standard rate of income tax, and
  - (b) which carry rights in respect of dividends and capital which are comparable with those general for fixed-dividend shares quoted on stock exchanges in the United Kingdom,
- " new consideration not derived from ordinary shares " means new consideration other than consideration consisting of the surrender, transfer or cancellation of ordinary shares of the company or any other company or consisting of the variation of rights in ordinary shares of the company or any other company, and other than consideration derived from a repayment of share capital paid in respect of ordinary shares of the company or of any other company.

### **235 Matters to be treated or not treated as repayments of share capital**

- (1) Where—
- (a) a company issues any share capital as paid up otherwise than by the receipt of new consideration, or has done so after 6th April 1965 ; and
  - (b) any amount so paid up does not fall to be treated as a distribution;
- then for the purposes of sections 233 and 234 above distributions afterwards made by the company in respect of shares representing that share capital shall not be treated as repayments of share capital, except to the extent to which those distributions, together with any relevant distributions previously so made, exceed the amounts so paid up (then or previously) on such shares after that date and not falling to be treated as distributions.
- (2) In subsection (1) above " relevant distribution " means so much of any distribution made in respect of shares representing the relevant share capital as apart from that subsection would be treated as a repayment of share capital, but by virtue of that subsection cannot be so treated.
- (3) For the purposes of subsection (1) above all shares of the same class shall be treated as representing the same share capital, and where shares are issued in respect of other shares, or are directly or indirectly converted into or exchanged for other shares, all such shares shall be treated as representing the same share capital.

- (4) Where share capital is issued at a premium representing new consideration, the amount of the premium is to be treated as forming part of that share capital for the purpose of determining under this Part of this Act whether any distribution made in respect of shares representing the share capital is to be treated as a repayment of share capital:

Provided that this subsection shall not have effect in relation to any part of the premium after that part has been applied in paying up share capital.

- (5) Subject to subsection (4) above, premiums paid on redemption of share capital are not to be treated as repayments of capital.

### **236 Stock dividend options**

- (1) Any share capital, other than redeemable share capital, issued by a company in consequence of the exercise by any person of an option conferred on him on or after 19th March 1968 to receive in respect of shares in the company either a dividend in cash or additional share capital shall be treated as a distribution by the company, and the income tax chargeable in respect of it under Schedule F shall be tax on the sum on which tax would have been chargeable under Schedule F if the person in question had accepted the cash dividend instead.
- (2) For the purposes of sections 234(1) and 235(1) above share capital issued as mentioned in subsection (1) above shall not be treated as issued " as paid up otherwise than by the receipt of new consideration ".
- (3) For the purposes of this section an option to receive either a dividend in cash or additional share capital is conferred on a person not only where he is required to choose one or the other, but also where he is offered the one subject to a right, however expressed, to choose the other instead, and a person's abandonment of, or failure to exercise, such a right is to be treated for those purposes as an exercise of the option.

### **237 Distributions: supplemental**

- (1) In this Part of this Act " new consideration " means consideration not provided directly or indirectly out of the assets of the company, and in particular does not include amounts retained by the company by way of capitalising a distribution :

Provided that where share capital has been issued at a premium representing new consideration, any part of that premium afterwards applied in paying up share capital shall be treated as new consideration also for that share capital, except in so far as the premium has been taken into account under section 235(4) above so as to enable a distribution to be treated as a repayment of share capital.

- (2) A distribution shall be treated under this Part of this Act as made, or consideration as provided, out of assets of a company if the cost falls on the company.
- (3) In this Part of this Act " share " includes stock, and any other interest of a member in a company.
- (4) References in this Part of this Act to issuing share capital as paid up apply also to the paying up of any issued share capital.
- (5) For purposes of this Part of this Act " security " includes securities not creating or evidencing a charge on assets, and interest paid by a company on money advanced without the issue of a security for the advance, or other consideration given by a

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company for the use of money so advanced, shall be treated as if paid or given in respect of a security issued for the advance by the company.

- (6) Where securities are issued at a price less than the amount repayable on them, and are not quoted on a recognised stock exchange, the principal secured shall not be taken for the purposes of this Part of this Act to exceed the issue price, unless the securities are issued on terms reasonably comparable with the terms of issue of securities so quoted.
- (7) For the purposes of this Part of this Act a thing is to be regarded as done in respect of a share if it is done to a person as being the holder of the share, or as having at a particular time been the holder, or is done in pursuance of a right granted or offer made in respect of a share ; and anything done in respect of shares by reference to share holdings at a particular time is to be regarded as done to the then holders of the shares or the personal representatives of any share holder then dead.

This subsection shall apply in relation to securities as it applies in relation to shares.

## PART XI

### COMPANY TAXATION

#### CHAPTER I

##### MAIN PROVISIONS

###### *General system of taxation*

### **238 Charge to corporation tax**

- (1) Corporation tax shall be charged on profits of companies, and the Corporation Tax Acts shall apply, for any financial year for which Parliament so determines and where an Act charges corporation tax for any financial year the Corporation Tax Acts apply, without any express provision, for that year accordingly.
- (2) The provisions of the Income Tax Acts relating to the charge of income tax other than surtax shall not apply to income of a company (not arising to it in a fiduciary or representative capacity) if—
- (a) the company is resident in the United Kingdom, or
  - (b) the income is, in the case of a company not so resident, within the chargeable profits of the company as defined for the purposes of corporation tax by section 246(2) below.
- (3) A company shall not be chargeable to capital gains tax in respect of gains accruing to it so that it is chargeable in respect of them to corporation tax or would be so chargeable but for an exemption from corporation tax.
- (4) In this Part of this Act, except in so far as the context otherwise requires—
- (a) " profits " means income and chargeable gains, and
  - (b) " trade " includes " vocation ", and includes also an office or employment or the occupation of woodlands in any context in which the expression is applied to that in the Income Tax Acts.

**239 U.K. company distributions not chargeable to corporation tax**

Except as otherwise provided by the Corporation Tax Acts, corporation tax shall not be chargeable on dividends and other distributions of a company resident in the United Kingdom, nor shall any such dividends or distributions be taken into account in computing income for corporation tax.

**240 Income tax on distributions, etc., received by U.K company**

- (1) Except as otherwise provided by the Corporation Tax Acts, a company resident in the United Kingdom shall not, in respect of distributions received in any year of assessment from another such company (in the Corporation Tax Acts referred to as the recipient's "franked investment income"), be entitled to repayment of income tax on any surplus in amount or value of that franked investment income over the aggregate amount or value of the distributions made by it in that year.
- (2) Where in any year of assessment a company has such a surplus of franked investment income, the surplus shall be carried forward to the following year and treated for purposes of this section (including any further application of this subsection) as an amount of franked investment income received in that year; but where by virtue of this subsection income tax in respect of franked investment income received in any year of assessment becomes repayable in a later year, it shall be repaid at the rate for the year in which the income was received, and tax for an earlier year of assessment shall be repaid before tax for a later year.
- (3) Subsection (1) above shall not apply—
  - (a) to a company which is wholly exempt from corporation tax or is only not exempt in respect of trading income, or
  - (b) in respect of distributions in relation to which express exemption (otherwise than by section 239 above) is given, whether specifically or by virtue of a more general exemption from tax, under any provision of the Tax Acts.
- (4) No payment made by a company resident in the United Kingdom shall by virtue of this section or otherwise be treated for any purpose of the Income Tax Acts as paid out of profits or gains brought into charge to income tax; nor shall any right or obligation under the Income Tax Acts to deduct income tax from any payment be affected by the fact that the recipient is a company not chargeable to income tax in respect of the payment.
- (5) Subject to the provisions of the Corporation Tax Acts, where a company resident in the United Kingdom receives any payment on which it bears income tax by deduction (not being franked investment income), the income tax thereon shall be set off against any corporation tax assessable on the company by an assessment made for the accounting period in which that payment falls to be taken into account for corporation tax (or would fall to be taken into account but for any exemption from corporation tax); and accordingly in respect of that payment the company, unless wholly exempt from corporation tax, shall not be entitled to a repayment of income tax before the assessment for that accounting period is finally determined and it appears that a repayment is due.
- (6) Schedule 9 to this Act shall have effect for the purpose of implementing the preceding subsections, and for regulating the time and manner in which companies resident in the United Kingdom are to account for and pay income tax in respect of distributions made by them, and in respect of payments from which tax is deductible other than

distributions, or are to be repaid income tax in respect of distributions and payments received by them.

- (7) References in this section to distributions or payments received by a company apply to any received by another person on behalf of or in trust for the company, but not to any received by the company on behalf of or in trust for another person, and nothing in this section shall apply to distributions in respect of which the company making them is not liable (apart from any election for group income under section 256(1) below) to account for income tax under section 232(2) of this Act; and references to "franked investment income" shall be construed accordingly.

#### **241 Claims for repayment of income tax deducted from receipts**

Effect shall be given—

- (a) to section 238(2) above, and to that section as modified by section 240(5) above and by section 246(3) below, and
- (b) so far as the exemptions from income tax conferred by the Corporation Tax Acts call for repayment of tax, to those exemptions,

by means of a claim.

#### **242 Explanation of income tax deductions to be annexed to dividend warrants, etc.**

- (1) Every warrant or cheque or other order drawn or made, or purporting to be drawn or made, in payment of any dividend or interest distributed by any company, being a company within the meaning of the Companies Act 1948, or the Companies Act (Northern Ireland) 1960, or a company created by letters patent or by or in pursuance of an Act of Parliament, shall have annexed thereto or be accompanied by a statement in writing showing—
- (a) the gross amount which, after deduction of the income tax appropriate thereto, corresponds to the net amount actually paid, and
  - (b) the rate and the amount of income tax appropriate to such gross amount, and
  - (c) the net amount actually paid.
- (2) If a company fails to comply with the provisions of this section, the company shall, in respect of each offence, incur a penalty of £10:

Provided that the aggregate amount of any penalties imposed under this section on any company in respect of offences connected with any one distribution of dividends or interest shall not exceed £100.

### *Corporation tax*

#### **243 General scheme of corporation tax**

- (1) Subject to any exceptions provided for by the Corporation Tax Acts, a company shall be chargeable to corporation tax on all its profits wherever arising.
- (2) A company shall be chargeable to corporation tax on profits accruing for its benefit under any trust, or arising under any partnership, in any case in which it would be so chargeable if the profits accrued to it directly; and a company shall be chargeable to corporation tax on profits arising in the winding up of the company, but shall not otherwise be chargeable to corporation tax on profits accruing to it in a fiduciary or

representative capacity except as respects its own beneficial interest (if any) in those profits.

- (3) Corporation tax for any financial year shall be charged on profits arising in that year; but assessments to corporation tax shall be made on a company by reference to accounting periods, and the amount chargeable (after making all proper deductions) of the profits arising in an accounting period shall, where necessary, be apportioned between the financial years in which the accounting period falls.
- (4) Except as provided by section 244 below and section 344 of this Act (special provisions for building societies), corporation tax assessed for an accounting period shall be paid within nine months from the end of that period or, if it is later, within one month from the making of the assessment.
- (5) In any financial year assessments for accounting periods falling wholly or partly in that year or (subject to subsection (6) below) in the preceding year may, notwithstanding that corporation tax has not at the time been charged for the year in question, charge tax for so much of the period as falls within that year according to the rate of tax last fixed, but any such charge shall be subject to later adjustment, if need be, by discharge or repayment of tax or by a further assessment if for that year corporation tax is not charged by an Act passed not later than 5th August next after the end of the year or is charged otherwise than as it has been assessed.
- (6) Where the House of Commons passes a Resolution for fixing the rate of corporation tax for any financial year, or for altering the tax for any financial year, then any assessment to tax afterwards made by virtue of subsection (5) above may be made in accordance with the Resolution; but no assessment made by virtue of that subsection later than 5th May next after the end of any financial year shall charge tax for that year, unless a Resolution for charging corporation tax for that year has been so passed, nor shall any assessment be made by virtue of any such Resolution later than the prescribed period from the date on which the Resolution is passed.
- (7) In subsection (6) above " the prescribed period " means—
  - (a) as respects a Resolution passed in March or April in any year, a period beginning with the passing of the Resolution and ending with 5th August in the same calendar year,
  - (b) as respects any other Resolution, four months after the date on which the Resolution is passed.

#### **244 Time for payment of corporation tax: companies trading before financial year 1965**

- (1) Where, in respect of a trade chargeable under Case I or II of Schedule D, a company was within the charge to income tax from a time before the financial year 1965, then (so long as the company continues to be within the charge to corporation tax in respect of that trade) section 243(4) above shall not apply to the company, but corporation tax assessed on the company (or on some person in its place) for any accounting period, whether or not in respect of the trade, shall be paid within the like interval from the end of the accounting period as there was between the end of the basis period of the trade for the year 1965-66 and 1st January 1966 or, if it is later, within one month from the making of the assessment:

Provided that this subsection shall not apply unless the said interval is longer than nine months.

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- (2) Where subsection (1) above applies to a company having distinct trades which had different basis periods for the year 1965-66, that one of the basis periods which ended earliest shall be taken.
- (3) References in this section to the basis period for the year 1965-66 are, in relation to any source of income, references to the period on the income of which the income tax (if any) chargeable for that year fell to be finally computed in respect of the source or, where by virtue of any provision of the Income Tax Acts the income of any other period was to be taken to be the income of the said period, that other period.

#### **245 Tax on company in liquidation**

- (1) In this section references to a company's final year are references to the financial year in which the affairs of the company are completely wound up, and references to a company's penultimate year are references to the last financial year preceding its final year.
- (2) Corporation tax shall be charged on the profits of the company arising in the winding-up in its final year at a rate which, subject to subsection (3) below, shall be the rate of corporation tax fixed for the penultimate year.
- (3) If the affairs of the company are completely wound up before an Act is passed fixing the rate of corporation tax for its penultimate year, corporation tax shall be charged on the company's profits arising in the winding-up in its final year, and if the winding-up commenced before the final year, on the company's profits arising at any time in its penultimate year, at the rate of corporation tax fixed by the budget resolution for the penultimate year (and without regard to the rate fixed by any subsequent Act); and any assessment made by virtue of section 243(5) above shall be subject to any such adjustment, by discharge or repayment of tax or by a further assessment, as may be required to give effect to this subsection.
- (4) An assessment on the company's profits for an accounting period which falls after the commencement of the winding-up shall not be invalid because made before the end of the accounting period.
- (5) In making an assessment after the commencement of the winding-up of the company but before the date when its affairs are completely wound up, the inspector may, with the concurrence of the liquidator, act on an assumption as to when that date will fall, so far as it governs section 247(7) below.
- (6) The assumption of the wrong date shall not alter the company's final and penultimate year, and if the right date is later an accounting period shall end on the date assumed, and a new accounting period shall begin and the said section 247(7) shall thereafter apply as if that new accounting period began with the commencement of the winding-up.
- (7) In this paragraph "budget resolution" means a resolution of the House of Commons for fixing the rate of corporation tax for the financial year in question, and if there is more than one such resolution, means the first of them.

#### **246 Companies not resident in United Kingdom**

- (1) A company not resident in the United Kingdom shall not be within the charge to corporation tax unless it carries on a trade in the United Kingdom through a branch



or agency but, if it does so, it shall, subject to any exceptions provided for by the Corporation Tax Acts, be chargeable to corporation tax on all its chargeable profits wherever arising.

- (2) For purposes of corporation tax the chargeable profits of a company not resident in the United Kingdom but carrying on a trade there through a branch or agency shall be—
- (a) any trading income arising directly or indirectly through or from the branch or agency, and any income from property or rights used by, or held by or for, the branch or agency (but so that this paragraph shall not include distributions received from companies resident in the United Kingdom); and
  - (b) such chargeable gains accruing on the disposal of assets situated in the United Kingdom as are by Part III of the Finance Act 1965 made chargeable to capital gains tax in the case of an individual not resident or ordinarily resident in the United Kingdom.
- (3) Subject to section 319 of this Act (overseas life insurance companies), where a company not resident in the United Kingdom receives any payment on which it bears income tax by deduction, and the payment forms part of, or is to be taken into account in computing, the company's income chargeable to corporation tax, the income tax thereon shall be set off against any corporation tax assessable on that income by an assessment made for the accounting period in which the payment falls to be taken into account for corporation tax; and accordingly in respect of that payment the company shall not be entitled to a repayment of income tax before the assessment for that accounting period is finally determined and it appears that a repayment is due.

#### **247 Basis of, and periods for, assessment**

- (1) Except as otherwise provided by the Corporation Tax Acts, corporation tax shall be assessed and charged for any accounting period of a company on the full amount of the profits arising in the period (whether or not received in or transmitted to the United Kingdom) without any other deduction than is authorised by those Acts.
- (2) An accounting period of a company shall begin for purposes of corporation tax whenever—
- (a) the company, not then being within the charge to corporation tax, comes within it, whether by the company becoming resident in the United Kingdom or acquiring a source of income, or otherwise; or
  - (b) an accounting period of the company ends without the company then ceasing to be within the charge to corporation tax.
- (3) An accounting period of a company shall end for purposes of corporation tax on the first occurrence of any of the following:—
- (a) the expiration of twelve months from the beginning of the accounting period;
  - (b) an accounting date of the company or, if there is a period for which the company does not make up accounts, the end of that period ;
  - (c) the company beginning or ceasing to carry on any trade, or to be, in respect of a trade, within the charge to corporation tax;
  - (d) the company beginning or ceasing to be resident in the United Kingdom;
  - (e) the company ceasing to be within the charge to corporation tax.
- (4) For the purposes of this section a company resident in the United Kingdom, if not otherwise within the charge to corporation tax, shall be treated as coming within the charge to corporation tax at the time when it commences to carry on business.

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- (5) If a company carrying on more than one trade makes up accounts of any of them to different dates, and does not make up general accounts for the whole of the company's activities, subsection (3)(b) above shall apply with reference to the accounting date of such one of the trades as the Board may determine.
- (6) If a chargeable gain or allowable loss accrues to a company at a time not otherwise within an accounting period of the company, an accounting period of the company shall then begin for the purposes of corporation tax, and the gain or loss shall accrue in that accounting period.
- (7) Notwithstanding anything in the preceding subsections, where a company is wound up, an accounting period shall end and a new one begin with the commencement of the winding up, and thereafter, subject to section 245(6) above, an accounting period shall not end otherwise than by the expiration of twelve months from its beginning or by the completion of the winding up.

For this purpose a winding up is to be taken to commence on the passing by the company of a resolution for the winding up of the company, or on the presentation of a winding up petition if no such resolution has previously been passed and a winding up order is made on the petition, or on the doing of any other act for a like purpose in the case of a winding up otherwise than under the Companies Act 1948.

- (8) Where it appears to the inspector that the beginning or end of any accounting period of a company is uncertain, he may make an assessment on the company for such period, not exceeding twelve months, as appears to him appropriate, and that period shall be treated for all purposes as an accounting period of the company unless either the inspector on further facts coming to his knowledge sees fit to revise it or on an appeal against the assessment in respect of some other matter the company shows the true accounting periods; and if on an appeal against an assessment made by virtue of this subsection the company shows the true accounting periods, the assessment appealed against shall, as regards the period to which it relates, have effect as an assessment or assessments for the true accounting periods, and there may be made such other assessments for any such periods or any of them as might have been made at the time when the assessment appealed against was made.

## **248 Allowance of charges on income**

- (1) In computing the corporation tax chargeable for any accounting period of a company any charges on income paid by the company in the accounting period, so far as paid out of the company's profits brought into charge to corporation tax, shall be allowed as deductions against the total profits for the period as reduced by any other relief from tax, other than group relief.
- (2) Subject to the following subsections and to any other express exceptions, " charges on income " means for the purposes of corporation tax payments of any description mentioned in subsection (3) below, not being dividends or other distributions of the company; but no payment which is deductible in computing profits or any description of profits for purposes of corporation tax shall be treated as a charge on income.
- (3) Subject to subsections (4) to (6) below, the payments referred to in subsection (2) above are—
  - (a) any yearly interest, annuity or other annual payment and any such other payments as are mentioned in section 52(2) of this Act but not including sums

which are or, but for any exemption would be, chargeable under Schedule A, and

- (b) any other interest payable in the United Kingdom on an advance from a bank carrying on a bona fide banking business in the United Kingdom, or from a person who in the opinion of the Board is bona fide carrying on business as a member of a stock exchange in the United Kingdom or bona fide carrying on the business of a discount house in the United Kingdom;

and for the purposes of this section any interest payable by a company as mentioned in paragraph (b) above shall be treated as paid on its being debited to the company's account in the books of the person to whom it is payable.

- (4) No such payment as is mentioned in subsection (3) (a) above made by a company to a person not resident in the United Kingdom shall be treated as a charge on income unless the company is so resident and either—
  - (a) the company deducts income tax from the payment in accordance with section 53 or section 54 of this Act, and accounts under Schedule 9 to this Act for the tax so deducted, or
  - (b) the payment is a payment of interest falling within section 249 below, or
  - (c) the payment is one payable out of income brought into charge to tax under Case IV or V of Schedule D.
- (5) No such payment made by a company as is mentioned in subsection (3) above shall be treated as a charge on income if—
  - (a) the payment is charged to capital, or the payment is not ultimately borne by the company; or
  - (b) the payment is not made under a liability incurred for a valuable and sufficient consideration (and, in the case of a company not resident in the United Kingdom, incurred wholly and exclusively for the purposes of a trade carried on by it in the United Kingdom through a branch or agency), and is not a covenanted donation to charity.
- (6) No such payment of interest as is mentioned in subsection (3) above made by a company shall be treated as a charge on income unless—
  - (a) the company exists wholly or mainly for the purpose of carrying on a trade, or
  - (b) the payment of interest is wholly and exclusively laid out or expended for the purposes of a trade carried on by the company, or
  - (c) the company is an investment company (as defined by section 304(5) of this Act, and including an authorised unit trust scheme), or
  - (d) the payment of interest would be eligible for relief under section 57 or section 62 of this Act (loans for purchase or improvement of land and certain pre-1970 loans) if it were made by an individual.
- (7) The deductions authorised by subsection (3)(a) above shall include five-sixths and no more of any payment made as an instalment, or part of an instalment, of an annuity within the meaning of the Tithe Acts 1936 and 1951; and subsection (5)(b) shall not apply to any such payment.
- (8) A covenanted donation to charity shall not be regarded for the purposes of the definition of " charges on income " in this section, or for any of the other purposes of the Corporation Tax Acts, as being, by reason of section 284(1)(a) or any other provision of this Act, a distribution.

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- (9) In this section "covenanted donation to charity" means a payment under a disposition or covenant made by the company in favour of a body of persons or trust established for charitable purposes only, whereby the like annual payments (of which the donation is one) become payable for a period which may exceed six years and is not capable of earlier termination under any power exercisable without the consent of the persons for the time being entitled to the payments.

## **249 Charges on income: interest payable to non-residents**

- (1) A payment of interest by a company is one to which section 248(4)(b) above applies if the company is carrying on a trade and—
- (a) under the terms of the contract under which the interest is payable, the interest is to be paid, or may be required to be paid, outside the United Kingdom, and
  - (b) the interest is in fact paid outside the United Kingdom, and
  - (c) either—
    - (i) the liability to pay the interest was incurred wholly or mainly for the purposes of activities of the company's trade carried on outside the United Kingdom, or
    - (ii) the interest is payable in the currency of a territory outside the scheduled territories and, subject to subsection (2) below, the liability to pay the interest was incurred wholly or mainly for the purposes of activities of that trade, wherever carried on.
- (2) Subsection (1)(c)(ii) above does not apply where—
- (a) the trade is carried on by a body of persons over whom the person entitled to the interest has control, or
  - (b) the person entitled to the interest is a body of persons over whom the person carrying on the trade has control, or
  - (c) the person carrying on the trade and the person entitled to the interest are both bodies of persons, and some other person has control over both of them.
- In this subsection the references to a body of persons include references to a partnership and "control" has the meaning assigned to it by section 534 of this Act.
- (3) For the purposes of subsection (1) above the company paying the interest shall be treated as carrying on any trade carried on by a 75 per cent. subsidiary of it (both being bodies corporate), if the subsidiary (as well as the company making the payment) is resident in the United Kingdom.
- (4) In determining for the purposes of this section whether one company is a 75 per cent. subsidiary of another that other company shall be treated as not being the owner—
- (a) of any share capital which it owns directly in a body corporate if a profit on a sale of the shares would be treated as a trading receipt of its trade; or
  - (b) of any share capital which it owns indirectly, and which is owned directly by a body corporate for which a profit on the sale of the shares would be a trading receipt; or
  - (c) of any share capital which it owns directly or indirectly in a body corporate not resident in the United Kingdom.
- (5) In this section "the scheduled territories" means the territories specified in Schedule 1 to the Exchange Control Act 1947 as for the time being in force.

**250 Computation of income: application of income tax principles**

- (1) Except as otherwise provided by this Act or any other enactment relating to income tax or corporation tax, the amount of any income shall for purposes of corporation tax be computed in accordance with income tax principles, all questions as to the amounts which are or are not to be taken into account as income, or in computing income, or charged to tax as a person's income, or as to the time when any such amount is to be treated as arising, being determined in accordance with income tax law and practice as if accounting periods were years of assessment.
- (2) For the purposes of this section " income tax law " means, in relation to any accounting period, the law applying, for the year of assessment in which the period ends, to the charge on individuals of income tax other than surtax, except that it does not include such of the enactments of the Income Tax Acts as make special provision for individuals in relation to matters referred to in subsection (1) above.
- (3) Accordingly for purposes of corporation tax income shall be computed, and the assessment shall be made, under the like Schedules and Cases as apply for purposes of income tax, and in accordance with the provisions applicable to those Schedules and Cases, but (subject to the provisions of the Corporation Tax Acts) the amounts so computed for the several sources of income, if more than one, together with any amount to be included in respect of chargeable gains, shall be aggregated to arrive at the total profits.
- (4) Without prejudice to the generality of subsection (1) above, any provision of the Income Tax Acts which confers an exemption from income tax, or which provides for a person to be charged to income tax on any amount (whether expressed to be income or not, and whether an actual amount or not), shall, except as otherwise provided, have the like effect for purposes of corporation tax.
- (5) Where, by virtue of this section or otherwise, any enactment applies both to income tax and to corporation tax, it shall not be affected in its operation by the fact that they are distinct taxes but, so far as is consistent with the Corporation Tax Acts, shall apply in relation to income tax and corporation tax as if they were one tax, so that, in particular, a matter which in a case involving two individuals is relevant for both of them in relation to income tax shall in a like case involving an individual and a company be relevant for him in relation to that tax and for it in relation to corporation tax; and for that purpose in any such enactment references to a relief from or charge to income tax, or to a specified provision of the Income Tax Acts shall, in the absence of or subject to any express adaptation, be construed as being or including a reference to any corresponding relief from or charge to corporation tax, or to any corresponding provision of the Corporation Tax Acts.
- (6) The provisions of the Income Tax Acts applied by this section do not include anything in—
  - (a) Part I or Part II of this Act, or
  - (b) Chapter II of Part VI of this Act (Schedule D basis of assessment, etc.), or
  - (c) Chapter VIII of Part VI of this Act (Case VII of Schedule D),

and nothing in this section shall be taken to mean that income arising in any period is to be computed by reference to any other period (except in so far as this results from apportioning to different parts of a period income of the whole period).

**251 Computation of income: special rules**

- (1) Where a company begins or ceases to carry on a trade, or to be within the charge to corporation tax in respect of a trade, the company's income shall be computed as if that were the commencement or, as the case may be, discontinuance of the trade, whether or not the trade is in fact commenced or discontinued.
- (2) Subject to subsection (3) below and to any other provision of the Corporation Tax Acts which expressly authorises such a deduction, no deduction shall be made in computing income from any source—
  - (a) in respect of dividends or other distributions ; nor
  - (b) in respect of any yearly interest, annuity or other annual payment or in respect of any such other payments as are mentioned in section 52(2) of this Act, but not including sums which are, or but for any exemption would be, chargeable under Schedule A.
- (3) In computing income from a trade subsection (2)(b) above shall not prevent the deduction of yearly interest payable in the United Kingdom on an advance from a bank carrying on a bona fide banking business in the United Kingdom.

**252 Company reconstructions without change of ownership**

- (1) Where, on a company (" the predecessor ") ceasing to carry on a trade, another company (" the successor ") begins to carry it on, and—
  - (a) on or at any time within two years after that event the trade or an interest amounting to not less than a three-fourths share in it belongs to the same persons as the trade or such an interest belonged to at some time within a year before that event; and
  - (b) the trade is not, within the period taken for the comparison under paragraph (a) above, carried on otherwise than by a company which is within the charge to tax in respect of it;

then the Corporation Tax Acts shall have effect subject to subsections (2) to (5) below.

In paragraphs (a) and (b) above references to the trade shall apply also to any other trade of which the activities comprise the activities of the first mentioned trade.

- (2) The trade shall not be treated as permanently discontinued nor a new trade as set up and commenced for the purpose of the allowances and charges provided for by the Capital Allowances Act 1968 (including the enactments which under this Act are to be treated as contained in Part I of that Act); but there shall be made to or on the successor in accordance with that Act all such allowances and charges as would, if the predecessor had continued to carry on the trade, have fallen to be made to or on it, and the amount of any such allowance or charge shall be computed as if the successor had been carrying on the trade since the predecessor began to do so and as if everything done to or by the predecessor had been done to or by the successor (but so that no sale or transfer which on the transfer of the trade is made to the successor by the predecessor of any assets in use for the purpose of the trade shall be treated as giving rise to any such allowance or charge).
- (3) The predecessor shall not be entitled to relief under section 178 of this Act (terminal losses), except as provided by subsection (5) below; and, subject to any claim made by the predecessor under section 177(2) of this Act (set off of loss against total profits), the successor shall be entitled to relief under section 177(1) of this Act (carry forward of loss), as for a loss sustained by the successor in carrying on the trade, for any amount

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for which the predecessor would have been entitled to claim relief if it had continued to carry on the trade.

- (4) Any securities within the meaning of section 471 of this Act (purchase and sale of securities) which at the time when the predecessor ceases to carry on the trade form part of the trading stock belonging to the trade shall be treated for the purposes of that section as having been sold at that time in the open market by the predecessor and as having been purchased at that time in the open market by the successor.
- (5) On the successor ceasing to carry on the trade—
- (a) if the successor does so within four years of succeeding to it, any relief which might be given to the successor under section 178 of this Act on its ceasing to carry on the trade may, so far as it cannot be given to the successor, be given to the predecessor as if the predecessor had incurred the loss (including any amount treated as a loss under subsection (3) of that section); and
  - (b) if the successor ceases to carry on the trade within one year of succeeding to it, relief may be given to the predecessor under section 178 of this Act in respect of any loss incurred by it (or amount treated as such a loss under subsection (3) of that section);

but for the purposes of section 178 of this Act, as it applies by virtue of this subsection to the giving of relief to the predecessor, the predecessor shall be treated as ceasing to carry on the trade when the successor does so.

- (6) Where the successor ceases to carry on the trade within the period taken for the comparison under subsection (1)(a) above and on its doing so a third company begins to carry on the trade, then no relief shall be given to the predecessor by virtue of subsection (5) above by reference to that event, but subject to that subsections (2) to (5) above shall apply both in relation to that event (together with the new predecessor and successor) and to the earlier event (together with the original predecessor and successor), but so that—
- (a) in relation to the earlier event " successor " shall include the successor at either event; and
  - (b) in relation to the later event " predecessor " shall include the predecessor at either event;

and if the conditions of this subsection are thereafter again satisfied, it shall apply again in like manner.

- (7) Where, on a company ceasing to carry on a trade, another company begins to carry on the activities of the trade as part of its trade, then that part of the trade carried on by the successor shall be treated for the purposes of this section as a separate trade, if the effect of so treating it is that subsection (1) or (6) above has effect on that event in relation to that separate trade ; and where, on a company ceasing to carry on part of a trade, another company begins to carry on the activities of that part as its trade or part of its trade, the predecessor shall for purposes of this section be treated as having carried on that part of its trade as a separate trade if the effect of so treating it is that subsection (1) or (6) above has effect on that event in relation to that separate trade.
- (8) Where under subsection (7) above any activities of a company's trade fall, on the company ceasing or beginning to carry them on, to be treated as a separate trade, the accounting periods of the company shall be adjusted accordingly, and any necessary apportionment shall be made of receipts, expenses, allowances or charges.
- (9) Where, by virtue of subsection (8) above, any sum falls to be apportioned and, at the time of the apportionment, it appears that it is material as respects the liability to tax

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(for whatever period) of two or more companies, any question which arises as to the manner in which the sum is to be apportioned shall be determined, for the purposes of the tax of all those companies—

- (a) in a case where the same body of General Commissioners have jurisdiction with respect to all those companies, by those Commissioners, unless all the companies agree that it shall be determined by the Special Commissioners,
- (b) in a case where different bodies of Commissioners have jurisdiction with respect to those companies, by such of those bodies as the Board may direct, unless all the companies agree that it shall be determined by the Special Commissioners, and
- (c) in any other case, by the Special Commissioners,

and any such Commissioners shall determine the question in like manner as if it were an appeal:

Provided that all the said companies shall be entitled to appear and be heard by the Commissioners who are to make the determination or to make representations to them in writing.

- (10) Any relief obtainable under this section by way of discharge or repayment of tax shall be given on the making of a claim.

### **253 Company reconstructions: supplemental**

- (1) For the purposes of section 252 above—
  - (a) a trade carried on by two or more persons shall be treated as belonging to them in the shares in which they are entitled to the profits of the trade ;
  - (b) a trade or interest therein belonging to any person as trustee (otherwise than for charitable or public purposes) shall be treated as belonging to the persons for the time being entitled to the income under the trust;
  - (c) a trade or interest therein belonging to a company shall, where the result of so doing is that subsection (1) or (6) of section 252 above has effect in relation to an event, be treated in any of the ways permitted by subsection (2) below.
- (2) For the purposes of section 252 above, a trade or interest therein which belongs to a company engaged in carrying it on may be regarded—
  - (a) as belonging to the persons owning the ordinary share capital of the company and as belonging to them in proportion to the amount of their holdings of that capital, or
  - (b) in the case of a company which is a subsidiary company, as belonging to a company which is its parent company, or as belonging to the persons owning the ordinary share capital of that parent company, and as belonging to them in proportion to the amount of their holdings of that capital,

and any ordinary share capital owned by a company may, if any person or body of persons has the power to secure by means of the holding of shares or the possession of voting power in or in relation to any company, or by virtue of any power conferred by the articles of association or other document regulating any company, that the affairs of the company owning the share capital are conducted in accordance with his or their wishes, be regarded as owned by the person or body of persons having that power.

- (3) For the purposes of subsection (2) above—
  - (a) references to ownership shall be construed as references to beneficial ownership;



- (b) a company shall be deemed to be a subsidiary of another company if and so long as not less than three-quarters of its ordinary share capital is owned by that other company, whether directly or through another company or other companies, or partly directly and partly through another company or other companies;
  - (c) the amount of ordinary share capital of one company owned by a second company through another company or other companies, or partly directly and partly through another company or other companies, shall be determined in accordance with subsections (5) to (10) of section 532 of this Act; and
  - (d) where any company is a subsidiary of another company, that other company shall be considered as its parent company unless both are subsidiaries of a third company.
- (4) In determining, for the purposes of section 252 above, whether or to what extent a trade belongs at different times to the same persons, persons who are relatives of one another and the persons from time to time entitled to the income under any trust shall respectively be treated as a single person, and for this purpose " relative " means husband, wife, ancestor, lineal descendant, brother or sister.

*Franked investment income*

**254 Set-off of losses etc. against surplus of franked investment income**

- (1) Where a company has a surplus of franked investment income for any year of assessment, the company may on making a claim for the purpose require that the amount of the surplus shall for all or any of the purposes mentioned in subsection (2) below be treated as if it were a like amount of profits chargeable to corporation tax, and subject to subsection (4) below the provisions mentioned in subsection (2) below shall apply in accordance with this section to reduce the amount of the surplus for purposes of section 240 of this Act so that income tax shall be repayable accordingly.
- (2) The purposes for which a claim may be made under subsection (1) above are those of—
- (a) the setting of trading losses against total profits under section 177(2) of this Act;
  - (b) the deduction of charges on income under section 248 of this Act;
  - (c) the deduction of expenses of management under section 304 or 305 of this Act;
  - (d) the setting of certain capital allowances against total profits under section 74(3) of the Capital Allowances Act 1968.
- (3) Where a company makes a claim under this section for any year of assessment, then—
- (a) the amount to which the claim relates shall for purposes of the claim be treated as profits of the accounting period or periods comprising or together comprising that year, and shall be apportioned between them (if more than one) in proportion to the parts of the year respectively comprised in them ;
  - (b) the reduction falling to be made in profits of an accounting period shall be made as far as may be in profits chargeable to corporation tax rather than in the amount treated as profits so chargeable under this section.

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- (4) Where a claim under this section relates to section 177(2) of this Act or to section 74(3) of the Capital Allowances Act 1968 and an accounting period of the company falls partly before and partly within the time mentioned in that subsection, then—
- (a) the restriction imposed by section 177(3) of this Act or by section 74(4) of the Capital Allowances Act 1968 on the amount of the relief shall be applied only to any relief to be given apart from this section, and shall be applied without regard to any amount treated as profits of the period under this section ; but
  - (b) relief under this section shall be given only against so much (if any) of the amount so treated as would under subsection (3)(a) above be apportioned to the part of the period falling within the said time if that part were a separate accounting period.

(5) Where—

- (a) on a claim made under this section for any year of assessment relief is given in respect of the whole or part of any loss incurred in a trade, or of any amount which could be treated as a loss under section 177(8) of this Act; and
- (b) in a later year of assessment the distributions on which the company pays the income tax under section 232(2) of this Act exceed its franked investment income ;

then (unless the company has ceased to carry on the trade or to be within the charge to corporation tax in respect of it) the company shall, for purposes of section 177(1) of this Act, be treated as having, in the accounting period ending at or last before the beginning of the later year of assessment, incurred a loss equal to whichever is the lesser of—

- (i) the excess referred to in paragraph (b) above ; and
- (ii) the amount in respect of which relief was given as aforesaid, or so much of that amount as remains after deduction of any part of it dealt with under this subsection in relation to an earlier year of assessment.

(6) Subsection (5) above shall apply, with the necessary adaptations.—

- (a) in relation to relief given in respect of management expenses; and
- (b) in relation to relief given in respect of capital allowances ;

as it applies in relation to relief given in respect of a loss (the reference to the company ceasing to be within the charge to corporation tax in respect of the trade being construed as a reference to its ceasing to be within that charge at all):

Provided that any amount which may be dealt with under subsection (5) as a loss shall be so dealt with rather than under this subsection, except in so far as the company concerned otherwise elects.

(7) The time limits for claims under this section shall be as follows—

- (a) if and so far as the purpose for which the claim is made is the setting of trading losses against total profits under section 177(2) of this Act, two years from the end of the year of assessment in which falls the end of the accounting period in which the trading loss is incurred,
- (b) if and so far as the purpose for which the claim is made is the deduction of charges on income under section 248 of this Act or of expenses of management under section 304 or 305 of this Act, six years from the end of the accounting period in which the charges were paid or the expenses of management were incurred,

- (c) if and so far as the purpose for which the claim is made is the setting of capital allowances against total profits under section 74(3) of the Capital Allowances Act 1968, two years from the end of the year of assessment in, which falls the end of the accounting period for which the capital allowances fall to be made.
- (8) For the purposes of a claim under this section for any year of assessment the surplus of franked investment income for any year of assessment shall be calculated without regard to the part, if any, carried forward from an earlier year of assessment.

## **255 Set-off of loss brought forward, or terminal loss**

- (1) Where a company has a surplus of franked investment income in any year of assessment, the company, instead of or in addition to making a claim under section 254 above, may on making a claim for the purpose require that the surplus shall be taken into account for relief under section 177(1) or under section 178 of this Act, up to the amount of franked investment income for the year which, if chargeable to corporation tax, would have been so taken into account by virtue of section 177(7) of this Act; and (subject to the restriction to the said amount of franked investment income) the following subsections shall have effect where the company makes a claim under this section for any year of assessment.
- (2) The amount to which the claim relates shall for the purposes of the claim be treated as trading income of the accounting period or periods comprising or together comprising the year of assessment, and shall be apportioned between them (if more than one) in proportion to the parts of the year respectively comprised in them.
- (3) The reduction falling to be made in trading income of an accounting period shall be made as far as may be in trading income chargeable to corporation tax rather than in the amount treated as trading income so chargeable under this section.
- (4) If the claim relates to section 177(1) of this Act, section 254(5) above shall apply in relation to it.
- (5) If the claim relates to section 178 of this Act and an accounting period of the company falls partly outside the three years mentioned in subsection (1) of that section, then—
- (a) the restriction imposed by subsection (2) of that section on the amount of the reduction that may be made in the trading income of that period shall be applied only to any relief to be given apart from this section, and shall be applied without regard to any amount treated as trading income of the period by virtue of this section, but
  - (b) relief under this section shall be given only against so much (if any) of the amount so treated as would under subsection (2) above be apportioned to the part of the period falling within the three years in question if that part were a separate accounting period.
- (6) The time limits for claims under this section shall be as follows—
- (a) if and so far as the purpose for which the claim is made is the allowance of relief under section 177(1) of this Act, six years from the end of the year of assessment for which the claim is made,
  - (b) if and so far as the purpose for which the claim is made is the allowance of relief under section 178 of this Act, six years from the time when the company ceases to carry on the trade.

- (7) For the purposes of a claim under this section for any year of assessment the surplus of franked investment income for any year of assessment shall be calculated without regard to the part, if any, carried forward from an earlier year of assessment.

*Group income*

**256 Group income, etc.**

- (1) Where a company receives dividends from another company (both being bodies corporate resident in the United Kingdom), and the company paying the dividends is—
- (a) a 51 per cent. subsidiary of the other or of a company so resident of which the other is a 51 per cent. subsidiary; or
  - (b) a trading or holding company owned by a consortium the members of which include the company receiving the dividends,

then, subject to the following provisions of this section, the company receiving the dividends and the company paying them may jointly elect that this subsection shall apply to the dividends received from the latter by the former, and so long as the election is in force any such dividends shall be excluded from sections 232(2) and 240 of this Act, and are accordingly not included, unless otherwise stated, in references to the franked investment income of the company receiving them (but are in the Corporation Tax Acts referred to as " group income " of that company):

Provided that an election under this subsection shall not prevent the payment of any amount of dividends under deduction of income tax, and where notwithstanding the election any amount is so paid, the Corporation Tax Acts shall have effect in relation to it as if there had been no such election.

- (2) Where a company receives from another company (both being bodies corporate resident in the United Kingdom) any such payments as are referred to below in this subsection, and either—
- (a) the conditions of subsection (1)(a) or (b) above would be satisfied in relation to the companies if the payments were dividends, or
  - (b) the company receiving the payments is a 51 per cent. subsidiary of the other company,

then, subject to the following provisions of this section, the company receiving the payments and the company paying them may jointly elect that this subsection shall apply to any such payments received from the latter by the former, and so long as the election is in force those payments may be made without deduction of income tax and neither section 53 nor section 54 of this Act shall apply thereto.

The payments for which an election may be made under this subsection are any payments which are for corporation tax charges on income of the company making them.

- (3) Subsections (1) and (2) above shall not apply to dividends or other payments received by a company on any investments, if a profit on the sale of those investments would be treated as a trading receipt of that company.
- (4) Where a company purports by virtue of an election under this section to pay any dividends or other payments without deduction of income tax, and income tax ought to have been deducted, then the company receiving the dividends or other payments shall be treated for the purposes of sections 232 and 240 of this Act as if that tax had

been deducted and been repaid to it under Schedule 9 to this Act, and the amount of that tax may be recovered from it accordingly by adjustment of the payments and repayments under the said Schedule 9 or otherwise.

- (5) In determining for the purposes of this section whether one body corporate is a 51 per cent. subsidiary of another, that other shall be treated as not being the owner—
- (a) of any share capital which it owns directly or in directly in a body corporate not resident in the United Kingdom, or
  - (b) of any share capital which it owns indirectly, and which is owned directly by a body corporate for which a profit on the sale of the shares would be a trading receipt.
- (6) For the purposes of this section—
- (a) " trading or holding company " means a trading company or a company the business of which consists wholly or mainly in the holding of shares or securities of trading companies which are its 90 per cent. subsidiaries,
  - (b) " trading company " means a company whose business consists wholly or mainly of the carrying on of a trade or trades,
  - (c) a company is owned by a consortium if three-quarters or more of the ordinary share capital of the company is beneficially owned between them by five or fewer companies resident in the United Kingdom of which none beneficially owns less than one-twentieth of that capital, and those companies are called the members of the consortium.
- (7) References in this section to dividends or payments received by a company apply to any received by another person on behalf of or in trust for the company, but not to any received by the company on behalf of or in trust for another person, and references to " group income " shall be construed accordingly.

## **257 Election for group income, etc.**

- (1) An election under subsection (1) or subsection (2) of section 256 above (in the following provisions of this section referred to as an " election ") shall be made by notice in writing to the inspector, and the notice shall set out the facts necessary to show that the companies are entitled to make the election.
- (2) An election shall not have effect in relation to dividends or other payments paid less than three months after the giving of the notice and before the inspector is satisfied that the election is validly made, and has so notified the companies concerned; but shall be of no effect if within those three months the inspector notifies the companies concerned that the validity of the election is not established to his satisfaction:
- Provided that the companies shall have the like right of appeal against any decision that the validity of the election is not established as the company paying the dividends or other payments would have if it were an assessment made on that company, and Part V of the Taxes Management Act 1970 shall apply accordingly.
- (3) An election shall cease to be in force if at any time the companies cease to be entitled to make the election, and on that happening each company shall forthwith notify the inspector.
- (4) Either of the companies making an election may at any time give the inspector notice in writing revoking the election; and any such notice shall have effect from the time it is given.

*Group relief***258 Group relief**

- (1) Relief for trading losses and other amounts eligible for relief from corporation tax may in accordance with the following provisions of this Chapter be surrendered by a company (called " the surrendering company ") which is a member of a group of companies and, on the making of a claim by another company (called " the claimant company ") which is a member of the same group, may be allowed to the claimant company by way of a relief from corporation tax called " group relief".
- (2) Group relief shall also be available in accordance with the said provisions—
- (a) where the surrendering company is a trading company which is owned by a consortium and which is not a 75 per cent. subsidiary of any company, and the claimant company is a member of the consortium, or
  - (b) where the surrendering company is a trading company—
    - (i) which is a 90 per cent. subsidiary of a holding company which is owned by a consortium, and
    - (ii) which is not a 75 per cent. subsidiary of a company other than the holding company,
 and the claimant company is a member of the consortium, or
  - (c) where the surrendering company is a holding company which is owned by a consortium and which is not a 75 per cent. subsidiary of any company, and the claimant company is a member of the consortium;

Provided that no claim may be made by a member of a consortium if a profit on a sale of the share capital of the surrendering or holding company which that member owns would be treated as a trading receipt of that member.

- (3) Subject to the following sections of this Chapter, two or more claimant companies may make claims relating to the same surrendering company, and to the same accounting period of that surrendering company.
- (4) A payment for group relief—
- (a) shall not be taken into account in computing profits or losses of either company for corporation tax purposes, and
  - (b) shall not for any of the purposes of the Corporation Tax Acts be regarded as a distribution or a charge on income,
- and in this subsection "payment for group relief" means a payment made by the claimant company to the surrendering company in pursuance of an agreement between them as respects an amount surrendered by way of group relief, being a payment not exceeding that amount.
- (5) For the purpose of this section and the following sections of this Chapter—
- (a) two companies shall be deemed to be members of a group of companies if one is the 75 per cent. subsidiary of the other or both are 75 per cent. subsidiaries of a third company,
  - (b) " holding company " means a company the business of which consists wholly or mainly in the holding of shares or securities of companies which are its 90 per cent. subsidiaries, and which are trading companies,
  - (c) " trading company " means a company whose business consists wholly or mainly of the carrying on of a trade or trades.

- (6) In applying for the said purposes the definition of " 75 per cent. subsidiary " in section 532 of this Act any share capital of a registered industrial and provident society shall be treated as ordinary share capital.
- (7) References in this and the following sections of this Chapter to a company apply only to bodies corporate resident in the United Kingdom; and in determining for the purposes of this and the following sections of this Chapter whether one company is a 75 per cent. subsidiary of another, the other company shall be treated as not being the owner—
- (a) of any share capital which it owns directly in a body corporate if a profit on a sale of the shares would be treated as a trading receipt of its trade, or
  - (b) of any share capital which it owns indirectly, and which is owned directly by a body corporate for which a profit on the sale of the shares would be a trading receipt, or
  - (c) of any share capital which it owns directly or in directly in a body corporate not resident in the United Kingdom.
- (8) For the said purposes—
- (a) a company is owned by a consortium if all of the ordinary share capital of that company is directly and beneficially owned between them by five or fewer companies, and those companies are called the members of the consortium,
  - (b) a member's share in a consortium shall be the percentage of the ordinary share capital of the surrendering company, or as the case may be of the holding company through which the surrendering company is owned, which is beneficially owned by that member in the relevant accounting period of the surrendering company, and if that percentage has fluctuated in the accounting period, the average percentage over the period shall be taken.

## **259 Kinds of group relief**

- (1) If in any accounting period the surrendering company has incurred a loss, computed as for the purposes of subsection (2) of section 177 of this Act, in carrying on a trade, the amount of the loss may be set off for the purposes of corporation tax against the total profits of the claimant company for its corresponding accounting period:

Provided that this subsection shall not apply to so much of a loss as is excluded from the said subsection (2) by subsection (4) of the said section, or by section 180 of this Act (farming and market gardening).

- (2) If for any accounting period any capital allowances fall to be made to the surrendering company which are to be given by discharge or repayment of tax and are to be available primarily against a specified class of income, so much of the amount of those capital allowances (exclusive of any carried forward from an earlier period) as exceeds its income of the relevant class arising in that accounting period (before deduction of any losses of any other period or of any capital allowances) may be set off for purposes of corporation tax against the total profits of the claimant company for its corresponding accounting period.
- (3) If for any accounting period the surrendering company (being an investment company) may under section 304(1) of this Act deduct any amount as expenses of management disbursed for that accounting period, so much of that amount (exclusive of any amount deductible only by virtue of subsection (2) of the said section 304) as exceeds the company's profits of that accounting period may be set off for purposes of corporation

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tax against the total profits of the claimant company (whether an investment company or not) for its corresponding accounting period.

- (4) The surrendering company's profits of the period shall be determined for the purposes of subsection (3) above without any deduction under the said section 304 and without regard to any deduction falling to be made in respect of losses or allowances of any other period.
- (5) References in subsections (3) and (4) above to the said section 304 do not include references to that section as applied by section 305 of this Act to companies carrying on life assurance business.
- (6) If in any accounting period the surrendering company has paid any amount by way of charges on income, so much of that amount as exceeds its profits of the period may be set off for purposes of corporation tax against the total profits of the claimant company for its corresponding accounting period.
- (7) The surrendering company's profits of the period shall be determined for the purposes of subsection (6) above without regard to any deduction falling to be made in respect of losses or allowances of any other period, or to expenses of management deductible only by virtue of subsection (2) of section 304 of this Act.
- (8) In applying any of the preceding subsections in the case of a claim made by a company as a member of a consortium only a fraction of the loss referred to in subsection (1) above, or of the excess referred to in subsection (2) or (3) or (6) above, as the case may be, may be set off under the subsection in question, and that fraction shall be equal to that member's share in the consortium, subject to any further reduction under section 261(2) below.

## **260 Relation of group relief to other relief**

- (1) Group relief for an accounting period shall be allowed as a deduction against the claimant company's total profits for the period before reduction by any relief derived from a subsequent accounting period, but as reduced by any other relief from tax (including relief in respect of charges on income under section 248(1) above).
- (2) The said other relief shall be determined on the assumption that the company makes all relevant claims under section 177(2) of this Act and section 74(3) of the Capital Allowances Act 1968 (set-off of trading losses and capital allowances against total profits).
- (3) For the purposes of this section "relief derived from a subsequent accounting period" means—
  - (a) relief under section 177(2) of this Act in respect of a loss incurred in an accounting period after the accounting period the profits of which are being computed, and
  - (b) relief under section 74(3) of the Capital Allowances Act 1968 in respect of capital allowances falling to be made for an accounting period after the accounting period the profits of which are being computed, and
  - (c) relief under section 87 of the Finance Act 1965 (transitional relief on cessation of trade etc.) where the company ceases to possess the source of income in question at a time after the end of the accounting period the profits of which are being computed, and



- (d) relief under section 178 of this Act in respect of a loss incurred in an accounting period after the end of the accounting period the profits of which are being computed.
- (4) The reductions to be made in total profits of an accounting period against which any relief derived from a subsequent accounting period is to be set off shall include any group relief for that first-mentioned accounting period, and this subsection shall have effect notwithstanding that under section 87(3) of the Finance Act 1965 relief under that section is to be given in priority to any other relief.

## 261 Corresponding accounting periods

- (1) For the purposes of group relief any accounting period of the claimant company which falls wholly or partly within an accounting period of the surrendering company corresponds to that accounting period.
- (2) If an accounting period of the surrendering company and a corresponding accounting period of the claimant company do not coincide—

- (a) the amount which may be set off against the total profits of the claimant company for the corresponding accounting period shall be reduced by applying the fraction

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

(if that fraction is less than unity), and

- (b) the said profits against which the amount mentioned in paragraph (a) above (as reduced where so required) may be set off shall be reduced by applying the fraction

$$\frac{A}{C}$$

(if that fraction is less than unity),

where

A is the length of the period common to the two accounting periods,  
B is the length of the accounting period of the surrendering company, and  
C is the length of the corresponding accounting period of the claimant company.

## 262 Companies joining or leaving group or consortium

- (1) Subject to the following provisions of this section, group relief shall be given if, and only if, the surrendering company and the claimant company are members of the same group, or fulfil the conditions for relief for a consortium, throughout the whole of the surrendering company's accounting period to which the claim relates, and throughout the whole of the corresponding accounting period of the claimant company
- (2) Where on any occasion two companies become or cease to be members of the same group, then for the purposes specified in subsection (3) below it shall be assumed as respects each company that on that occasion (unless a true accounting period of the company begins or ends then) an accounting period of the company ends, and a new one begins, the new accounting period to end with the end of the true accounting period (unless before then there is a further break under this subsection), and—

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- (a) that the losses or other amounts of the true accounting period are apportioned to the component accounting periods on a time basis according to their lengths, and
  - (b) that the amount of total profits for the true accounting period of the company against which group relief may be allowed in accordance with section 260(1) above is also so apportioned to the component accounting periods.
- (3) Where the one company is the surrendering company and the other company is the claimant company—
- (a) references to accounting periods, to profits, and to losses, allowances, expenses of management or charges on income of the surrendering company, in section 259 above shall be construed in accordance with subsection (2) above,
  - (b) references to accounting periods in section 261 above and subsection (1) of this section shall be so construed (so that if the two companies are members of the same group in the surrendering company's accounting period, they must under section 261 above also be members of the same group in any corresponding accounting period of the claimant company),
  - (c) references to profits, and amounts to be set off against the profits, in section 261 above shall be so construed (so that an amount apportioned under subsection (2) above to a component accounting period may fall to be reduced under section 261(2) above).
- (4) Subsection (2) and (3) above shall apply with the necessary modifications where a company begins or ceases to fulfil the conditions for relief for a consortium, either as a surrendering company or as a claimant company, as it applies where two companies become or cease to be members of the same group.

### **263 Exclusion of double allowances, etc.**

- (1) Relief shall not be given more than once in respect of the same amount, whether by giving group relief and by giving some other relief (in any accounting period) to the surrendering company, or by giving group relief more than once.
- (2) In accordance with subsection (1) above, two or more claimant companies cannot, in respect of any one loss or other amount for which group relief may be given, and whatever their accounting periods corresponding to that of the surrendering company, obtain in all more relief than could be obtained by a single claimant company whose corresponding accounting period coincided with the accounting period of the surrendering company.
- (3) If claims for group relief are made by more than one claimant company which relate to the same accounting period of the same surrendering company, and—
  - (a) all the claims so made are admissible only by virtue of subsections (2) and (3) of section 262 above, and
  - (b) there is a part of the surrendering company's accounting period during which none of those claimant companies is a member of the same group as the surrendering company,
 those claimant companies shall not obtain in all more relief than could be obtained by a single claimant company which was not a member of the same group as the surrendering company during that part of the surrendering company's accounting period (but was a member during the remainder of that accounting period).

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- (4) If claims for group relief are made by a claimant company as respects more than one surrendering company for group relief to be set off against its total profits for any one accounting period, and—
- (a) all the claims so made are admissible only by virtue of subsections (2) and (3) of section 262 above, and
  - (b) there is a part of the claimant company's accounting period during which none of the surrendering companies by reference to which the claims are made is a member of the same group as the claimant company,
- the claimant company shall not obtain in all more relief to be set off against its profits for the accounting period than it could obtain on a claim as respects a single surrendering company (with unlimited losses and other amounts eligible for relief) which was not a member of the same group as the claimant company during that part of the claimant company's accounting period (but was a member during the remainder of that accounting period).
- (5) The provisions of this subsection have effect as respects a claim for group relief made by a company as a member of a consortium, in this subsection referred to as a "consortium claim"—
- (a) a consortium claim, and a claim other than a consortium claim, shall not both have effect as respects the loss or other amount of the same accounting period of the same surrendering company, unless each of the two claims is as respects a loss or other amount apportioned under section 262(2)(a) above to a component of that accounting period, and the two components do not overlap,
  - (b) in subsections (3) and (4) above consortium claims shall be disregarded,
- and paragraph (a) above shall take effect according to the order in which claims are made.
- (6) Without prejudice to the provisions of section 87(3) of the Capital Allowances Act 1968, any reference in Part I of that Act to an allowance made includes a reference to an allowance which would be made but for the granting of group relief, or but for that and but for an insufficiency of profits or other income against which to make it.

## **264 Claims and adjustments**

- (1) A claim for group relief—
- (a) need not be for the full amount available,
  - (b) shall require the consent of the surrendering company notified to the inspector in such form as the Board may require, and
  - (c) must be made within two years from the end of the surrendering company's accounting period to which the claim relates.
- (2) A claim for group relief by a company as a member of a consortium shall require the consent of each other member of the consortium, notified to the inspector in such form as the Board may require, in addition to the consent of the surrendering company.
- (3) If the inspector discovers that any group relief which has been given is or has become excessive he may make an assessment to corporation tax under Case VI of Schedule D in the amount which ought in his opinion to be charged.
- (4) Subsection (3) above is without prejudice to the making of an assessment under section 29(3)(c) of the Taxes Management Act 1970, and to the making of all such other adjustments by way of discharge or repayment of tax or otherwise as may be

required where a claimant company has obtained too much relief, or a surrendering company has forgone relief in respect of a corresponding amount.

## CHAPTER II

### COMPANIES' CAPITAL GAINS

#### *General provisions*

#### **265 Computation of chargeable gains**

- (1) Subject to the provisions of this section, the amount to be included in respect of chargeable gains in a company's total profits for any accounting period shall be the total amount of chargeable gains accruing to the company in the accounting period after deducting any allowable losses accruing to the company in the period and, so far as they have not been allowed as a deduction from chargeable gains accruing in any previous accounting period, any allowable losses previously (but not earlier than the year 1965-66) accruing to the company while it has been within the charge to corporation tax.
- (2) Except as otherwise provided by the Corporation Tax Acts, the total amount of the chargeable gains to be so included shall for purposes of corporation tax be computed in accordance with the principles applying for capital gains tax, all questions as to the amounts which are or are not to be taken into account as chargeable gains or as allowable losses, or in computing gains or losses, or charged to tax as a person's gain, or as to the time when any such amount is to be treated as accruing, being determined in accordance with the provisions relating to capital gains tax as if accounting periods were years of assessment.
- (3) Subject to subsection (4) below, where the enactments relating to capital gains tax contain any reference to income tax or to the Income Tax Acts the reference shall, in relation to a company, be construed as a reference to corporation tax or to the Corporation Tax Acts ; but—
  - (a) this subsection shall not affect the references to income tax in paragraph 5(2) of Schedule 6 to the Finance Act 1965 (exclusion of expenditure by reference to hypothetical income tax),
  - (b) nothing in this section shall be taken as applying for corporation tax section 21 of the said Act (alternative charge to tax on capital gains accruing to an individual), and
  - (c) in so far as the said provisions operate by reference to matters of any specified description, account shall for corporation tax be taken of matters of that description which are confined to companies, but not of any which are confined to individuals.
- (4) Part III of the Finance Act 1965 as extended by this section shall not be affected in its operation by the fact that capital gains tax and corporation tax are distinct taxes but, so far as is consistent with the Corporation Tax Acts, shall apply in relation to capital gains tax and corporation tax on chargeable gains as if they were one tax, so that, in particular, a matter which in a case involving two individuals is relevant for both of them in relation to capital gains tax shall in a like case involving an individual and a company be relevant for him in relation to that tax and for it in relation to corporation tax.

- (5) Where assets of a company are vested in a liquidator under section 244 of the Companies Act 1948, or section 226 of the Companies Act (Northern Ireland) 1960, or otherwise, this section and the enactments applied by this section shall apply as if the assets were vested in, and the acts of the liquidator in relation to the assets were the acts of, the company (acquisitions from or disposals to him by the company being disregarded accordingly).

## **266 Corporation tax attributable to chargeable gains: recovery from shareholder**

- (1) This section applies where a person who is connected with a company resident in the United Kingdom receives or becomes entitled to receive in respect of shares in the company any capital distribution from the company, other than a capital distribution representing a reduction of capital, and—
- (a) the capital so distributed derives from the disposal of assets in respect of which a chargeable gain accrues to the company; or
  - (b) the distribution constitutes such a disposal of assets.
- (2) If the corporation tax assessed on the company for the accounting period in which the chargeable gain accrues included any amount in respect of chargeable gains, and any of the tax assessed on the company for that period is not paid within six months from the date when it becomes payable by the company, the said person may by an assessment made within two years from that date be assessed and charged (in the name of the company) to an amount of that corporation tax—
- (a) not exceeding the amount or value of the capital distribution which that person has received or become entitled to receive; and
  - (b) not exceeding a proportion equal to that person's share of the capital distribution made by the company of corporation tax on the amount of that gain at the rate in force when the gain accrued.
- (3) A person paying any amount of tax under this section shall be entitled to recover a sum equal to that amount from the company.
- (4) The provisions of this section are without prejudice to any liability of the person receiving or becoming entitled to receive the capital distribution in respect of a chargeable gain accruing to him by reference to the capital distribution as constituting a disposal of an interest in shares in the company.
- (5) In this section " capital distribution " has the same meaning as in paragraph 3 of Schedule 7 to the Finance Act 1965 and " connected with " shall be construed in accordance with section 533 of this Act.

## **267 Company reconstruction or amalgamation: transfer of assets**

- (1) Subject to the provisions of this section, where—
- (a) any scheme of reconstruction or amalgamation involves the transfer of the whole or part of a company's business to another company, and
  - (b) the transfer takes effect after 5th April 1970, and
  - (c) at the time of the transfer both the companies are resident in the United Kingdom, and
  - (d) the first-mentioned company receives no part of the consideration for the transfer (otherwise than by the other company taking over the whole or part of the liabilities of the business),

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then so far as relates to corporation tax on chargeable gains the two companies shall be treated as if any assets included in the transfer were acquired by the one company from the other company for a consideration of such amount as would secure that on the disposal by way of transfer neither a gain nor a loss would accrue to the company making the disposal, and for the purposes of Part II of Schedule 6 to the Finance Act 1965 (assets held on 6th April 1965) the acquiring company shall be treated as if the respective acquisitions of the assets by the other company had been the acquiring company's acquisition of them.

- (2) This section does not apply in relation to an asset which, until the transfer, formed part of trading stock of a trade carried on by the company making the disposal, or in relation to an asset which is acquired as trading stock for the purposes of a trade carried on by the company acquiring the asset.
- (3) This section does not apply in the case of a transfer of the whole or part of a company's business to a unit trust scheme to which subsection (1) or subsection (2) of section 38 of the Finance Act 1965 (unit trusts for exempt unit holders) applies.
- (4) In this section—

" scheme of reconstruction or amalgamation " means a scheme for the reconstruction of any company or companies or the amalgamation of any two or more companies,

" trading stock " has the meaning given by section 137(4) of this Act.

## **268 Postponement of charge on transfer of assets to nonresident company**

- (1) This section applies where a company resident in the United Kingdom which is carrying on a trade outside the United Kingdom through a branch or agency transfers the trade carried on through that branch or agency, together with the whole assets of the business used for the purposes of that trade, or together with the whole of those assets other than cash, to a company not resident in the United Kingdom, and the business is so transferred wholly or partly in exchange for shares or for shares and loan stock issued by the transferee company to the transferor company, and the shares so issued, either alone or taken together with any other shares in the transferee company already held by the transferor company, amount in all to not less than one quarter of the ordinary share capital of the transferee company.
- (2) For the purposes of Part III of the Finance Act 1965, the transferor company shall be treated as if a fraction of any chargeable gain accruing to it on its disposal of any asset so transferred to the transferee company did not accrue to the transferor company until—
  - (a) the transferee company disposes or partly disposes of that asset, or ceases to use it, or is wound up or dissolved, or
  - (b) the transferor company disposes of all or any of the shares or loan stock issued in exchange by the transferee company, or
  - (c) the expiration of a period of ten years beginning with the transfer, or
  - (d) the passing of a resolution or the making of an order, or any other act, for the winding up of the transferor company (unless that company is not in fact wound up or dissolved),whichever event comes first.
- (3) A disposal of shares or loan stock by the transferor company which, by virtue of section 273 below, is treated as giving rise to neither a gain nor a loss shall be

disregarded for the purposes of subsection (2)(b) above, but on the first occasion after such a disposal that there is a disposal which is not so treated of all or any of those shares or that loan stock, that subsection shall apply as if the disposal were a disposal by the transferor company.

- (4) The fraction referred to in subsection (2) above is

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

where—

A is the market value at the time of the transfer of the shares and of any loan stock received by the transferor company in exchange for the business (including any such assets as are referred to in subsection (1) above), and

B is the market value at the time of the transfer of the whole of the consideration so received by the transferor company.

- (5) For the purposes of this section the ordinary share capital of a company means all the issued share capital (by whatever name called) of the company, other than capital the holders of which have a right to a dividend at a fixed rate but have no other right to share in the profits of the company; and if all or part of the ordinary share capital of the transferee company consists of shares of no par value, the proportion of one quarter shall be determined according to the market value of the ordinary share capital at the time of the transfer.
- (6) All such adjustments shall be made by discharge or repayment of tax as are required to give effect to the provisions of this section.
- (7) This section applies only in relation to a transfer of a trade and assets after 10th April 1968.

## **269 Interest charged to capital**

- (1) Where—

- (a) a company incurs expenditure on the construction of any building, structure or works, being expenditure allowable as a deduction under paragraph 4 of Schedule 6 to the Finance Act 1965 in computing a gain accruing to the company on the disposal of the building, structure or work, or of any asset comprising it, and
- (b) that expenditure was defrayed out of borrowed money, and
- (c) the company charged to capital all or any of the interest on that borrowed money referable to a period or part of a period ending on or before the disposal,

the sums so allowable under the said paragraph 4 shall include the amount of that interest charged to capital.

- (2) Paragraph 3 of Schedule 14 to the Finance Act 1967 (restriction on deductions where gain computed by reference to current use value of land) shall not restrict the sums allowable under subsection (1) above.

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*Gilt-edged securities: restrictions on exemptions*

**270 Charge to tax on certain disposals of United Kingdom securities**

- (1) Subsection (1) of section 41 of the Finance Act 1969 (gilt-edged securities exempt from tax on capital gains) does not apply in the case of a disposal by a company of any specified securities unless the disposal occurs more than twelve months after the acquisition of the securities, and in this section "specified securities" has the same meaning as in the said section 41.
- (2) For the purposes of subsection (1) above—
  - (a) if in consequence of a conversion on their redemption of any specified securities, those securities and a new holding of specified securities are, under paragraph 4(2) of Schedule 7 to the Finance Act 1965, as applied by paragraph 5 of that Schedule, to be treated as the same asset acquired as the converted securities were acquired, the date of acquisition of the new holding shall be deemed to be the date of the acquisition of the converted securities ; and
  - (b) the rules of identification in paragraph 8 of Schedule 7 to this Act shall apply, and
  - (c) in relation to a disposal of specified securities to which, by virtue of subsection (1) above, the said section 41(1) does not apply, the expenditure allowable under paragraph 4 of Schedule 6 to the Finance Act 1965 (cost of acquisition, etc.) shall, notwithstanding the provisions as to the pooling of securities in Schedule 7 to that Act, be determined by reference to the acquisition of the securities identified in accordance with paragraph (b) above.
- (3) Where under section 273 below the companies disposing of and acquiring an asset are to be treated as if the consideration were of such an amount that neither a gain nor a loss accrues on the disposal, the company acquiring the asset shall be treated for the purposes of subsections (1) and (2) above (and of the enactments referred to in subsection (2) above so far as applied for the purposes of subsection (1) above) as acquiring it at the time when the other acquired it.
- (4) In any case where—
  - (a) at 3.30 p.m. on 15th April 1969 (in the following provisions of this section referred to as "the relevant time") or at any time thereafter (whether before or after the commencement of this Act) any specified securities were held by a company in such circumstances that any gain or loss on their disposal would, apart from section 41 of the Finance Act 1969 (and Schedule 9 to the Finance Act 1965), have been taken into account in determining the company's liability to corporation tax on chargeable gains, and
  - (b) those securities are subsequently appropriated by the company in such circumstances that if they were disposed of after the appropriation, any profit accruing on their disposal would be brought into account in computing the company's income for corporation tax,then for the purposes of corporation tax any loss incurred by the company on the disposal of those securities shall not exceed the loss which would have been incurred on that disposal if the amount or value of the consideration for the acquisition of the securities had been equal to their market value at the time of the appropriation.
- (5) In any case where—
  - (a) at the relevant time or at any time thereafter (whether before or after the commencement of this Act) any specified securities were held by a company



in such circumstances that any profit accruing on their disposal would be brought into account in computing the company's income for corporation tax, and

- (b) those securities are subsequently appropriated by the company in such circumstances that any gain accruing on their disposal would, by virtue of section 41 of the Finance Act 1969, be exempt from corporation tax on chargeable gains,

then for the purposes of corporation tax the company shall be treated as if, immediately before the appropriation, it had sold and repurchased the specified securities at their market value at the time of the appropriation.

## **271 Charge to tax on certain disposals of Guaranteed Stock issued at a discount**

- (1) Section 27(3) of the Finance Act 1965 (gains and losses on certain Guaranteed Stock disregarded for purposes of tax on chargeable gains if within the exempt price range) shall not apply in the case of a disposal by a company unless the disposal of the securities occurs more than twelve months after their acquisition.
- (2) Paragraph 5(2) of Schedule 7 to that Act (conversion of certain Guaranteed Stock) shall not apply to a disposal of, or of part of, the new holding unless the disposal occurs more than twelve months after the acquisition of the converted securities.
- (3) The rules of identification in paragraph 8 of Schedule 7 to this Act shall apply for the purposes of this section and where this section applies in relation to any disposal, paragraph 2(4) of Schedule 7 to the Finance Act 1965 (pooling of securities: exclusion of those subject to tax under Case VII of Schedule D) shall apply as if that disposal had been chargeable to income tax under Case VII of Schedule D (tax on short-term gains).
- (4) Where under section 273 below the companies disposing of and acquiring an asset are to be treated as if the consideration were of such amount that neither a gain nor a loss accrues on the disposal, the company acquiring the asset shall be treated for the purposes of the preceding provisions of this section as acquiring it at the time when the other acquired it.

### *Groups of companies*

## **272 Groups of companies: definitions**

- (1) For the purposes of this and the following sections of this Chapter—
  - (a) references to a company, subject to section 280(7) below, apply only to a company, as that expression is limited by subsection (2) below, which is resident in the United Kingdom;
  - (b) a principal company, and all its 75 per cent. subsidiaries form a group, and where a principal company is a member of a group as being itself a 75 per cent. subsidiary that group shall comprise all its 75 per cent. subsidiaries;
  - (c) " principal company " means a company of which another company is a 75 per cent. subsidiary;
  - (d) in applying the definition of " 75 per cent. subsidiary " in section 532 of this Act any share capital of a registered industrial and provident society shall be treated as ordinary share capital; and

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- (e) " group " and " subsidiary " shall be construed with any necessary modifications where applied to a company incorporated under the law of a country outside the United Kingdom.
- (2) For the purposes referred to in subsection (1) above references to a company apply only to—
- (a) a company within the meaning of the Companies Act 1948 or the corresponding enactment in Northern Ireland, and
  - (b) a company which is constituted under any other Act or a Royal Charter or letters patent or (although resident in the United Kingdom) is formed under the law of a country or territory outside the United Kingdom, and
  - (c) a registered industrial and provident society within the meaning of section 340 of this Act.
- (3) For the purposes referred to in subsection (1) above a group remains the same group so long as the same company remains the principal company of the group, and if at any time the principal company of a group becomes a 75 per cent. subsidiary of another company the group of which it was the principal company before that time shall be regarded as the same as the group of which that other company, or one of which it is a 75 per cent. subsidiary, is the principal company, and the question whether or not a company has ceased to be a member of a group shall be determined accordingly.
- (4) For the purposes referred to in subsection (1) above the passing of a resolution or the making of an order, or any other act, for the winding-up of a company shall not be regarded as the occasion of that company, or of any 75 per cent. subsidiary of that company, ceasing to be a member of a group of companies.
- (5) The following sections of this Chapter, except in so far as they relate to recovery of tax, shall also have effect in relation to bodies from time to time established by or under any enactment for the carrying on of any industry or part of an industry, or of any undertaking, under national ownership or control as if they were companies within the meaning of those sections, and as if any such bodies charged with related functions (and in particular the Boards and Holding Company established under the Transport Act 1962 and the new authorities within the meaning of the Transport Act 1968 established under that Act of 1968) and subsidiaries of any of them formed a group, and as if also any two or more such bodies charged at different times with the same or related functions were members of a group:
- Provided that this subsection shall have effect subject to any enactment by virtue of which property, rights, liabilities or activities of one such body fall to be treated for corporation tax as those of another, including in particular any such enactment in Chapter V of Part XII of this Act.
- (6) The following sections of this Chapter, except in so far as they relate to recovery of tax, shall also have effect in relation to the Executive for a designated area within the meaning of section 9 (1) of the Transport Act 1968 as if that Executive were a company within the meaning of those sections.

## **273 Transfers within a group**

- (1) Notwithstanding any provision in Part III of the Finance Act 1965 fixing the amount of the consideration deemed to be received on a disposal or given on an acquisition, where a member of a group of companies disposes of an asset to another member of the group, both members shall, except as provided by subsections (2) and (3) below, be

treated, so far as relates to corporation tax on chargeable gains, as if the asset acquired by the member to whom the disposal is made were acquired for a consideration of such amount as would secure that on the other's disposal neither a gain nor a loss would accrue to that other; but where it is assumed for any purpose that a member of a group of companies has sold or acquired an asset, it shall be assumed also that it was not a sale to or acquisition from another member of the group.

- (2) Subsection (1) above shall not apply where the disposal is—
- (a) a disposal of a debt due from a member of a group of companies effected by satisfying the debt or part of it; or
  - (b) a disposal of redeemable shares in a company on the occasion of their redemption ;

and the reference in that subsection to a member of a group of companies disposing of an asset shall not apply to anything which under Schedule 7 to the Finance Act 1965 is to be treated as a disposal of an interest in shares in a company in consideration for a capital distribution (as defined in paragraph 3 of that Schedule) from that company, whether or not involving a reduction of capital.

- (3) For the purposes of subsection (1) above, so far as the consideration for the disposal consists of money or money's worth by way of compensation for any kind of damage or injury to assets, or for the destruction or dissipation of assets or for anything which depreciates or might depreciate an asset, the disposal shall be treated as being to the person who, whether as an insurer or otherwise, ultimately bears the burden of furnishing that consideration.

#### **274 Transfers within a group: trading stock**

- (1) Where a member of a group of companies acquires an asset as trading stock from another member of the group, and the asset did not form part of the trading stock of any trade carried on by the other member, the member acquiring it shall be treated for purposes of paragraph 1 of Schedule 7 to the Finance Act 1965 as having acquired the asset otherwise than as trading stock and immediately appropriated it for the purposes of the trade as trading stock.
- (2) Where a member of a group of companies disposes of an asset to another member of the group, and the asset formed part of the trading stock of a trade carried on by the member disposing of it but is acquired by the other member otherwise than as trading stock of a trade carried on by it, the member disposing of the asset shall be treated for purposes of paragraph 1 of Schedule 7 to the Finance Act 1965 as having immediately before the disposal appropriated the asset for some purpose other than the purpose of use as trading stock.

#### **275 Disposal or acquisition outside a group**

- (1) Where a company which is or has been a member of a group of companies disposes of an asset which it acquired from another member of the group at a time when both were members of the group, paragraph 6 of Schedule 6 to the Finance Act 1965 (restriction of losses by reference to capital allowances) shall apply in relation to any capital allowances made to the other member (so far as not taken into account in relation to a disposal of the asset by that other member), and so on as respects previous transfers of the asset between members of the group (but this shall not be taken as affecting the consideration for which an asset is deemed under section 273(1) above to be acquired).

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- (2) Part II of Schedule 6 to the Finance Act 1965 (assets acquired before 6th April 1965) shall apply in relation to a disposal of an asset by a company which is or has been a member of a group of companies, and which acquired the asset from another member of the group at a time when both were members of the group, as if all members of the group for the time being were the same person, and as if the acquisition or provision of the asset by the group, so taken as a single person, had been the acquisition or provision of it by the member disposing of it.

## **276 Replacement of business assets by members of a group**

- (1) For the purposes of section 33 of the Finance Act 1965 (replacement of business assets) all the trades carried on by members of a group of companies shall be treated as a single trade (unless it is a case of one member of the group acquiring, or acquiring the interest in, the new assets from another or disposing of, or of the interest in, the old assets to another).
- (2) Paragraph 16(2) of Schedule 19 to the Finance Act 1969 (special rules for depreciating assets) shall apply where the company making the claim is a member of a group of companies as if all members of the group for the time being were the same person (and, in accordance with subsection (1) above, as if all trades carried on by members were the same trade) and so that the gain shall accrue to the member of the group holding the asset concerned on the occurrence of the event mentioned in the said paragraph 16(2).

## **277 Tax on company recoverable from other members of group**

- (1) If at any time a chargeable gain accrues to a company which at that time is a member of a group of companies and any of the corporation tax assessed on the company for the accounting period in which the chargeable gain accrues is not paid within six months from the date when it becomes payable by the company, then, if the tax so assessed included any amount in respect of chargeable gains.—
- (a) a company which was at the time when the gain accrued the principal company of the group ; and
  - (b) any other company which in any part of the period of two years ending with that time was a member of the said group of companies and owned the asset disposed of or any part of it, or where that asset is an interest or right in or over another asset, owned either asset or any part of either asset;
- may at any time within two years from the time when the tax became payable be assessed and charged (in the name of the company to whom the chargeable gain accrued) to an amount of that corporation tax not exceeding corporation tax on the amount of that gain at the rate in force when the gain accrued.
- (2) A company paying any amount of tax under subsection (1) above shall be entitled to recover a sum of that amount—
- (a) from the company to which the chargeable gain accrued, or
  - (b) if that company is not the company which was the principal company of the group at the time when the chargeable gain accrued, from that principal company,

and a company paying any amount under paragraph (b) above shall be entitled to recover a sum of that amount from the company to which the chargeable gain accrued, and so far as it is not so recovered, to recover from any company which is for the time being a member of the group and which has while a member of the group owned

the asset disposed of or any part of it (or where that asset is an interest or right in or over another asset, owned either asset or any part of it) such proportion of the amount unrecovered as is just having regard to the value of the asset at the time when the asset, or an interest or right in or over it, was disposed of by that company.

## **278 Company ceasing to be member of a group**

(1) If a company (in this section called the chargeable company) ceases to be a member of a group of companies, this section shall have effect as respects any asset which the chargeable company acquired from another company which was at the time of acquisition a member of that group of companies, but only if the time of acquisition fell—

- (a) on or after 6th April 1965, and
- (b) within the period of six years ending with the time when the company ceases to be a member of the group;

and references in this section to a company ceasing to be a member of a group of companies do not apply to cases where a company ceases to be a member of a group by being wound up or dissolved or in consequence of another member of the group being wound up or dissolved.

(2) Where two or more associated companies cease to be members of the group at the same time, subsection (1) above shall not have effect as respects an acquisition by one from another of those associated companies.

(3) If, when the chargeable company ceases to be a member of the group, the chargeable company, or an associated company also leaving the group, owns, otherwise than as trading stock—

- (a) the asset, or
- (b) property to which a chargeable gain has been carried forward from the asset on a replacement of business assets,

the chargeable company shall be treated for all the purposes of Part III of the Finance Act 1965 as if immediately after its acquisition of the asset it had sold, and immediately reacquired, the asset at market value at that time.

(4) For the purposes of this section—

- (a) two or more companies are associated companies if, by themselves, they would form a group of companies,
- (b) a chargeable gain is carried forward from an asset to other property on a replacement of business assets if, by one or more claims under section 33 of the Finance Act 1965, the chargeable gain accruing on a disposal of the asset is reduced, and as a result an amount falls to be deducted from the expenditure allowable in computing a gain accruing on the disposal of the other property,
- (c) an asset acquired by the chargeable company shall be treated as the same as an asset owned at a later time by that company or an associated company if the value of the second asset is derived in whole or in part from the first asset, and in particular where the second asset is a freehold, and the first asset was a leasehold and the lessee has acquired the reversion.

(5) If any of the corporation tax assessed on a company in consequence of this section is not paid within six months from the date when it becomes payable then—

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- (a) a company which on the said date, or immediately after the chargeable company ceased to be a member of the group, was the principal company of the group, and
- (b) a company which owned the asset on the said date, or when the chargeable company ceased to be a member of the group,

may at any time within two years from the time when the tax became payable, be assessed and charged (in the name of the chargeable company) to all or any part of that tax ; and a company paying any amount of tax under this subsection shall be entitled to recover a sum of that amount from the chargeable company.

- (6) Notwithstanding any limitation on the time for making assessments, an assessment to corporation tax chargeable in consequence of this section may be made at any time within six years from the time when the chargeable company ceased to be a member of the group, and where under this section the chargeable company is to be treated as having disposed of, and reacquired, an asset, all such recomputations of liability in respect of other disposals, and all such adjustments of tax, whether by way of assessment or by way of discharge or repayment of tax, as may be required in consequence of the provisions of this section shall be carried out.
- (7) The provision in subsection (3) above making the assumption that an asset is sold and re-acquired at market value shall, in accordance with paragraph 7(1) of Schedule 14 to the Finance Act 1967, have effect subject to the provisions of section 33 of that Act (current use value of land in Great Britain).
- (8) This section has effect, to the exclusion of the corresponding enactments repealed by this Act, where the chargeable company ceases to be a member of the group in an accounting period ending after 5th April 1970, and not only in respect of tax for such an accounting period but also in respect of tax for accounting periods ending on or before that date.

## **279 Shares in subsidiary member of a group**

- (1) This section has effect if a company (in this section called " the subsidiary ") ceases to be a member of a group of companies, and on an earlier occasion shares in the subsidiary were disposed of by another company (in this section called " the chargeable company") which was then a member of that group in the course of an amalgamation or reconstruction in the group, but only if that earlier occasion fell—
  - (a) on or after 6th April 1965, and
  - (b) within the period of six years ending with the date on which the subsidiary ceases to be a member of the group;

and references in this section to a company ceasing to be a member of a group of companies do not apply to cases where a company ceases to be a member of a group by being wound up or dissolved or in consequence of another member of the group being wound up or dissolved.
- (2) The chargeable company shall be treated, for all the purposes of Part III of the Finance Act 1965, as if immediately before the earlier occasion it had sold, and immediately reacquired, the said shares at market value at that time.
- (3) If, before the subsidiary ceases to be a member of the group, the chargeable company has ceased to exist, or a resolution has been passed, or an order made, for the winding up of the company, or any other act has been done for the like purpose, any corporation tax to which, if the chargeable company had continued in existence, it would have been

chargeable in consequence of this section may be assessed and charged (in the name of the chargeable company) on the company which is, at the time when the subsidiary ceases to be a member of the group, the principal company of the group.

(4) If any of the corporation tax assessed on a company in consequence of this section, or in pursuance of subsection (3) above, is not paid within six months from the date when it becomes payable, then—

- (a) a company which is on the said date, or was on the earlier occasion, the principal company of the group, and
- (b) any company taking an interest in the subsidiary as part of the amalgamation or reconstruction in the group,

may at any time within two years from the time when the tax became payable, be assessed and charged (in the name of the chargeable company) to all or any part of that tax; and a company paying any amount of tax under this subsection shall be entitled to recover a sum of that amount from the chargeable company, or as the case may be from the company assessed under subsection (3) above.

(5) Notwithstanding any limitation on the time for making assessments, an assessment to corporation tax chargeable in consequence of this section may be made at any time within six years from the time when the subsidiary ceased to be a member of the group and, in relation to any disposal of the property after the earlier occasion, there shall be made all such adjustments of tax, whether by way of assessment or by way of discharge or repayment of tax, as may be required in consequence of the provisions of this section.

(6) For the purposes of this section there is a disposal of shares in the course of an amalgamation or reconstruction in a group of companies if paragraph 6 or paragraph 7 of Schedule 7 to the Finance Act 1965 (company amalgamations) applies to shares in a company so as to equate them with shares in or debentures of another company, and the companies are members of the same group, or become members of the same group as a result of the amalgamation or reconstruction.

(7) Where by virtue of paragraph 7 of the said Schedule 7 shares are to be treated as cancelled and replaced by a new issue, references in this section to a disposal of shares include references to the occasion of their being so treated.

(8) This section has effect, to the exclusion of the corresponding enactments repealed by this Act, where the subsidiary ceases to be a member of the group in an accounting period of the chargeable company (or, as the case may be, of the company assessable under subsection (3) above) ending after 5th April 1970, and not only in respect of tax for such an accounting period but also in respect of tax for accounting periods ending on or before that date.

#### *Losses attributable to depreciatory transactions*

### **280 Transactions in a group**

(1) This section has effect as respects a disposal of shares in, or securities of, a company (in this section referred to as an "ultimate disposal") if the value of the shares or securities has been materially reduced by a depreciatory transaction effected on or after 6th April 1965; and for this purpose "depreciatory transaction" means—

- (a) any disposal of assets at other than market value by one member of a group of companies to another, or

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- (b) unless the ultimate disposal occurred before 30th April 1969, any other transaction satisfying the conditions of subsection (2) below:

Provided that a transaction shall not be treated as a depreciatory transaction to the extent that it consists of a payment which is required to be or has been brought into account, for the purposes of corporation tax on chargeable gains, in computing a chargeable gain or allowable loss accruing to the person making the ultimate disposal.

- (2) The conditions referred to in subsection (1)(b) above are—
- (a) that the company, the shares in which, or securities of which, are the subject of the ultimate disposal, or any 75 per cent. subsidiary of that company, was a party to the transaction, and
  - (b) that the parties to the transaction were or included two or more companies which at the time of the transaction were members of the same group of companies.
- (3) Without prejudice to the generality of subsection (1) above, the cancellation of any shares in or securities of one member of a group of companies under section 66 of the Companies Act 1948 shall, to the extent that immediately before the cancellation those shares or securities were the property of another member of the group, be taken to be a transaction fulfilling the conditions in subsection (2) above.
- (4) If the person making the ultimate disposal is, or has at any time been, a member of the group of companies referred to in subsection (1) or (2) above, any allowable loss accruing on the disposal shall be reduced to such extent as appears to the inspector, or on appeal the Commissioners concerned, to be just and reasonable having regard to the depreciatory transaction :

Provided that if the person making the ultimate disposal is not a member of the said group when he disposes of the shares or securities, no reduction of the loss shall be made by reference to a depreciatory transaction which took place when that person was not a member of the said group.

- (5) The inspector or the Commissioners shall make the decision under subsection (4) above on the footing that the allowable loss ought not to reflect any diminution in the value of the company's assets which was attributable to a depreciatory transaction if and so far as the effect of the transaction was to increase the value of the assets of any other member of the group, but allowance may be made for any other transaction on or after 6th April 1965 which has enhanced the value of the company's assets and depreciated the value of the assets of any other member of the group.
- (6) If, under subsection (4) above, a reduction is made in an allowable loss, any chargeable gain accruing on a disposal of the shares or securities of any other company which was a party to the depreciatory transaction by reference to which the reduction was made, being a disposal not later than six years after the depreciatory transaction, shall be reduced to such extent as appears to the inspector, or on appeal to the Commissioners concerned, to be just and reasonable having regard to the effect of the depreciatory transaction on the value of those shares or securities at the time of their disposal:

Provided that the total amount of any one or more reductions in chargeable gains made by reference to a depreciatory transaction shall not exceed the amount of the reductions in allowable losses made by reference to that depreciatory transaction. All such adjustments, whether by way of discharge or repayment of tax, or otherwise, as are required to give effect to the provisions of this subsection may be made at any time.



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- (7) For the purposes of this section—
- " securities " includes any loan stock or similar security whether secured or unsecured,
  - references to the disposal of assets include references to any method by which one company which is a member of a group appropriates the goodwill of another member of the group,
  - a " group of companies " may consist of companies some or all of which are not resident in the United Kingdom.
- (8) References in this section to the disposal of shares or securities include references to the occasion of the making of a claim under section 23(4) of the Finance Act 1965 that the value of shares or securities has become negligible, and references to a person making a disposal shall be construed accordingly.

## **281 Dividend stripping**

- (1) The provisions of this section apply where one company (in this section referred to as " the first company ") has a holding in another company (in this section referred to as " the second company ") and the following conditions are fulfilled—
- (a) that the holding amounts to, or is an ingredient in a holding amounting to, 10 per cent. of all holdings of the same class in the second company,
  - (b) that the first company is not a dealing company in relation to the holding,
  - (c) that a distribution is or has been made after 29th April 1969 to the first company in respect of the holding, and
  - (d) that the effect of the distribution is that the value of the holding is or has been materially reduced.
- (2) Where this section applies in relation to a holding section 280 above shall apply in relation to any disposal of any shares or securities comprised in the holding, whether the disposal is by the first company or by any other company to which the holding is transferred by a transfer to which section 273 above applies, as if the distribution were a depreciatory transaction and, if the companies concerned are not members of a group of companies, as if they were:
- Provided that the distribution shall not be treated as a depreciatory transaction to the extent that it consists of a payment which is required to be or has been brought into account, for the purposes of corporation tax on chargeable gains, in computing a chargeable gain or allowable loss accruing to the person making the ultimate disposal.
- (3) This section shall be construed as one with section 280 above.
- (4) For the purposes of this section a company is " a dealing company " in relation to a holding if a profit on the sale of the holding would be taken into account in computing the company's trading profits.
- (5) References in this section to a holding in a company refer to a holding of shares or securities by virtue of which the holder may receive distributions made by the company, but so that—
- (a) a company's holdings of different classes in another company shall be treated as separate holdings, and
  - (b) holdings of shares or securities which differ in the entitlements or obligations they confer or impose shall be regarded as holdings of different classes.

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- (6) For the purposes of subsection (1) above—
- (a) all a company's holdings of the same class in another company are to be treated as ingredients constituting a single holding, and
  - (b) a company's holding of a particular class shall be treated as an ingredient in a holding amounting to 10 per cent. of all holdings of that class if the aggregate of that holding and other holdings of that class held by connected persons amounts to 10 per cent. of all holdings of that class,
- and section 533 of this Act (definition of connected persons) shall have effect in relation to paragraph (b) above as if, in subsection (7) of that section, after the words " or exercise control of " in each place where they occur there were inserted the words " or to acquire a holding in ".

## CHAPTER III

### CLOSE COMPANIES

#### *Meaning of close company*

#### **282 Meaning of close company**

- (1) For the purposes of the Corporation Tax Acts, a " close company " is one which is under the control of five or fewer participators, or of participators who are directors, except that the expression does not apply—
- (a) to a company not resident in the United Kingdom, or
  - (b) to a registered industrial and provident society within the meaning of section 340(9) of this Act, or to a building society within the meaning of section 343 of this Act or any other company to which the said section 343 applies, or
  - (c) to a company controlled by or on behalf of the Crown, and not otherwise a close company, or
  - (d) to a company falling within subsection (4) or section 283 below.
- (2) Subject to subsection (4) and section 283 below, a company resident in the United Kingdom (but not falling within subsection (1)(b) above) is also a close company if, on the assumption that it is so, or on the assumption that it and any other such company or companies are so, more than half of any amount falling under this Chapter to be apportioned for the purposes of surtax in the case of the company could be apportioned among five or fewer participators, or among participators who are directors.
- (3) For the purposes of this section—
- (a) a company is to be treated as controlled by or on behalf of the Crown if, but only if, it is under the control of the Crown or of persons acting on behalf of the Crown, independently of any other person, and
  - (b) where a company is so controlled, it shall not be treated as being otherwise a close company unless it can be treated as a close company as being under the control of persons acting independently of the Crown.
- (4) A company is not to be treated as a close company in any case where—

- (a) by reason of beneficial ownership of shares in the company, the control of it is in the hands of a company which is not a close company, or of two or more companies none of which is a close company, and
- (b) it could only be treated as a close company as being under the control of five or fewer participators, and it cannot be so treated except by taking as one of the participators a company which is not a close company,

but so that references in this subsection to a close company shall be treated as applying to any company which, if resident in the United Kingdom, would be a close company.

### **283 Certain companies with quoted shares not to be close companies**

- (1) Subject to the following provisions of this section, a company is not to be treated as being at any time a close company if—
  - (a) shares in the company carrying not less than 35 per cent. of the voting power in the company (and not being shares entitled to a fixed rate of dividend, whether with or without a further right to participate in profits) have been allotted unconditionally to, or acquired unconditionally by, and are at that time beneficially held by, the public, and
  - (b) any such shares have within the preceding twelve months been the subject of dealings on a recognised stock exchange, and the shares have within those twelve months been quoted in the official list of a recognised stock exchange.
- (2) Subsection (1) above shall not apply to a company at any time when the total percentage of the voting power in the company possessed by all of the company's principal members exceeds 85 per cent.
- (3) For the purposes of subsection (1) above, shares in a company shall be deemed to be beneficially held by the public if, and only if, they—
  - (a) fall within subsection (4) below, and
  - (b) are not within the exceptions in subsection (5) below,and a corresponding construction shall be given to the reference to shares which have been allotted unconditionally to, or acquired unconditionally by, the public.
- (4) Shares fall within this subsection (as being beneficially held by the public)—
  - (a) if beneficially held by a company resident in the United Kingdom which is not a close company, or by a company not so resident which would not be a close company if it were so resident, or
  - (b) if held on trust for a fund or scheme approved under section 208 or section 222 (superannuation funds and retirement schemes) of this Act, or
  - (c) if they are not comprised in a principal member's holding.
- (5) Shares shall not be deemed to be held by the public if they are held—
  - (a) by any director or associate of a director of the company, or
  - (b) by any company which is under the control of any such director or associate, or of two or more persons each of whom is such a director or associate, or
  - (c) by any associated company of the company, or
  - (d) as part of any fund the capital or income of which is applicable or applied wholly or mainly for the benefit of, or of the dependants of, the employees or directors, or past employees or directors, of the company, or of any company within paragraph (b) or (c) above.

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References in this subsection to shares held by any person include references to any shares the rights or powers attached to which could, for the purposes of section 302 below (definition of " control"), be attributed to that person under subsection (5) of that section (nominees).

- (6) For the purposes of this section—
- (a) a person is a principal member of a company if he possesses a percentage of the voting power in the company of more than 5 per cent. and, where there are more than five such persons, if he is one of the five persons who possess the greatest percentages or if, because two or more persons possess equal percentages of the voting power in the company, there are no such five persons, he is one of the six or more persons (so as to include those two or more who possess equal percentages) who possess the greatest percentages, and
  - (b) a principal member's holding consists of the shares which carry the voting power possessed by him.
- (7) In arriving at the voting power which a person possesses, there shall be attributed to him any voting power which, for the purposes of section 302 below (definition of " control "), would be attributed to him under subsection (5) or (6) of that section (nominees, controlled companies and associates).
- (8) In this section " share " includes " stock " .

*Additional matters to be treated as distributions*

#### **284 Payments etc. to participators and associates**

- (1) Subject to such exceptions as are mentioned in section 233(1) of this Act, in the Corporation Tax Acts " distribution ", in relation to a close company, includes unless otherwise stated—
- (a) any annuity or other annual payment paid by the company to a participator, other than interest,
  - (b) any rent, royalty or other consideration paid or given by the company to a participator for the use of property other than money or, in the case of tangible property or of copyright in a literary, dramatic, musical or artistic work within the meaning of the Copyright Act 1956 (or any corresponding right under the law of a country to which that Act does not extend), so much of any such consideration as represents more than a reasonable commercial consideration, and
  - (c) any such amount as is required to be treated as a distribution by subsection (2) below.
- (2) Where a close company incurs expense in or in connection with the provision for any participator of living or other accommodation, of entertainment, of domestic or other services, or of other benefits or facilities of whatever nature, the company shall be treated as making a distribution to him of an amount equal to so much of that expense as is not made good to the company by the participator:

Provided that this subsection shall not apply to expense incurred in or in connection with the provision of benefits or facilities for a person to whom section 196 of this Act applies as a director or employee of the company, or the provision for the spouse,

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children or dependants of any such person of any pension, annuity, lump sum, gratuity or other like benefit to be given on his death or retirement.

- (3) Any reference in subsection (2) above to expense incurred in or in connection with any matter includes a reference to a proper proportion of any expense incurred partly in or in connection with that matter; and section 197 of this Act (valuation of benefits in kind) shall apply for the purposes of that subsection as it applies for the purposes of section 196 of this Act, references to that subsection being substituted for references to section 196(1), and references to a body corporate including any company.
- (4) Subsection (2) above shall not apply if the company and the participator are both resident in the United Kingdom and—
  - (a) one is a subsidiary of the other or both are subsidiaries of a third company also so resident, and
  - (b) the benefit to the participator arises on or in connection with a transfer of assets or liabilities by the company to him, or to the company by him.
- (5) The question whether one body corporate is a subsidiary of another for the purpose of subsection (4) above shall be determined as a question whether it is a 51 per cent. subsidiary of that other, except that that other shall be treated as not being the owner—
  - (a) of any share capital which it owns directly in a body corporate if a profit on a sale of the shares would be treated as a trading receipt of its trade; or
  - (b) of any share capital which it owns indirectly, and which is owned directly by a body corporate for which a profit on the sale of the shares would be a trading receipt; or
  - (c) of any share capital which it owns directly or indirectly in a body corporate not resident in the United Kingdom.
- (6) Where each of two or more close companies makes a payment to a person who is not a participator in that company, but is a participator in another of those companies, and the companies are acting in concert or under arrangements made by any person, then each of those companies and any participator in it shall be treated as if the payment made to him had been made by that company.

This subsection shall apply, with any necessary adaptations, in relation to the giving of any consideration, and to the provision of any facilities, as it applies in relation to the making of a payment.

- (7) For the purposes of this section any reference to a participator includes an associate of a participator, and any participator in a company which controls another company shall be treated as being also a participator in that other company.

## **285 Interest paid to directors and directors' associates**

- (1) Subject to such exceptions as are mentioned in section 233(1) of this Act, this section has effect where in any accounting period any interest is paid by a close company to, or to an associate of, a person—
  - (a) who is a director of the close company, or of any company which controls, or is controlled by, the close company, and
  - (b) who has a material interest—
    - (i) in the close company, or
    - (ii) where the close company is controlled by another company, in that other company.

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- (2) If the total amount so paid to any person in the accounting period exceeds the limit imposed in his case, the excess shall be a distribution made by the close company to that person.
- (3) The limit shall be worked out in the first instance as an overall limit applying to the aggregate of all interest which is within subsection (1) above and which was paid by the close company in the accounting period, and, where there are two or more different recipients, that overall limit shall be apportioned between them according to the amounts of interest paid to them respectively.
- (4) The overall limit shall be a sum equal to interest at 8 per cent. per annum on whichever is the less of—
  - (a) the total of the loans, advances and credits on which the interest within subsection (1) above was paid by the close company in the accounting period, or if that total was different at different times in the accounting period, the average total over the accounting period, and
  - (b) the nominal amount of the issued share capital of the close company plus the amount of any share premium account (or other comparable account by whatever name called) of the company, taking both amounts as at the beginning of the accounting period.
- (5) In this section " interest" includes any other consideration paid or given by the close company for the use of money advanced, or credit given, by any person, and references to interest " paid " shall be construed accordingly.
- (6) This section has effect subject to section 284(6) above, and for the purposes of this section a person has a material interest in a company—
  - (a) if he, either on his own or with any one or more of his associates, or if any associate of his with or without any such other associates, is the beneficial owner of, or able, directly or through the medium of other companies or by any other indirect means, to control, more than 5 per cent. of the ordinary share capital of the company, or
  - (b) if, on an amount equal to the whole distributable income of the company falling under this Chapter to be apportioned for the purposes of surtax, more than 5 per cent. of that amount could be apportioned to him together with his associates (if any), or to any associate of his, or any such associates taken together.

*Charges to tax in connection with loans and covenants*

**286 Loans to participators etc.**

- (1) Subject to the following provisions of this section, where a close company, otherwise than in the ordinary course of a business carried on by it which includes the lending of money, makes any loan or advances any money to an individual who is a participator in the company or an associate of a participator, there shall be assessed on and recoverable from the company, as if it were an amount of income tax chargeable on the company, an amount equal to income tax on the grossed up equivalent of the loan or advance.
- (2) For the purposes of this section the cases in which a close company is to be regarded as making a loan to any person include a case where—

- (a) that person incurs a debt to the close company, or
- (b) a debt due from that person to a third party is assigned to the close company, and then the close company shall be regarded as making a loan of an amount equal to the debt:

Provided that paragraph (a) above shall not apply to a debt incurred for the supply by the close company of goods or services in the ordinary course of its trade or business unless the credit given exceeds six months or is longer than that normally given to the company's customers.

- (3) This section shall not apply to a loan made to a director or employee of a close company, or of an associated company of the close company, under a bona fide scheme for assisting the purchase of houses by members of the staff of the close company, or of any associated company of the close company, if—
  - (a) the loan is used for the purpose of purchasing a dwelling which is or will be the borrower's only or main residence, and
  - (b) neither the amount of the loan, nor that amount when taken with any other outstanding loans made for the same purpose, by the close company or any of its associated companies to the borrower, or to the wife or husband of the borrower, exceeds £10,000, and
  - (c) the borrower works full-time for the close company, or any of its associated companies, and
  - (d) the borrower does not have a material interest in the close company or in any associated company of the close company.
- (4) Tax assessed by virtue of this section shall, subject to any appeal against the assessment, be due within fourteen days after the issue of the notice of assessment.
- (5) Where, after a company has paid the amount assessed on it under this section in respect of any loan or advance, the loan or advance or any part of it is repaid to the company, the amount paid by the company, or a proportionate part of it, shall be repaid.

Relief under this subsection shall be given on a claim, which must be made within six years from the end of the year of assessment in which the repayment is made.
- (6) For the purposes of this section and section 287 below, the grossed up equivalent of an amount is such a sum as, after deduction of income tax at the standard rate, is equal to that amount, and shall be computed by reference to the standard rate for the year of assessment in which the loan or advance is made or, as the case may be, the debt is wholly or partly released or written off.
- (7) Where, under arrangements made by any person otherwise than in the ordinary course of a business carried on by him—
  - (a) a close company makes a loan or advance which, apart from this subsection, does not give rise to any charge on the company under subsection (1) above, and
  - (b) some person other than the close company makes a payment or transfers property to, or releases or satisfies (in whole or in part) a liability of, an individual who is a participator in the company or an associate of a participator,

then, unless in respect of the matter referred to in paragraph (b) above there falls to be included in the total income for the purposes of surtax of the participator or associate an amount not less than the grossed up equivalent of the loan or advance, this section shall apply as if the loan or advance had been made to him.

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- (8) In subsections (1) and (7)(b) above, the references to an individual shall apply also to a company receiving the loan or advance in a fiduciary or representative capacity, and to a company not resident in the United Kingdom.
- (9) For the purposes of this section any participator in a company which controls another company shall be treated as being also a participator in that other company; and section 285(6) above shall apply for the purpose of determining whether a person has, for the purpose of subsection (3) above, a material interest in a company.

### **287 Effect of release, etc., of debt in respect of loan under s. 286**

- (1) Subject to the following provisions of this section where a company is assessed or liable to be assessed under section 286 above in respect of a loan or advance and releases or writes off the whole or part of the debt in respect of it, the person to whom it was made shall be treated for purposes of surtax as having then received an amount of income equal to the grossed up equivalent of the amount so released or written off.
- (2) If the loan or advance referred to in subsection (1) above was made to a person who has since died, or to trustees of a trust which has come to an end, this section, instead of applying to the person to whom it was made, shall apply to the person from whom the debt is due at the time of release or writing off (and if it is due from him as personal representative within the meaning of Part XV of this Act, the amount treated as received by him shall accordingly be, as regards surtax, included for the purposes of that Part in the aggregate income of the estate).
- (3) This section shall not have effect in relation to a loan or advance made to a person if any sum falls in respect of the loan or advance to be included in his income by virtue of section 451 of this Act (sums paid to settlor otherwise than as income), except in so far as the amount released or written off exceeds the sums previously falling to be so included (without the addition for income tax provided for by subsection (5) of that section).
- (4) This section shall be construed as one with section 286 above.

### **288 Covenants by participators**

- (1) Where, in respect of any payment made or consideration given by a company, any sum falls by virtue of section 34 of this Act (charge of surtax on consideration for certain restrictive covenants etc.) to be included in an individual's total income for the purposes of surtax, and, at the time when the payment is made or the consideration is given, the company is a close company and the individual is a participator in the company or an associate of a participator, there shall be assessed on and recoverable from the company, as if it were an amount of income tax chargeable on the company, an amount equal to income tax on the sum falling to be included in the individual's income as aforesaid, at the standard rate for the year of assessment in which the payment is made or the consideration is given.
- (2) Tax assessed by virtue of subsection (1) above shall, subject to any appeal against the assessment, be due within fourteen days after the issue of the notice of assessment.
- (3) Where subsection (1) above would apply to any payment or consideration if the condition that the company is a close company and the individual a participator in it or an associate of a participator were satisfied at the time when the payment is made or the consideration is given, that subsection shall apply if either—



- (a) at that time the individual holds or is about to hold an office or employment with the company and the condition is satisfied within two years afterwards, or
  - (b) at that time the individual holds or has held an office or employment with the company and the condition has been satisfied within two years previously.
- (4) For the purposes of this section any participator in a company which controls another company shall be treated as being also a participator in that other company.

*Charges to tax in respect of shortfall*

**289 Shortfall in distributions**

- (1) If in any accounting period of a close company there is a shortfall in the company's distributions, there shall be assessed on and recoverable from the company, as if it were an amount of income tax chargeable on the company, an amount equal to the income tax for which the company would be liable to account under section 232(2) of this Act on a distribution equal in amount (before deduction of income tax) to the shortfall and made twelve months after the end of the accounting period (income tax having been deducted).
- (2) Tax assessed by virtue of subsection (1) above shall, subject to any appeal against the assessment, be due within fourteen days after the issue of the notice of assessment.
- (3) Where a company is in respect of any year of assessment: assessed under this section in respect of a shortfall in distributions, and there is in that year a surplus of franked investment income (including any amount carried forward from an earlier year), the company may, by a claim made within two years from the end of that year of assessment, require that the shortfall shall be set off as far as may be against the surplus, and, in that event, the shortfall and the surplus shall each (as regards the company) be treated as reduced by the amount of the set-off; and the set-off shall, so far as it reduces the shortfall, be effected by discharge of the tax assessed under this section by reference to the shortfall.
- (4) Effect shall be given to a claim under subsection (3) above in priority to any claim for the same year under section 254 or section 255 of this Act, but the set-off shall be made as far as may be against any part of the surplus which has been carried forward from an earlier year of assessment.
- (5) Where a company is assessed under this section in respect of a shortfall in distributions for any accounting period, then (so long as the company remains a close company) it may for any later accounting period for which there is no such shortfall make a claim within six years from the end of the later period requiring that the shortfall of the earlier period, or so much of it as has not been dealt with under this subsection, shall, in determining the income tax payable by the company in respect of distributions for the later period or, as the case may be, in arriving at any surplus of franked investment income, be deducted rateably from the distributions made by the company for the later period :

Provided that no deduction shall be made under this subsection from the distributions for any accounting period so as to reduce those distributions below the required standard.

- (6) Subject to subsections (4) and (5) of section 294 below, the preceding provisions of this section shall, notwithstanding the winding up of a company, or the passing of any

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resolution or the making of any order or anything else done for the winding up of a company, continue to apply as if the company were not being wound up.

- (7) So much of section 247(8) of this Act (adjustments where true accounting period is established on appeal) as extends the time within which assessments may be made shall apply to assessments to tax under this section.

## **290 Determination of shortfall: required standard**

- (1) For the purposes of section 289 above, the shortfall in a company's distributions for any accounting period is, subject to the following provisions of this section, the amount (if any) by which the distributions for the period fall short of the required standard; and subject to those provisions, the required standard is the distributable income for the period, less so much of that income (not exceeding, in the case of a company which is neither a trading company nor a member of a trading group, the amount of the estate or trading income) as the company shows could not be distributed without prejudice to the requirements of the company's business.
- (2) In no case shall the required standard exceed the company's distributable investment income for the period plus 60 per cent. of the estate or trading income for the period.
- (3) In arriving at the required standard for any accounting period—
- (a) regard shall be had not only to the current requirements of the company's business, but also to such other requirements as may be necessary or advisable for the maintenance and development of that business but, for this purpose, the provisions of section 293 below shall apply;
  - (b) the amount of the estate or trading income shall be taken at the amount included in respect of it in the distributable income.
- (4) Where a company is subject to any restriction imposed by law as regards the making of distributions, any shortfall in its distributions for an accounting period shall be disregarded to the extent to which the company could not make distributions up to the required standard without contravening that restriction.
- (5) In the application of subsection (2) above to a trading company, the estate or trading income for an accounting period, if it is less than the relevant maximum amount shall be treated as reduced by one-fifth of the amount required to make it up to that relevant maximum amount or, if it is less than the relevant minimum amount, shall be disregarded.
- (6) The relevant maximum and minimum amounts referred to in subsection (5) above shall be determined as follows:—
- (a) where the company has no associated company in the accounting period, those amounts are £9,000 and £1,500 respectively;
  - (b) where the company has one or more associated companies in the accounting period, the relevant maximum amount is £9,000 divided by one plus the number of those associated companies and the relevant minimum amount is £1,500 divided by one plus the number of those associated companies.
- (7) In applying subsections (5) and (6) above to any accounting period of a trading company, an associated company which has not carried on any trade or business at any time in that accounting period (or, if an associated company during part only of that accounting period, at any time in that part of that accounting period) shall be disregarded; and for the purposes of this section a company is to be treated as an "

associated company" of another at a given time if at that time one of the two has control of the other or both are under the control of the same person or persons.

- (8) In determining how many associated companies a trading company has got in an accounting period or whether a trading company has an associated company in an accounting period, an associated company shall be counted even if it was an associated company for part only of the accounting period, and two or more associated companies shall be counted even if they were associated companies for different parts of the accounting period.
- (9) For an accounting period of less than twelve months the relevant maximum and minimum amounts determined in accordance with subsection (6) above shall be proportionately reduced.
- (10) The provisions of this section have effect subject to section 294 below.

**291 Distributions to be taken into account, and meaning of " distributable income " etc.**

- (1) For the purposes of the provisions of this Chapter relating to shortfalls in the distributions of a close company, the distributions for an accounting period shall be taken to consist of—
  - (a) any dividends which are declared in respect of the period and are paid during the period or within eighteen months after it, and
  - (b) all distributions made in the period except dividends which, in relation to any previous period, would fall under paragraph (a) above:

Provided that, where a period of account is not an accounting period, dividends which, if it were an accounting period, would be treated under paragraph (a) above as distributions for that accounting period shall be apportioned to any accounting period or part of an accounting period falling within the period of account in proportion to the distributable income of each such period or part.

- (2) For the purposes of the provisions referred to in subsection (1) above, the " distributable income " of a company for an accounting period shall be the amount of its distributable profits for the period exclusive of the part attributable to chargeable gains, and, for the purposes of this subsection—
  - (a) the " distributable profits " of a company for an accounting period shall be the amount on which corporation tax falls finally to be borne, less the amount of that tax, but with additions equal to—
    - (i) any franked investment income, less the amount of any relief given against it under section 254 or section 255 of this Act, and
    - (ii) any group income,
  - (b) the part of a company's distributable profits attributable to chargeable gains shall be taken to be the amount of the chargeable gains on which corporation tax is finally borne less the amount of that tax, and
  - (c) the amount on which corporation tax falls finally to be borne (but not the amount of that tax) shall be computed as if section 254 of this Act did not include subsection (5) or subsection (6) of that section (and as if section 255 of this Act did not apply the said subsection (5)).
- (3) For the purposes of the provisions referred to in subsection (1) above, the " distributable investment income " of a company for an accounting period shall be the amount of the

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distributable income, exclusive of the part attributable to estate or trading income, and less whichever is the smaller of—

- (a) 10 per cent. of the estate or trading income, and
  - (b) £200 or, if the accounting period is of less than twelve months, a proportionately reduced amount.
- (4) For the purposes of this Chapter, the " estate or trading income " of a company means—
- (a) income which is not investment income for the purposes of section 292(1) below, and
  - (b) income which is chargeable to tax under Schedule A or Schedule B, and income (other than yearly or other interest) which is chargeable to tax under Schedule D, and which arises from the ownership or occupation of land (including any interest in or right over land) or from the letting furnished of any building or part of a building.
- (5) The amount for part of an accounting period of any description of income referred to in subsections (2) to (4) above shall be a proportionate part of the amount for the whole period, and, in determining the amount for any period of any description of income, any deduction from the company's profits for charges on income, expenses of management or other amounts deductible from profits of more than one description shall be treated as made from such profits, and in such proportions from those profits, as is appropriate.

## **292 Meaning of "trading company" and "member of a trading group"**

- (1) For the purposes of this Chapter, a " trading company " is any company which exists wholly or mainly for the purpose of carrying on a trade, and any other company whose income does not consist wholly or mainly of investment income, that is to say, income, which, if the company were an individual, would not be earned income; but for this purpose any amount which is apportioned to a company under section 296 below shall be deemed to be income of the company and to be investment income.
- (2) For the purposes of this Chapter, a company is to be treated as a " member of a trading group " if, but only if—
- (a) it exists wholly or mainly for the purpose of co-ordinating the administration of a group of two or more companies each of which is under its control and exists wholly or mainly for the purpose of carrying on a trade, or
  - (b) it is under the control of another company resident in the United Kingdom and not itself under the control of a third company, and it exists wholly or mainly for the purpose of a trade or trades carried on by that other company or by a group which, consisting of that other company and a company or companies also under its control and resident in the United Kingdom, exists wholly or mainly for the purpose of carrying on the said trade or trades:

Provided that a company shall not be treated as a member of a trading group by reason of any company having the control of another if that control is exercised through a company which is not resident in the United Kingdom or through a company whose control depends on a holding a profit on the sale of which would be treated as a trading receipt of the company.

## **293 Requirements of the company's business**

- (1) For the purposes of section 290(3) above there shall be regarded as income available for distribution and not as having been applied, or as being applicable, to the current requirements of a company's business, or to such other requirements as may be necessary or advisable for the maintenance and development of that business—
- (a) any sum expended or applied, or intended to be expended or applied, out of the income of the company, otherwise than in pursuance of an obligation entered into by the company before 4th August 1914—
    - (i) in or towards payment for the business, undertaking or property which the company was formed to acquire or which was the first business, undertaking or property of a substantial character in fact acquired by the company, or
    - (ii) in redemption or repayment of any share or loan capital or debt (including any premium thereon) issued or incurred in or towards payment for any such business, undertaking or property, or issued or incurred for the purpose of raising money applied or to be applied in or towards payment therefor, or
    - (iii) in meeting any obligations of the company in respect of the acquisition of any such business, undertaking or property, or
    - (iv) in redemption or repayment of any share or loan capital or debt (including any premium thereon) issued or incurred otherwise than for adequate consideration, and
  - (b) any sum expended or applied, or intended to be expended or applied, in pursuance or in consequence of any fictitious or artificial transaction, and
  - (c) in the case of a company which is neither a trading company nor a member of a trading group, any sum expended or applied, or available to be expended or applied, out of the income of the company in or towards the redemption, repayment or discharge of any loan capital or debt (including any premium thereon) in respect of which any person is a loan creditor of the company.
- (2) For the purposes of subsection (1)(a)(iv) above, share or loan capital or debt shall be deemed to be issued or incurred otherwise than for adequate consideration if—
- (a) it is issued or incurred for consideration the value of which to the company is substantially less than the amount of the capital or debt (including any premium thereon), or
  - (b) it is issued or incurred in or towards, or for the purpose of raising money applied or to be applied in or towards, the redemption or repayment of any share or loan capital or debt which itself was issued or incurred for such consideration as is mentioned in paragraph (a) of this subsection or which represents, directly or indirectly, any share or loan capital or debt which itself was issued or incurred for such consideration;

and references in the preceding provisions of this section to money applied or to be applied for any purpose shall be deemed to include references to money applied or to be applied in or towards the replacement of that money.

## **294 Cessations and liquidations**

- (1) For the purposes of sections 289 and 290 above, where a close company ceases to carry on the trade, or the business of holding investments, in which its activities wholly or mainly consisted, then, subject to subsection (2) below, but notwithstanding any other provision limiting the required standard of distributions, the required standard

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for any accounting period in which that event occurs, or which ends in or with the twelve months ending with that event, shall be calculated on the whole, instead of on 60 per cent. of the estate or trading income (if any) taken into account, and without any deduction in respect of the requirements of the business.

- (2) Where subsection (1) above applies for an accounting period and the company shows that it could not make distributions up to the required standard without prejudice to the claims of creditors (excluding those mentioned in subsection (3) below), then, for the purposes of section 289 above so much of the shortfall as the company shows could not be avoided without prejudice to those claims shall be disregarded.
- (3) The creditors to be excluded for the purposes of subsection (2) above are all participators and associates of participators, and all creditors in respect of debts originally created in favour of or due to a person who was then a participator or associate of a participator:

Provided that a creditor is not to be excluded in respect of any debt which either—

- (a) arose in the ordinary course of the company's trade or the company's business of holding investments and also in the ordinary course of a trade or profession of the creditor or, as the case may be, of the participator or associate who was the original creditor, or
- (b) is a debt for remuneration chargeable to income tax under Schedule E, or
- (c) is a debt for any rent or other payment due for the use of tangible property or of copyright in a literary, dramatic, musical or artistic work within the meaning of the Copyright Act 1956 (or any corresponding right under the law of a country to which that Act does not extend), and not representing more than a reasonable commercial consideration for that use.
- (4) Where a resolution is passed, or an order is made, for the winding up of a close company, or where any other act is done for a like purpose in the case of a winding up otherwise than under the Companies Act 1948, subsections (1) to (3) above shall apply for any accounting period ending in or with the twelve months ending with the passing of the resolution or other event, or for any later accounting period, as they apply, in a case falling within subsection (1) above, for an accounting period in which a close company ceases to carry on a trade.
- (5) Where an event mentioned in subsection (4) above occurs, then any assessment on the company in respect of a shortfall—
- (a) for an accounting period ending in or with the twelve months ending with the said event shall be an assessment as for a distribution made immediately before that event,
- (b) for any later accounting period shall be an assessment as for a distribution made immediately before the end of that period,
- and the amount due under the assessment shall be recoverable accordingly.

## **295 The shortfall charge: protection by transmission of accounts**

- (1) A close company may, at any time after the general meeting at which the accounts for any period of account are adopted, forward to the inspector a copy of those accounts, together with a copy of the report (if any) of the directors for that period and such further information (if any) as it may think fit, and may request the inspector to proceed under this section in relation to any accounting period comprised in that period of account:

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Provided that this subsection shall not apply if the company is neither a trading company nor a member of a trading group and has no estate or trading income.

- (2) Where the inspector receives a request made in accordance with subsection (1) above in relation to any accounting period, then, subject to subsection (3) below, he shall, within three months after receipt of the request, intimate to the company whether or not he proposes to make an assessment on the company in respect of the accounting period under section 289 above.
- (3) On receiving a request made in accordance with subsection (1) above, the inspector may, not later than three months after the receipt of the request, call on the company to furnish him with such further particulars as he may reasonably require; and, if the inspector does so, the time for giving the intimation required by subsection (2) above shall not expire before three months after he has been furnished with those particulars.
- (4) Where the inspector receives a request made in accordance with subsection (1) above in relation to any accounting period, and does not within the time limited by subsections (2) and (3) above intimate his intention to make an assessment in respect of the period, no such assessment shall be made unless either—
  - (a) the information accompanying the request, and any further particulars furnished to the inspector in connection therewith, are not such as to make full and accurate disclosure of all facts and considerations which are material to be known to him, or
  - (b) within twelve months of the end of the period any of the provisions of section 294 above has effect in relation to the company.

#### *Surtax apportionments*

### **296 Apportionment for surtax of close company's income**

- (1) Subject to the provisions of this section, the income of a close company for any accounting period may, for the purposes of surtax, be apportioned by the Board among the participators, and any amount apportioned to a close company, whether originally or by one or more sub-apportionments under this provision, may be further apportioned among the participators in that company.
- (2) For the purposes of an apportionment under this section, there shall be added to the amount of the income to be apportioned any amounts which were deducted in respect of annual payments, not being interest, in arriving at the company's distributable income (as defined in section 291(2) above) for the accounting period and which, in the case of an individual, would not have been deductible or would have been treated as his income in computing his total income for surtax.
- (3) Subject to subsection (2) above and (in the case of non-trading companies) to section 298(2) below.—
  - (a) an apportionment shall not be made under this section of a company's income for an accounting period unless an assessment is made on the company under section 289 above in respect of a shortfall in its distributions for that period, and
  - (b) the amount apportioned shall be the amount of the shortfall taken into account in making that assessment (and for this purpose a set-off of a surplus of

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franked investment income under section 289(3) above shall not be taken as reducing the amount of the shortfall),

and an assessment under the said section 289, when it becomes final and conclusive, shall also be final and conclusive for the purposes of this subsection.

- (4) Subject to subsection (5) below and (in the case of non-trading companies) to section 298 below, any apportionment under this section, including any sub-apportionment of an amount directly or indirectly apportioned to a company, shall be made according to the respective interests in the company in question of the participators.
- (5) In determining for the purposes of subsection (4) above the respective interests of the participators, the Board may if it seems proper to them to do so attribute to each participator an interest corresponding to his interest in the assets of the company available for distribution among the participators in the event of a winding up.
- (6) This section shall, notwithstanding the winding-up of a company, or the passing of any resolution or the making of any order or anything else done for the winding up of a company, continue to apply as if the company were not being wound up.
- (7) Notice of an apportionment under this section shall be given by serving on the company a statement showing the total amount apportioned and, as the Board think fit, either the amount apportioned to each participator or the amount apportioned to each class of shares.
- (8) A company which is aggrieved by any notice of apportionment under this section shall be entitled to appeal to the Special Commissioners on giving notice to an officer of the Board within thirty days after the date of the notice; and subject to that an apportionment under this section shall be final and conclusive.
- (9) If a company fails or refuses, on being required to do so by the Board, to furnish a statement of its income for any accounting period apportionable under this section, or renders a statement with which the Board are not satisfied, the Board may make an estimate of that income to the best of their judgment.
- (10) On an appeal to the Special Commissioners, the Commissioners shall have jurisdiction to review any relevant decision taken by the Board under subsection (5) or subsection (9) above.

## **297 Consequences of apportionment under s. 296**

- (1) Where an apportionment of income of a close company has been made under section 296 above, surtax shall be assessed and charged in respect of the sum so apportioned in accordance with the following provisions of this section.
- (2) Subject to subsection (4) below, and (in the case of non-trading companies) to section 298(3) below, the income apportioned to a participator in a company shall for the purposes of surtax form part of his total income, and subject to section 529 of this Act shall be deemed to be the highest part of that income and to have been received by him at the end of the accounting period to which the apportionment relates.
- (3) Any amount apportioned to the personal representatives of a deceased person shall be treated as included as regards surtax in the aggregate income of the estate for the purposes of Part XV of this Act.



- (4) No individual shall be charged to surtax by virtue of any apportionment unless the sum or, where there is a sub-apportionment, the aggregate sum on which he is so chargeable amounts either to £100 or more or to 5 per cent. or more of the amount apportioned.
- (5) Any surtax chargeable under this section in respect of the amount of the income of a close company apportioned to any participator shall be assessed upon that participator in the name of the company and, subject as hereinafter provided, shall be payable by the company, and all the provisions of the Income Tax Acts relating to surtax assessments and the collection and recovery of surtax shall, with any necessary modification, apply to surtax assessments and to the collection and recovery of surtax charged under this section.
- (6) A notice of charge to surtax under this section shall in the first instance be served on the participator on whom the tax is assessed, and if the participator does not within twenty-eight days from the date of the notice elect to pay the tax, a notice of charge shall be served on the company, and the tax shall thereupon become payable by the company:

Provided that—

- (a) nothing in this subsection shall prejudice the right to recover from the company the surtax charged in respect of any participator who has elected as aforesaid but who fails to pay the tax by 1st January in the year next following the year of assessment or within twenty-eight days of the date on which he so elected, whichever is the later, and
- (b) where a notice of charge is served on a company and the tax thereupon becoming payable is not paid by the company before the expiry of three months from the date of service or before 2nd January in the year next following the year of assessment, whichever is the later, the tax shall thereupon, without prejudice to the right to recover it from the company, be recoverable from the participator on whom it was assessed.
- (7) Where, in consequence of a sub-apportionment, subsections (5) and (6) above apply in relation to a participator in a company other than the company whose income is apportioned, references in those subsections to the company shall be taken as references to the company whose income is apportioned.
- (8) Where—
- (a) any undistributed income which has been assessed and charged to surtax under this section is subsequently distributed, and
- (b) on the occasion of its distribution the distributions for the accounting period exceed the required standard,

a fraction of any amount to which an individual is entitled shall be deemed not to form part of his total income for the purposes of surtax; and the said fraction is

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

where—

A is the said excess, and

B is the whole distributions for the period.

- (9) Sections 34(1) and 37(1) (time limits for assessment) and section 33(1) (relief for error or mistake) of the Taxes Management Act 1970 shall apply in relation to surtax assessed under this section as if for references to six years there were substituted references to seven years.

**298 Apportionment of income of non-trading companies**

- (1) The provisions of this section and section 299 below apply in relation to a close company which is not a trading company, and in those provisions such a company is referred to as a " non-trading company ".
- (2) There may be apportioned under section 296 above, if the Board see reason for it, the whole of a non-trading company's income for an accounting period up to the amount of the required standard (notwithstanding that there has been no shortfall in distributions for that period), together with any addition to be made under subsection (2) of that section, but with such reduction, if any, as may be just in respect of distributions made for the period to persons other than participators and associates of participators :

Provided that for this purpose the required standard shall be treated as reduced by so much of any shortfall in the distributions for the period as would under section 290(4) above or, where subsection (1) of section 294 above applies, under subsection (2) of that section, be disregarded in an assessment made in respect of that shortfall.

- (3) Where an apportionment is made by virtue of subsection (2) above, an individual shall not be charged to surtax on an amount treated in consequence of the apportionment or any sub-apportionment as being his income except in so far as it exceeds the amount which, apart from the apportionment, falls in respect of distributions made by the company in the accounting period to be included in the statement of total income to be made by him for the purposes of surtax.
- (4) For the purposes of section 296(4) above, a loan creditor shall be deemed to have an interest in any company which is a non-trading company to the extent that the income to be apportioned, or assets representing it, has or have been expended or applied, or is or are available to be expended or applied, in redemption, repayment or discharge of the loan capital or debt (including any premium thereon) in respect of which he is a loan creditor.
- (5) In the case of a non-trading company where, by virtue or in consequence of any settlement, a loan creditor has been or could be required by some other person (in this subsection referred to as " the beneficiary ") to pay to the beneficiary the whole or a part of any sums which have been or might be paid to the loan creditor by the company in redemption, repayment or discharge of the loan capital or debt (including any premium thereon) in respect of which he is a loan creditor, or to pay or transfer to the beneficiary the whole or a part of any sums or assets representing (directly or indirectly) any such sums, then—
- (a) if the requirement related, or could relate, to the whole of the sums or assets in question, the beneficiary and not the loan creditor shall be deemed for the purposes of section 296 above to be a participator in the company and, for the purposes of subsection (4) of that section, to have the interest in the company which the loan creditor would, but for this provision, be deemed to have in respect of that loan capital or debt; and
  - (b) in any other case, the beneficiary, as well as the loan creditor, shall be deemed to be a participator in the company for the purposes of section 296 above and, for the purposes of subsection (4) of that section, the interest which the loan creditor is deemed to have in the company in respect of that loan capital or debt shall be divided between them in such manner as the Board think fit.

In this subsection " settlement" includes any disposition, trust, covenant, agreement, arrangement or transfer of assets.

- (6) On an appeal to the Special Commissioners, the Commissioners shall have jurisdiction to review any relevant decision taken by the Board in exercise of their functions under subsection (5) above.

**299 Supplementary provisions as to apportionment of income of non-trading companies**

- (1) If, in the case of a non-trading company, the Board are of opinion that any person who is not a participator in the company for the purposes of section 296 above is, or is likely to be, able to secure that income or assets, whether present or future, of the company will be applied either directly or indirectly for his benefit, they may, if they think fit, treat him as a participator in the company for those purposes.
- (2) In apportioning the income of a non-trading company under section 296 above—
- (a) to any person who is treated as a participator in the company by virtue of subsection (1) above, or
  - (b) to any person who is a participator in the company but has no relevant interests in the company, and in their opinion is, or is likely to be, able to secure that income or assets, whether present or future, of the company will be applied either directly or indirectly for his benefit, or
  - (c) to any person who is a participator in the company and in their opinion is, or is likely to be, able to secure that income or assets, whether present or future, of the company will be applied either directly or indirectly for his benefit to a greater extent than is represented in the value for apportionment purposes of his relevant interests in the company considered in relation to the value for those purposes of the relevant interests of other persons therein,
- the Board may apportion to him such part of the income of the company as appears to them to be appropriate, and may adjust as they may consider necessary the apportionment of the remainder of the company's income.
- (3) Subsection (2) above applies to the sub-apportionment of an amount directly or indirectly apportioned to a non-trading company under section 296 above as it applies to an apportionment of the company's income.
- (4) For the purposes of this section, a person shall be deemed to be able to secure that income or assets will be applied for his benefit if he is in fact able to do so by any means whatsoever, whether he has any rights at law or in equity in that behalf or not, and the Board may draw the inference that a person is likely to be able to secure that income or assets of a company will be applied for his benefit or, as the case may be, will be so applied to a greater extent than is represented in the value for apportionment purposes of any relevant interests which he has in the company, if and only if they are satisfied—
- (a) that he has, directly or indirectly, transferred assets to the company the value of which is not represented, or is not adequately represented, in the value for apportionment purposes of any relevant interests which he has in the company, and
  - (b) that the persons who, whether as directors or share holders or in any other capacity have, or will at any material time have, powers or rights affecting the disposal or application of the income or assets of the company are likely to act in accordance with his wishes, or that he is able to secure that persons who at the material times will have such powers or rights will be persons likely to act in accordance with his wishes.

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- (5) Where the Board have, under subsection (2) above, apportioned income of a company for any accounting period, and the amount apportioned to any participator is less than the amount of income distributed to that participator by the company in respect of the said period in such manner that the amount distributed would, apart from this subsection, fall to be included in the statement of total income to be made by that participator for the purposes of surtax, the excess of the amount so distributed over the amount apportioned to that participator shall be deemed not to form part of the participator's total income for tax purposes:

Provided that, where notice of appeal is given against the apportionment, the reference in this subsection to the amount apportioned to the participator shall be construed as a reference to the amount apportioned to him on the final determination of the appeal.

- (6) For the purposes of this section—
- (a) references to a person shall, in the case of an individual, be deemed to include the wife or husband of the individual,
  - (b) " assets " includes property or rights of any kind, and " transfer ", in relation to rights, includes the creation of those rights, and
  - (c) " relevant interests " means, in relation to a person connected in any way with a company, interests by reference to which income of the company could be apportioned to him under section 296 of this Act apart from this section, and " value for apportionment purposes " means, in relation to any relevant interests in any company, the value falling to be put thereon in apportioning the income of the company under the said section 296.
- (7) On an appeal to the Special Commissioners, the Commissioners shall have jurisdiction to review any relevant decision taken by the Board in exercise of their functions under this section.

### **300 Apportionment of interest paid by certain non-trading companies**

- (1) Subject to the provisions of this section, all interest paid by a close company in any accounting period shall be apportioned under section 296 above as if the interest were income of the close company for the accounting period.
- (2) Subsection (1) above shall not apply to a company—
- (a) if it is a trading company, or
  - (b) if it is a member of a trading group, or
  - (c) if the whole, or substantially the whole, of its income is of one or more of the following descriptions, that is—
    - (i) estate or trading income,
    - (ii) interest, and dividends or other distributions, received from a 51 per cent. subsidiary of it (both companies being bodies corporate) if the subsidiary is itself within any of paragraphs (a), (b) and (c) of this subsection.
- (3) Subsection (1) above shall not apply—
- (a) to interest which would be eligible for relief under section 57 or section 62 of this Act (loans for purchase or improvement of land and certain pre-1970 loans) if paid by an individual, or
  - (b) to interest which is money wholly and exclusively laid out or expended for the purposes of a trade carried on by the company.

- (4) If any amount of interest apportionable under subsection (1) above is interest paid to a participator in the close company, the amount apportionable to that participator by virtue of subsection (1) above shall be reduced by the first-mentioned amount (and without requiring the reduction to be reflected in the amount apportioned to any other person).
- (5) Section 296(3) above has effect subject to the provisions of this section, and an amount apportionable by virtue of this section shall be in addition to amounts (if any) apportionable under section 296 above without this section.
- (6) In determining under section 296 above and the provisions applying for the purposes of that section the person to whom any amount is to be apportionable by virtue of this section, any interest which any person possesses as a loan creditor shall be disregarded (but without prejudice to the making of an apportionment to him in any other capacity).
- (7) In determining for the purposes of subsection (2)(c)(ii) above whether one body corporate is a 51 per cent. subsidiary of another, that other shall be treated as not being the owner—
  - (a) of any share capital which it owns directly or indirectly in a body corporate not resident in the United Kingdom, or
  - (b) of any share capital which it owns indirectly and which is owned directly by a body corporate for which a profit on the sale of the shares would be a trading receipt.

### *Information*

#### **301 Powers of Board and inspectors to obtain information**

- (1) The Board may, by notice in writing, require any company which is, or appears to them to be, a close company to furnish them, within such time (not being less than twenty-eight days) as may be specified in the notice, with such particulars as they think necessary for the purposes of sections 296 to 300 above.
- (2) If for the purposes of those sections any person in whose name any shares are registered is so required by notice in writing by the Board, he shall state whether or not he is the beneficial owner of the shares and, if not the beneficial owner of the shares or any of them, shall furnish the name and address of the person or persons on whose behalf the shares are registered in his name.
- (3) Subsection (2) above shall apply in relation to loan capital as it applies in relation to shares.
- (4) The Board may, for the purposes of the said sections, by notice in writing require—
  - (a) any company which appears to them to be a close company to furnish them with particulars of any bearer securities issued by the company, and the names and addresses of the persons to whom the securities were issued and the respective amounts issued to each person, and
  - (b) any person to whom securities were issued as afore said, or to or through whom such securities were subsequently sold or transferred, to furnish them with such further information as they may require with a view to enabling them to ascertain the names and addresses of the persons beneficially interested in the securities.

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In this subsection "securities " includes shares, stocks, bonds, debentures and debenture stock, and also any promissory note or other instrument evidencing indebtedness issued to a loan creditor of the company.

- (5) Any power which the Board may exercise under this section for the purposes of sections 296 to 300 of this Act may be exercised by the inspector for the purposes of any of sections 286 to 295 of this Act.

### *General definitions*

## **302 Meaning of " associated company " and " control "**

- (1) For the purposes of this Chapter, other than section 290 above, a company is to be treated as another's " associated company " at a given time if, at that time or at any time within one year previously, one of the two has control of the other, or both are under the control of the same person or persons.
- (2) For the purposes of this Chapter, a person shall be taken to have control of a company—
- (a) if he exercises, or is able to exercise or is entitled to acquire, control, whether direct or indirect, over the company's affairs, and in particular, but without prejudice to the generality of the preceding words, if he possesses, or is entitled to acquire, the greater part of the share capital or voting power in the company, or
  - (b) if he possesses, or is entitled to acquire, either—
    - (i) the greater part of the issued share capital of the company, or
    - (ii) such part of that capital as would, if the whole of the income of the company were in fact distributed to the members, entitle him to receive the greater part of the amount so distributed, or
    - (iii) such redeemable share capital as would entitle him to receive on its redemption the greater part of the assets which, in the event of a winding up, would be available for distribution among members, or
  - (c) if in the event of a winding up he would be entitled to the greater part of the assets available for distribution among members.
- (3) Where two or more persons together satisfy any of the conditions in paragraphs (a) to (c) of subsection (2) above, they shall be taken to have control of the company.
- (4) In subsection (2) above " member " includes any person having a share or interest in the capital or income of the company, and, for the purposes of that subsection, a person shall be treated as entitled to acquire anything which he is entitled to acquire at a future date, or will at a future date be entitled to acquire ; and, for the purposes of paragraphs (b) (iii) and (c) of that subsection, any loan creditor may be treated as a member (and the references to share capital as including loan capital).
- (5) For the purposes of subsections (2) and (3) above, there shall be attributed to any person any rights or powers of a nominee for him, that is to say, any rights or powers which another person possesses on his behalf or may be required to exercise on his direction or behalf.
- (6) For the purposes of subsections (2) and (3) above, there may also be attributed to any person all the rights and powers of any company of which he has, or he and associates

of his have, control or any two or more such companies, or of any associate of his or of any two or more associates of his, including those attributed to a company or associate under subsection (5) above, but not those attributed to an associate under this subsection ; and such attributions shall be made under this subsection as will result in the company being treated as under the control of five or fewer participators if it can be so treated.

### **303 Meaning of "participator", "associate", "director" and "loan creditor"**

- (1) For the purposes of this Chapter, a " participator " is, in relation to any company, a person having a share or interest in the capital or income of the company, and, without prejudice to the generality of the preceding words, includes—
- (a) any person who possesses, or is entitled to acquire, share capital or voting rights in the company,
  - (b) any loan creditor of the company,
  - (c) any person who possesses, or is entitled to acquire, a right to receive or participate in distributions of the company (construing " distributions " without regard to section 284 or section 285 of this Act) or any amounts payable by the company (in cash or in kind) to loan creditors by way of premium on redemption, and
  - (d) any person who is entitled to secure that income or assets (whether present or future) of the company will be applied directly or indirectly for his benefit.

In this subsection references to being entitled to do anything apply where a person is presently entitled to do it at a future date, or will at a future date be entitled to do it.

- (2) The provisions of subsection (1) above are without prejudice to any particular provision of this Chapter requiring a participator in one company to be treated as being also a participator in another company.
- (3) For the purposes of this Chapter " associate " means, in relation to a participator—
- (a) any relative or partner of the participator,
  - (b) the trustee or trustees of any settlement in relation to which the participator is, or any relative of his (living or dead) is or was, a settlor (" settlement" and " settlor" having here the same meaning as in section 454(3) of this Act), and
  - (c) where the participator is interested in any shares or obligations of the company which are subject to any trust, or are part of the estate of a deceased person, any other person interested therein, and has a corresponding meaning in relation to a person other than a participator:

Provided that paragraph (c) above shall not apply so as to make an individual an associate as being entitled or eligible to benefit under a trust—

- (i) if the trust relates exclusively to a fund or scheme approved under section 208 or section 222 (superannuation funds and retirement schemes) of this Act, or to a scheme the whole of which is an " excepted provident fund or staff assurance scheme or other similar scheme" as defined in section 224 of this Act, or
- (ii) if the trust is exclusively for the benefit of the employees, or the employees and directors, of the company or their dependants (and not wholly or mainly for the benefit of directors or their relatives), and the individual in question is not (and could not as a result of the operation of the trust become), either on

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his own or with his relatives, the beneficial owner of more than 5 per cent. of the ordinary share capital of the company;

and in applying paragraph (ii) of this proviso, any charitable trusts which may arise on the failure or determination of other trusts shall be disregarded.

- (4) In subsection (3) above "relative" means husband or wife, parent or remoter forebear, child or remoter issue, or brother or sister.
- (5) For the purposes of this Chapter "director" includes any person occupying the position of director by whatever name called, any person in accordance with whose directions or instructions the directors are accustomed to act, and any person who—
- (a) is a manager of the company or otherwise concerned in the management of the company's trade or business, and
  - (b) is remunerated out of the funds of that trade or business, and
  - (c) is, either on his own or with one or more associates, the beneficial owner of, or able, directly or through the medium of other companies or by any other indirect means, to control 20 per cent. or over of the ordinary share capital of the company.
- (6) In subsection (5)(c) above, the expression "either on his own or with one or more associates" requires a person to be treated as owning or, as the case may be, controlling what any associate owns or controls, even if he does not own or control share capital on his own, and in paragraph (ii) of the proviso to subsection (3) above the expression "either on his own or with his relatives" has a corresponding meaning.
- (7) For the purposes of this Chapter "loan creditor", in relation to a company, means a creditor in respect of any debt incurred by the company—
- (a) for any money borrowed or capital assets acquired by the company, or
  - (b) for any right to receive income created in favour of the company, or
  - (c) for consideration the value of which to the company was (at the time when the debt was incurred) substantially less than the amount of the debt (including any premium thereon),
- or in respect of any redeemable loan capital issued by the company:

Provided that a person carrying on a business of banking shall not be deemed to be a loan creditor in respect of any loan capital or debt issued or incurred by the company for money lent by him to the company in the ordinary course of that business.

## PART XII

### SPECIAL CLASSES OF COMPANIES AND BUSINESSES

#### CHAPTER I

##### INVESTMENT AND INSURANCE COMPANIES : EXPENSES OF MANAGEMENT AND CAPITAL ALLOWANCES

### 304 Expenses of management of investment companies (including savings banks)

- (1) In computing for the purposes of corporation tax the total profits for any accounting period of an investment company resident in the United Kingdom there shall be



deducted any sums disbursed as expenses of management (including commissions) for that period, except any such expenses as are deductible in computing income for the purposes of Schedule A:

Provided that there shall be deducted from the amount treated as expenses of management the amount of any income derived from sources not charged to tax, other than franked investment income and group income.

- (2) Where in any accounting period of an investment company the expenses of management deductible under subsection (1) above, together with any charges on income paid in the accounting period wholly and exclusively for purposes of the company's business, exceed the amount of the profits from which they are deductible, the excess shall be carried forward to the succeeding accounting period; and the amount so carried forward shall be treated for purposes of this section, including any further application of this subsection, as if it had been disbursed as expenses of management for that accounting period.
- (3) For the purposes of subsections (1) and (2) above, there shall be added to a company's expenses of management in any accounting period the amount of any allowances falling to be made to the company for that period by virtue of section 306 below, in so far as effect cannot be given to them under subsection (2) of that section.
- (4) Where an appeal against an assessment to corporation tax or against a decision on a claim under section 254 of this Act (set off of losses etc. against franked investment income) relates exclusively to the relief to be given under subsection (1) above, the appeal shall lie to the Special Commissioners, and if and so far as the question in dispute on any such appeal which does not lie to the Special Commissioners relates to that relief, that question shall, instead of being determined on the appeal, be referred to and determined by the Special Commissioners, and the Taxes Management Act 1970 shall apply as if that reference were an appeal.
- (5) In this section " investment company " means any company whose business consists wholly or mainly in the making of investments and the principal part of whose income is derived therefrom, but includes any savings bank or other bank for savings.

### **305 Expenses of management of insurance companies**

- (1) Subject to the provisions of this section and of section 307 below, section 304 above shall apply for computing the profits of a company carrying on life assurance business, whether mutual or proprietary, (and not charged to corporation tax in respect of it under Case I of Schedule D), whether or not the company is resident in the United Kingdom, as that section applies in relation to an investment company except to—
  - (a) there shall be deducted from the amount treated as expenses of management for any accounting period the amount of any fines, fees or profits arising from reversions, and
  - (b) no deduction shall be made under the proviso to subsection (1) of section 304 above.
- (2) Relief in respect of management expenses shall not be given to any such company, whether under section 254 of this Act or under subsection (1) above, so far as it would, if given in addition to all other reliefs to which the company is entitled, reduce the income tax and corporation tax borne by the company on the income and gains of its life assurance business for any accounting period to less than would have been paid if the company had been charged to tax in respect of that business under Case I of

Schedule D; and where relief has been withheld in respect of any accounting period by virtue of this subsection, the excess to be carried forward by virtue of section 304(2) above shall be increased accordingly.

The reference in paragraph 2(1) of Schedule 6 to the Finance Act 1965 (computation of chargeable gains: exclusion of sums taken into account in computing income) to computing income or profits or gains or losses shall not be taken as applying to a computation of a company's income for the purposes of this subsection.

- (3) In subsection (2) above " life assurance business " includes the business of granting annuities on human life.

### **306 Capital allowances for machinery and plant**

- (1) Subject to the provisions of this section, Chapter II of Part I of the Capital Allowances Act 1968, and such other provisions of the Corporation Tax Acts as relate to allowances or charges under that Chapter, shall apply with any necessary adaptations in relation to machinery or plant provided for use or used for the purposes of the management of the business—

- (a) of an investment company (as defined in section 304(5) above), or
- (b) of a company carrying on the business of life assurance,

as they apply in relation to machinery or plant provided for use or used for the purposes of a trade ; and, except as provided by subsection (2) below, in relation to any allowances and balancing charges which fall to be made by virtue of this section the Corporation Tax Acts shall apply as if they were to be made in taxing a trade.

- (2) As respects allowances or charges falling to be made by virtue of this section in relation to any business—

- (a) allowances for any accounting period shall, as far as may be, be given effect by deducting the amount of the allowance from any income for the period of the business, and in so far as effect cannot be so given section 304(3) above shall apply ; and
- (b) effect shall be given to any charge by treating the amount on which the charge is to be made as income of the business;

and section 46 of the Capital Allowances Act 1968 (manner of making allowances and charges under Chapter II) shall not apply.

- (3) No allowance, other than an investment allowance, and no balancing charge shall be made by virtue of this section for any accounting period in respect of expenditure incurred by any person on machinery or plant, except in pursuance of an election made by him for that accounting period; but an election for any chargeable period shall have effect as an election for that and all subsequent chargeable periods.
- (4) An election under subsection (3) above shall be made by notice in writing to the inspector either for all machinery or plant provided for use or used for the purposes of the management of the relevant business, or for any class of machinery or plant so provided or used; but an election for machinery or plant of any class shall not be made for any accounting period after an assessment in respect of the business for that or a subsequent accounting period has been finally determined without such an election.
- (5) Corresponding allowances or charges in the case of the same machinery or plant shall not be made under Chapter II of Part I of the Capital Allowances Act 1968 (whether for the same chargeable period or for different chargeable periods) both

under subsection (2) above and in some other way; and, on any assessment to tax, expenditure to which an election under this section applies shall not be taken into account otherwise than under the said Chapter II (and except as provided by section 304(3) above).

- (6) In this section references to the purposes of the management of a business are to be taken as referring to those purposes expenditure on which would, apart from this section, be treated as expenses of management within the meaning of section 304 above.
- (7) The Tax Acts shall have effect as if this section were contained in Chapter II of Part I of the Capital Allowances Act 1968.

## CHAPTER II

### INSURANCE COMPANIES, ETC

#### *Insurance companies*

#### **307 Separation of different classes of business**

- (1) Where an insurance company carries on life assurance business in conjunction with insurance business of any other class, the life assurance business shall, for the purposes of the Corporation Tax Acts, be treated as a separate business from any other class of business carried on by the company.
- (2) Where an insurance company carries on both ordinary life assurance business and industrial life assurance business, the business of each such class shall, for the purposes of the Corporation Tax Acts, be treated as though it were a separate business, and section 305 of this Act shall apply separately to each such class of business.

#### **308 Case I computation: investment income, etc.**

- (1) Section 239 of this Act shall not prevent franked investment income of a company resident in the United Kingdom which carries on life assurance business from being taken into account as part of the profits in computing trading income in accordance with the provisions applicable to Case I of Schedule D.
- (2) In ascertaining for the purposes of section 177 or section 178 of this Act (relief for losses) whether and to what extent a company has incurred a loss on its life assurance business any profits derived from the investments of its life assurance fund (including franked investment income of a company so resident) shall be treated as part of the profits of that business.

#### **309 Case I computation: profits reserved for policy holders and annuitants**

Where the profits of an insurance company in respect of its life assurance business are, for the purposes of this Act, computed in accordance with the provisions thereof applicable to Case I of Schedule D, such part of those profits as belongs or is allocated to, or is reserved for, or expended on behalf of, policy holders or annuitants shall be excluded in making the computation, but if any profits so excluded as being reserved for policy holders or annuitants cease at any time to be so reserved and are not allocated

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to or expended on behalf of policy holders or annuitants, those profits shall be treated as profits of the company for the accounting period in which they ceased to be so reserved.

### **310 Rate relief: investment income reserved for policy holders**

- (1) A claim may be made under this section by an insurance company carrying on life assurance business in respect of unrelieved income from investments held in connection with that business.
- (2) If on the claim the company proves to the satisfaction of the Board that it has, for any year for which the rate of corporation tax exceeds 37.5 per cent., borne corporation tax in respect of any of the said unrelieved income, the company shall be entitled to repayment of so much of that tax borne by it for that year as is equal to the amount by which—
  - (a) the corporation tax borne by the company for that year in respect of the part specified in subsection (6) below of the said unrelieved income, exceeds—
  - (b) the corporation tax which would have been so borne in respect of that part of that income if the rate of corporation tax for that year had been 37.5 per cent.
- (3) If on the claim the company proves to the satisfaction of the Board that it has, for any year for which the standard rate of income tax exceeds 37.5 per cent., borne income tax in respect of any of the said unrelieved income, the company shall be entitled to repayment of so much of that tax borne by it for that year as is equal to the amount by which—
  - (a) the income tax borne by the company for that year in respect of the part specified in subsection (6) below of the said unrelieved income, exceeds—
  - (b) the income tax which would have been so borne in respect of that part of that income if the standard rate of income tax for that year had been 37.5 per cent.
- (4) Subsection (3) above shall apply to franked investment income as if income tax deducted (or treated under paragraph 2 of Schedule F as deducted) from it were income tax borne by the company, and for the purposes of the preceding provisions of this section—
  - (a) "unrelieved income" means income which has not been excluded from charge to tax by virtue of any provision and against which no relief has been allowed by deduction or set-off;
  - (b) the amount of tax which has been or would be borne by a company shall be taken to be the amount of tax which has been or would be so borne after the allowance of any relief to which the company is or would be entitled otherwise than under the preceding provisions of this section.
- (5) Except as provided by the preceding provisions of this section, a company resident in the United Kingdom shall not be entitled to repayment of income tax deducted (or treated under paragraph 2 of Schedule F as deducted) from such part of the franked investment income from investments held in connection with its life assurance business as is specified in subsection (6) below.

The reference in this subsection to repayment of income tax includes a reference to the setting off of income tax against tax which the company is liable to pay in respect

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of its own distributions, and this subsection shall not be taken to apply to repayments of income tax under section 254 of this Act.

- (6) The said part shall be, in the case of any unrelieved income, the same fraction of it as the fraction which, on a computation of the profits of the company in respect of its life assurance business in accordance with the provisions applicable to Case I of Schedule D (whether or not the company is in fact charged to tax under that Case for the relevant accounting period or periods), would be connoted by the words in section 309 above "such part of those profits as belongs or is allocated to, or is reserved for, or expended on behalf of, policy holders or annuitants ":

Provided that, if the income exceeds the profits as computed in accordance with those provisions other than section 309 above, the said part shall be that fraction of the income so far as not exceeding the profits, together with the amount of the excess.

### **311 Rate relief: chargeable gains reserved for policy holders**

- (1) Where an insurance company carrying on life assurance business proves on a claim to the satisfaction of the Board that it has, for any year for which the rate of corporation tax exceeds the rate set out in subsection (2) below, borne corporation tax in respect of chargeable gains from investments held in connection with its life assurance business, the company shall be entitled to repayment of so much of that tax borne by it for that year as is equal to the amount by which—
- (a) the corporation tax borne by the company for that year in respect of such part of those gains as, in the opinion of the Board, belongs or is allocated to, or is reserved for, or expended on behalf of, policy holders,
- exceeds—
- (b) the corporation tax which would have been so borne in respect of that part of those gains if the rate of corporation tax on the gains had been the rate set out below.
- (2) The said rate of corporation tax is 37-5 per cent., or the rate at which capital gains tax is for the time being chargeable under section 20(3) of the Finance Act 1965, whichever is the lower rate.

In relation to corporation tax for any accounting period the relevant rate of capital gains tax under the said section 20(3) shall be that for the year of assessment in which that accounting period ends.

- (3) For the purposes of this section, the amount of corporation tax which has been or would be borne by a company (in respect of chargeable gains from investments held in connection with its life assurance business) shall be taken to be the amount of corporation tax which has been or would be so borne after the allowance of any relief to which the company is or would be entitled otherwise than under this section.

### **312 Annuity business: separate charge on profits**

- (1) Subject to the provisions of this section, profits arising to an insurance company from general annuity business or pension annuity business shall be treated as income within Schedule D, and be chargeable under Case VI of that Schedule, and for that purpose—
- (a) the business of each such class shall be treated separately, and

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- (b) subject to paragraph (a) above, and to subsection (2) below, the profits therefrom shall be computed in accordance with the provisions of this Act applicable to Case I of Schedule D:

Provided that this subsection shall not apply to an insurance company charged to corporation tax in accordance with the provisions applicable to Case I of Schedule D in respect of the profits of its ordinary life assurance business.

- (2) In making the said computation—
- (a) section 309 of this Act shall apply with the necessary modifications and in particular with the omission therefrom of all references to policy holders, and
  - (b) no deduction shall be allowed in respect of any expenses of management deductible under section 305 of this Act, and
  - (c) there may be set off against the profits any loss, to be computed on the same basis as the profits, which has arisen in connection with the granting of annuities on human life in any previous accounting period or year of assessment not earlier than the year 1923-24.
- (3) Section 179 of this Act (Case VI losses) shall not be taken to apply to a loss incurred by a company on its general annuity business or pension annuity business.
- (4) For the purposes of subsection (2) of this section, losses for years of assessment earlier than 1956-57 shall be computed by reference to the annuity business as a whole, and by apportioning any losses which arose on that business (and in respect of which relief has not been given) between the general annuity business and the pension annuity business in such manner as may be appropriate.

### **313 General annuity business**

- (1) In the case of a company carrying on general annuity business, the annuities paid by the company, so far as referable to that business and so far as they do not exceed the taxed income of the part of the annuity fund so referable, shall be treated as charges on income.
- (2) In computing under section 312 above the profits arising to an insurance company from general annuity business—
- (a) taxed income and group income shall not be taken into account as part of those profits, and
  - (b) of the annuities paid by the company and referable to general annuity business—
    - (i) those which under subsection (1) above are treated as charges on income shall not be deductible, and
    - (ii) those which are not so treated shall (notwithstanding section 251(2) of this Act) be deductible.
- (3) In subsections (1) and (2) above "taxed income " means income charged to corporation tax otherwise than under section 312 above, and franked investment income.
- (4) Subject to subsection (5) below, tax on any franked investment income which is taken into account under subsection (2) above to enable annuities referable to general annuity business to be treated as charges on income shall not be available for setoff against income tax which the company is liable to pay in respect of its own distributions.

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- (5) For the purposes of subsection (4) above there shall be deducted from the amount of the franked investment income of the company arising in any accounting period and taken into account under subsection (1) above—
- (a) the amount of any profit arising in that accounting period to the company from general annuity business and computed under section 312 above, and
  - (b) the amount of any group income arising in that accounting period to the company and referable to its general annuity business.
- (6) A company which is not resident in the United Kingdom but carries on through a branch or agency there any general annuity business shall not be entitled to treat any part of the annuities paid by it which are referable to that business as paid out of profits or gains brought into charge to income tax.

### **314 Pension annuity business**

- (1) Exemption from income tax and corporation tax shall be allowed in respect of income from, and chargeable gains in respect of, investments and deposits of so much of an insurance company's annuity fund as is referable to pension annuity business.
- (2) The exemption from tax conferred by subsection (1) above shall not exclude any sums from being taken into account as receipts in computing profits or losses for any purpose of the Corporation Tax Acts.
- (3) Subject to subsection (4) below—
- (a) the exclusion by section 239 of this Act from the charge to corporation tax of franked investment income shall not prevent such income being taken into account as part of the profits in computing under section 312 of this Act income from pension annuity business,
  - (b) notwithstanding anything in section 240 of this Act a company resident in the United Kingdom and carrying on life assurance business shall be entitled to repayment of income tax in respect of franked investment income of the company's annuity fund so far as it is referable to pension annuity business, and
  - (c) any franked investment income on which income tax is so repayable shall be left out of account under the said section 240.
- (4) If for any accounting period there is, apart from this subsection, a profit arising to an insurance company from pension annuity business and computed under section 312 of this Act, and the company so elects as respects all or any part of its franked investment income arising in that period, being an amount of franked investment income not exceeding the amount of the said profit, subsection (3) above shall not apply to the franked investment income to which the election relates.

If an accounting period falls partly in one income tax year of assessment, and partly in another such year, the power of making elections under this subsection may be exercised separately for the respective parts of the accounting period as if they were separate accounting periods, and an election under this subsection shall be made by notice in writing given to the inspector not later than two years after the end of the accounting period, or part of an accounting period, to which the election relates, or within such longer period as the Board may by notice in writing allow.

- (5) In computing under section 312 of this Act profits from pension annuity business—
- (a) group income shall not be taken into account as part of those profits,

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(b) annuities shall be deductible notwithstanding section 251(2) of this Act, and a company shall not be entitled to treat as paid out of profits or gains brought into charge to income tax any part of the annuities paid by the company which is referable to pension annuity business.

### **315 Foreign life assurance funds**

(1) Corporation tax under Cases IV and V on income arising from investments of the foreign life assurance fund of an insurance company shall be computed as in the cases mentioned in section 122(2) of this Act, that is to say, by reference to the amount of income received in the United Kingdom; and this subsection shall apply notwithstanding that the said section relates only to income tax.

(2) Where any of the following securities, namely—

(a) securities issued by the Treasury with the condition that the interest thereon shall not be liable to income tax so long as it is shown, in manner directed by the Treasury, that the securities are in the beneficial ownership of persons who are not ordinarily resident in the United Kingdom, or

(b) securities issued by the Treasury with the condition that—

(i) so long as the securities are in the beneficial ownership of persons who are not ordinarily resident in the United Kingdom, the interest thereon shall be exempt from income tax, and

(ii) so long as the securities are in the beneficial ownership of persons who are neither domiciled nor ordinarily resident in the United Kingdom, neither the capital thereof nor the interest thereon shall be liable to any taxation present or future, or

(c) securities to which section 416 of this Act (local authority securities expressed in foreign currencies) applies,

for the time being form part of the investments of the foreign life assurance fund of an insurance company, the income arising from those securities, if applied for the purposes of that fund or reinvested so as to form part of that fund, shall not be liable to tax.

(3) Where any income arising abroad from the investments of the foreign life assurance fund of an insurance company has been remitted to the United Kingdom and invested, as part of the investments of that fund, in any such securities as are mentioned in subsection (2) above, that income shall not be liable to tax and any tax paid thereon shall, if necessary, be repaid to the company on the making of a claim.

(4) Any securities issued by the Treasury, in pursuance of the power conferred by section 60(1) of the Finance Act 1940, with a modified form of the condition specified in subsection (2)(b) above shall, save in so far as the terms of the issue otherwise provide, be deemed for the purposes of subsections (2) and (3) above to be such securities as are mentioned in the said subsection (2).

(5) Where income arising from the investments of the foreign life assurance fund of an insurance company has been relieved from tax in pursuance of the provisions of this section, a corresponding reduction shall be made—

(a) in the relief granted under section 305 of this Act in respect of expenses of management, and

(b) in any amount on which the company is chargeable to tax by virtue of section 312 of this Act.



- (6) In this section " foreign life assurance fund "—
- (a) means any fund representing the amount of the liability of an insurance company in respect of its life assurance business with policy holders and annuitants residing outside the United Kingdom whose proposals were made to, or whose annuity contracts were granted by, the company at or through a branch or agency outside the United Kingdom, and
  - (b) where such a fund is not kept separately from the life assurance fund, means such part of the life assurance fund as represents the liability of the company under such policies and contracts, such liability being estimated in the same manner as it is estimated for the purpose of the company's periodical return.
- (7) Subject to subsection (8) below, for any year for which the agreements set out in Part I of Schedule 12 to this Act are in force, subsection (6) above shall have effect as if the expression " the United Kingdom" included the Republic of Ireland.
- (8) Where—
- (a) an insurance company having its head office in the United Kingdom carries on business in the Republic of Ireland, and
  - (b) under provisions of the law of that country corresponding with section 314(1) above exemption from income tax is allowable in respect of income corresponding to the income from investments and deposits referable to pension annuity business to which the said section 314(1) applies,
- this section shall have effect in relation to the income so exempt in the Republic of Ireland with the omission of subsection (7) above.
- (9) Where this section has effect in relation to income arising from investments of any part of an insurance company's life assurance fund, it shall have the like effect in relation to chargeable gains accruing from the disposal of any such investments, and losses so accruing shall not be allowable losses.

### **316 Overseas life insurance companies: charge on investment income**

- (1) Any income of an overseas life insurance company from the investments of its life assurance fund (excluding the annuity fund, if any), wherever received, shall, to the extent provided in this section, be deemed to be profits comprised in Schedule D and shall be charged to corporation tax under Case III of Schedule D.
- (2) Distributions received from companies resident in the United Kingdom shall be brought into account under this section notwithstanding their exclusion from the charge to corporation tax.
- (3) A portion only of the income from the investments of the life assurance fund (excluding the annuity fund, if any) shall be charged in accordance with subsection (1) above, and for any accounting period that portion shall be determined by the formula

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

where—

- A is the total income from those investments for that period,
- B is the average of the liabilities for that period to policy holders resident in the United Kingdom and to policy holders resident abroad whose proposals

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were made to the company at or through its branch or agency in the United Kingdom, and

C is the average of the liabilities for that period to all the company's policy holders,

but any reference in this subsection to liabilities does not include liabilities in respect of annuity business.

- (4) For the purposes of subsection (3) above, the average of any liabilities for an accounting period shall be taken as one half of the aggregate of the liabilities at the beginning and end of the valuation period which coincides with that accounting period or in which that accounting period falls.
- (5) For the purposes of this section the liabilities of an insurance company attributable to any business at any time shall be ascertained by reference to the net liabilities of the company as valued by an actuary for the purposes of the relevant periodical return.
- (6) Section 129(3) of this Act (income assessable and chargeable in one sum) shall not apply to tax in respect of income to which subsection (1) of this section applies.

### **317 Management expenses of overseas life insurance companies**

The relief under section 305 above available to an overseas life insurance company in respect of its expenses of management shall be limited to expenses attributable to the life assurance business carried on by the company at or through its branch or agency in the United Kingdom.

### **318 Overseas life insurance companies: annuity business**

- (1) Nothing in the Corporation Tax Acts shall prevent the distributions of companies resident in the United Kingdom from being taken into account as part of the profits in computing, under section 312 above, the profits arising from pension annuity business and general annuity business to an overseas life insurance company.
- (2) Any charge to tax under section 312 above for any accounting period on profits arising to an overseas life insurance company from general annuity business shall extend only to a portion of the profits arising from that business and that portion shall be determined by the formula

where—

A is the total amount of those profits,

B is the average of the liabilities attributable to that business for the relevant accounting period in respect of contracts with persons resident in the United Kingdom or contracts with persons resident abroad whose proposals were made to the company at or through its branch or agency in the United Kingdom, and

C is the average of the liabilities attributable to that business for that accounting period in respect of all contracts.

- (3) For the purposes of subsection (2) above, the average of any liabilities for an accounting period shall be taken as one half of the aggregate of the liabilities at the beginning and end of the valuation period which coincides with that accounting period or in which that accounting period falls.

- (4) For the purposes of this section the liabilities of an insurance company attributable to general annuity business at any time shall be ascertained by reference to the net liabilities of the company as valued by an actuary for the purposes of the relevant periodical return.

**319 Set-off of income tax against corporation tax by overseas life insurance companies**

- (1) For the purposes of subsection (3) of section 246 of this Act (set-off by non-resident companies of income tax deducted from payments received against corporation tax), as it applies to life insurance companies, the amount of the income tax referred to in that subsection which shall be available for set-off under that subsection in an accounting period shall be limited in accordance with subsections (2) and (3) below.
- (2) If the company is chargeable to corporation tax for an accounting period in accordance with section 316 above in respect of the income from the investments of its life assurance fund, the amount of income tax available for set-off against any corporation tax assessed for that period on that income shall not exceed an amount equal to income tax at the standard rate on the portion of income from investments which is chargeable to corporation tax by virtue of subsection (3) of the said section 316.
- (3) If the company is chargeable to corporation tax for an accounting period in accordance with section 318 above on a proportion of the total amount of the profits arising from its general annuity business, the amount of income tax available for set-off against any corporation tax assessed for that period on those profits shall not exceed an amount equal to income tax at the standard rate on the like proportion of the income from investments included in computing those profits.

**320 Overseas life insurance companies: double taxation agreements**

- (1) This section applies to an overseas life insurance company if, by virtue of arrangements specified in an Order in Council under section 497 of this Act (double taxation relief), no charge to corporation tax under Case III of Schedule D arises under section 316 of this Act in respect of any income of the company from the investments of its life assurance fund (excluding the annuity fund, if any).
- (2) For the purposes of section 254 of this Act (set-off of losses etc. against franked investment income), so much of any distributions received in any year of assessment from a company resident in the United Kingdom by an overseas life insurance company to which this section applies as is received in respect of the portion of the investments of its life assurance fund (excluding the annuity fund, if any) attributable to the business of its branch or agency in the United Kingdom shall be deemed to be franked investment income of that company, and accordingly the company may make a claim under subsection (1) of the said section 254 for any of the purposes specified in subsection (2) thereof.

**321 Life policies carrying rights not in money**

- (1) Where any investments or other assets are, in accordance with a policy issued in the course of life assurance business carried on by an insurance company, transferred to the policy holder, the policy holder's acquisition of the assets, and the disposal of them to him, shall be deemed to be for a consideration equal to the market value of the assets—

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- (a) for the purposes of Part III of the Finance Act 1965 (chargeable gains), and
  - (b) for the purposes of computing income in accordance with Case I or Case VI of Schedule D, and
  - (c) for the purposes of Case VII of Schedule D.
- (2) This section has effect as respects investments or other assets transferred on or after 6th April 1967.

### **322 Benefits from life policies issued before 5th August 1965: deduction for tax on chargeable gains**

- (1) This section applies in relation to policies of life assurance issued before 5th August 1965 by a company carrying on life assurance business, being policies which—
- (a) provide for benefits consisting to any extent of investments of a specified description or of a sum of money to be determined by reference to the value of such investments, but
  - (b) do not provide for the deduction from those benefits of any amount by reference to tax chargeable in respect of chargeable gains.

(2) Where—

- (a) the investments of the company's life assurance fund, so far as referable to those policies, consist wholly or mainly of investments of the description so specified, and
- (b) on the company becoming liable under any of those policies for any such benefits (including benefits to be provided on the surrender of a policy), a chargeable gain accrues to the company from the disposal, in meeting or for the purpose of meeting that liability, of investments of that description forming part of its life assurance fund, or would so accrue if the liability were met by or from the proceeds of such a disposal,

then the company shall be entitled as against the person receiving the benefits to retain thereout a part thereof not exceeding in amount or value corporation tax, at the rate specified in subsection (3) below, in respect of the chargeable gain referred to in paragraph (b) above, computed without regard to any amount retained under this subsection.

- (3) The amount to be retained under subsection (2) above shall be computed by reference to the rate of corporation tax for the time being in force or, if no rate of corporation tax has yet been fixed for the financial year, the rate last in force:

Provided that, in so far as the chargeable gain represents or would represent a gain belonging or allocated to, or reserved for, policy holders, the amount to be retained shall be computed by reference to a rate of tax not exceeding 37.5 per cent.

### **323 Interpretation**

- (1) This section has effect for the interpretation of the preceding provisions of this Chapter, with this section.
- (2) Unless the context otherwise requires—
- " annuity business " means the business of granting annuities on human life,
  - " annuity fund " means, where an annuity fund is not kept separately from the life assurance fund of an insurance company, such part of the life assurance

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fund as represents the liability of the company under its annuity contracts, as stated in its periodical returns,

" insurance company " means a company to which the Insurance Companies Act 1958 or the Insurance Companies Act (Northern Ireland) 1968 applies,

" life assurance business " includes annuity business,

" overseas life insurance company " means an insurance company having its head office outside the United Kingdom but carrying on life assurance business through a branch or agency in the United Kingdom,

" periodical return ", in relation to an insurance company, means a return deposited with the Board of Trade under the Insurance Companies Act 1958 or, as the case may be, with the Ministry of Commerce for Northern Ireland under the Insurance Companies Act (Northern Ireland) 1968.

- (3) " General annuity business " means any annuity business which is not pension annuity business, and any division to be made between the two classes of business shall be made on the principle of referring to pension annuity business any premiums falling within subsection (4) below, together with the part resulting therefrom of the company's annuity fund and liability for annuities, and of dealing with other incomings and outgoings accordingly.
- (4) The premiums to be referred to pension annuity business are those payable under contracts falling (at the time when the premium is payable) within one or other of the following descriptions, that is to say—
- (a) any contract with an individual who is, or would but for an insufficiency of profits or gains be, chargeable to income tax in respect of relevant earnings (as defined in section 226(8) and (9) of this Act) from a trade, profession, vocation, office or employment carried on or held by him, being a contract approved by the Board under that section,
  - (b) any contract with the trustees or other persons having the management of a superannuation fund within the meaning of section 208 of this Act, or of a scheme approved under section 226 of this Act, being a contract which—
    - (i) was entered into for the purposes only of that fund or scheme, or, in the case of a fund part only of which is approved under the said section 208, then for the purposes only of that part of that fund, and
    - (ii) (in the case of a contract entered into or varied after 1st August 1956) is so framed that the liabilities undertaken by the insurance company under the contract correspond with liabilities against which the contract is intended to secure the fund (or the relevant part of it) or the scheme,

and in this and the last preceding subsection " premium " includes any consideration for an annuity.

#### *Capital redemption business*

### **324 Capital redemption business**

- (1) Where any person carries on capital redemption business in conjunction with business of any other class, the capital redemption business shall, for the purposes of the Corporation Tax Acts (including the provisions about corporation tax on chargeable

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gains) and the Income Tax Acts, be treated as a separate business from any other class of business carried on by that person.

(2) In ascertaining whether and to what extent any person has incurred a loss on his capital redemption business—

- (a) for the purposes of sections 177 and 178 of this Act (corporation tax losses), or
- (b) for the purposes of section 168 of this Act (income tax losses against general income),

any profits derived from investments held in connection with the capital redemption business (including franked investment income of a company resident in the United Kingdom) shall be treated as part of the profits of that business, and in determining whether any, and if so what, relief can be given under section 171(3) of this Act (income tax loss carried forward and set off against investment income which has borne tax) in the case of capital redemption business, the loss which may be carried forward under subsection (1) of that section shall be similarly computed.

(3) In this section, " capital redemption business " means the business (not being life assurance business or industrial assurance business) of effecting and carrying out contracts of insurance, whether effected by the issue of policies, bonds or endowment certificates or otherwise, whereby, in return for one or more premiums paid to the insurer, a sum or a series of sums is to become payable to the insured in the future.

(4) This section shall not apply to any capital redemption business in so far as it consists of carrying out such contracts as aforesaid effected before 1st January 1938.

*Dealers in securities: conversions*

**325     3½ per cent. war loan**

Where a war loan holding which was continued under Part III of the Finance (No. 2) Act 1931 beyond the redemption date as therein defined was, on that date, in the beneficial ownership of a person who was carrying on a trade consisting wholly or partly in dealing in securities, that person shall be treated for tax purposes as not having changed his investment on that date and the produce of any realisation of the whole or any part of the continued holding, together with any additional consideration, or the appropriate part of any additional consideration, received by him in connection with the continuance, shall be treated as the produce of the realisation of the whole or the appropriate part of the original holding:

Provided that where any such person, in pursuance of section 16 of the said Act, gave notice in writing to the inspector not later than the end of the year 1933-34 that he desired to be treated for the purposes of the Income Tax Acts as having changed his investment on the redemption date, the preceding provisions of this section shall not apply to him and he shall be treated for tax purposes as having changed his investment on the redemption date.

**326     Exchange of securities in connection with conversion operations, nationalisation, etc.**

(1) If—

- (a) any securities to which a person who is carrying on a trade which consists wholly or partly in dealing in securities is beneficially entitled are exchanged for other securities; and

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- (b) the exchange is one to which this section applies, then (whether or not any additional consideration is given for the exchange) that person shall, unless he gives notice in writing to the inspector not later than two years after the end of the chargeable period in which the exchange takes place that he desires not to be so treated, be treated for tax purposes (except as regards any tax payable in respect of dividends or interest), both at the time of the exchange and thereafter, as if the exchange had not taken place, and in that case the produce of any subsequent realisation of any of the securities received by him under the exchange (together with any additional consideration or the appropriate part of any additional consideration received by him thereunder) shall be treated as the produce of the realisation of the corresponding securities surrendered by or transferred from him under the exchange, or of a corresponding part thereof, as the case may be.
- (2) The exchanges to which this section applies are—
- (a) any exchange effected under any arrangement carried out under section 2 of the National Loans Act 1939 or section 14 of the National Loans Act 1968 if the Treasury direct, in pursuance of that arrangement, that this section shall apply to exchanges thereunder; and
  - (b) any exchange of securities effected by section 1 of the Bank of England Act 1946 ; and
  - (c) any exchange of securities effected in pursuance of any enactment passed after 5 th April 1946 which provides for the compulsory acquisition of any securities and the issue of other securities in lieu thereof, if the Treasury direct that this section shall apply to exchanges of securities effected in pursuance of that enactment.
- (3) In this section, " securities " includes shares, stock, bonds, debentures and debenture stock.

### **327 Other provisions as to issues of securities in connection with nationalisation, etc.**

- (1) Where—
- (a) in pursuance of any enactment passed after 5th April 1946 any securities are issued to any body corporate as, or as part of, the consideration for the compulsory acquisition of any property under that enactment, and
  - (b) that body corporate is wound up or the capital thereof is reduced or any bonds, debentures or debenture stock thereof are redeemed, and, in or in connection with the winding up, reduction of capital or redemption, all or any of the securities issued as aforesaid to the body corporate are distributed to holders of securities of the body corporate, and
  - (c) the Treasury direct that this section shall apply in relation to the distribution, any person who is carrying on a trade which consists wholly or partly in dealing in securities and is beneficially entitled to any securities to the holders of which the distribution is made shall, in relation to that distribution, be treated for tax purposes in the manner specified in the following provisions of this section, unless he gives notice in writing to the inspector not later than two years after the end of the chargeable period in which the distribution takes place that he desires not to be so treated in relation to that distribution.
- (2) If the result of the winding up, reduction of capital or redemption of bonds, debentures or debenture stock is that the securities of the body corporate to which the person in question is entitled as aforesaid are wholly extinguished without his receiving anything

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in respect thereof except the securities distributed as aforesaid, he shall be treated for tax purposes (except as regards any tax payable in respect of dividends or interest), both then and thereafter, as if neither the extinction nor the distribution had taken place but as if the produce of any subsequent realisation of any of the distributed securities were the produce of the realisation of the extinguished securities or a corresponding part thereof, as the case may be.

- (3) In any other case—
- (a) the said person shall be treated as having acquired the distributed securities at a cost equal to such proportion of the cost to him of the securities in respect of which the distribution was made as may be specified in the direction of the Treasury referred to in subsection (1) of this section and the question whether he has made any, and if so what, profit or suffered any, and if so what, loss on any subsequent realisation of the distributed securities shall be determined accordingly, and
  - (b) in considering whether he has, either as the result of the winding up, reduction of capital or redemption of bonds, debentures or debenture stock and the distribution of the securities, or on any subsequent realisation of any of the securities in respect of which the distribution was made, made any, and if so what, profit or suffered any, and if so what, loss in connection with the securities in respect of which the distribution was made, the distributed securities shall be left out of account and the cost to him of the securities in respect of which the distribution was made shall be deemed to be reduced by the amount of the cost at which, under paragraph (a) of this subsection, he is taken to have acquired the distributed securities.
- (4) In this section " securities " includes shares, stock, bonds, debentures and debenture stock.

*Non-resident banks, insurance companies and dealers in securities*

### **328 Treatment of tax-free income**

- (1) Where a banking business, an insurance business or a business consisting wholly or partly in dealing in securities is carried on in the United Kingdom by a person not resident therein, then—
- (a) in computing for any of the purposes of the Tax Acts the profits arising from, or loss sustained in, the business, and
  - (b) in the case of an insurance business, also in computing the profits or loss from annuity business under section 312 of this Act,

all interest, dividends and other payments whatsoever to which section 100 or section 159(4) of this Act (which exempt certain dividends of non-residents) extends shall be included notwithstanding the exemption from tax conferred by those sections respectively.

In this subsection " securities " includes stocks and shares.

- (2) Where—
- (a) any such business as aforesaid is carried on in the United Kingdom by a person not ordinarily resident therein, and
  - (b) in making any such computation as aforesaid with respect to that business, any interest on any securities issued by the Treasury is excluded by virtue of



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- a condition of the issue thereof regulating the treatment of the interest thereon for tax purposes,
- any expenses attributable to the acquisition or holding of, or to any transaction in, the securities (but not including in those expenses any interest on borrowed money), and any profits or losses so attributable, shall also be excluded in making that computation.
- (3) In the case of an overseas life insurance company as defined in section 323 of this Act—
- (a) in computing for the purposes of section 316 of this Act the income from the investments of the life assurance fund of the company, any interest, dividends and other payments whatsoever to which section 100 or section 159(4) of this Act extends shall be included notwithstanding the exemption from tax conferred by those sections respectively, and
  - (b) where in computing the said income any interest on any securities issued by the Treasury is excluded by virtue of a condition of the issue thereof regulating the treatment of the interest thereon for tax purposes, the relief under section 305 of this Act shall be reduced so as to bear to the amount of relief which would be granted but for the provisions of this paragraph the same proportion as the amount of that income, excluding the said interest, bears to the amount of that income including that interest.

### **329 Tax-free Treasury securities: exclusion of interest on borrowed money**

- (1) This section has effect where paragraphs (a) and (b) of section 328(2) above apply to a business for any accounting period or year of assessment.
- (2) Up to the amount determined under this section (called the amount ineligible for relief) interest on money borrowed for the purposes of the business—
- (a) shall be excluded in any computation under the Tax Acts of the profits (or loss) arising from the business or, where subsection (5) below applies, arising from any annuity business forming part of the life assurance business, and
  - (b) shall be excluded from the definition of " charges on income " in section 248 of this Act.
- (3) In determining the amount ineligible for relief, account shall be taken of all money borrowed for the purposes of the business which is outstanding in the accounting or basis period, up to the total cost of the tax-free Treasury securities held for the purpose of the business in that period:

Provided that where the person carrying on the business is a company, account shall not be taken of any borrowed money carrying interest which, apart from subsection (2) above, does not fall to be included in the computations under paragraph (a) of that subsection, and is not to be treated as a charge on income for the purposes of the Corporation Tax Acts.

- (4) Subject to subsection (5) below, the amount ineligible for relief shall be equal to a year's interest on the amount of money borrowed which is to be taken into account under subsection (3) above at a rate equal to the average rate of interest in the accounting or basis period on money borrowed for the purposes of the business, except that in the case of a period of less than twelve months, interest shall be taken for that shorter period instead of for a year.
- (5) Where relief for expenses of management is to be granted to an insurance company for any accounting period, and that relief falls to be reduced under section 328(3)(b)

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above (by applying the fraction which is investment income of the life assurance fund other than income from tax-free Treasury securities divided by that total investment income) the amount ineligible for relief shall be a fraction of the amount of interest in the accounting period on money borrowed for the purposes of the business, and that fraction shall be the fraction which is income from tax-free Treasury securities divided by total investment income of the life assurance fund (that is to say one minus the fraction to be applied under the said subsection (3)(b)).

- (6) In this section "tax-free Treasury securities" means securities issued by the Treasury with a condition regulating the treatment of the interest thereon for income tax or corporation tax purposes such that interest on the securities is excluded in computing the income or profits.
- (7) For the purposes of this section the cost of a holding of tax-free Treasury securities which has fluctuated in the accounting or basis period shall be the average cost of acquisition of the initial holding, and of any subsequent acquisitions in the accounting or basis period, applied to the average amount of the holding in the accounting or basis period, and this subsection shall be applied separately to securities of different classes.
- (8) In this section " accounting or basis period " means the company's accounting period or the period by reference to which the profits or gains arising in the year of assessment are to be computed.

#### *Underwriters*

### **330 Underwriters**

Schedule 10 to this Act shall have effect as respects underwriters.

## **CHAPTER III**

### FRIENDLY SOCIETIES AND TRADE UNIONS

#### *Unregistered friendly societies*

### **331 Unregistered friendly societies**

An unregistered friendly society whose income does not exceed £160 a year shall, on making a claim, be entitled to exemption from income tax and corporation tax (whether on income or on chargeable gains).

#### *Registered friendly societies*

### **332 Registered friendly societies**

- (1) Subject to subsection (2) below, a registered friendly society shall, on making a claim, be entitled to exemption from income tax and corporation tax (whether on income or on chargeable gains).
- (2) Subsection (1) above—

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- (a) shall not apply to profits arising from life or endowment business consisting of the assurance of gross sums exceeding £500 or of the granting of annuities of annual amounts exceeding £104, and
  - (b) as respects other life or endowment business (in this Chapter referred to as "tax exempt life or endowment business ") has effect subject to the following provisions of this Chapter.
- (3) In applying the said limits of £500 and £104 any bonus or addition declared upon an assurance of a gross sum or annuity shall be disregarded.

### **333 Life or endowment business: distinction between old and new societies**

- (1) So far as section 332 above relates to profits arising from life or endowment business it shall not exempt—
- (a) a friendly society registered after 31st December 1957 which at any time in the period of three months ending on 3rd May 1966 entered into any transaction in return for a single premium, being a transaction forming part of its life or endowment business, or
  - (b) subject to subsections (2) and (3) below, a friendly society registered after 3rd May 1966, or a friendly society which was registered in the period of three months ending on 3rd May 1966 but which at no time earlier than 3rd May 1966 carried on any life or endowment business.
- (2) Subsection (1)(b) above shall not apply to a friendly society if, by the rules of the society, the only life or endowment business which it may carry on is—
- (a) industrial assurance business,
  - (b) assurance affording provision for sickness or other infirmity, whether bodily or mental, which is also assurance for a gross sum independent of sickness or other infirmity, where not less than sixty per cent. of the amount of the premiums is attributable to the provision afforded during sickness or other infirmity, and no bonus or addition may be declared upon the assurance of the gross sum, or
  - (c) contracts exclusively for the assurance of a gross sum or annuity payable on death to or for the benefit of the deceased's widow or dependent child,
- or business which falls within any two or all three of paragraphs (a),(b) or (c) above taken together.
- (3) Subsection (1)(b) above shall not apply to any part of a friendly society's tax exempt life or endowment business which it acquires by way of transfer of engagements or amalgamation from another friendly society, and which consists of business relating to contracts made not later than the time of transfer or amalgamation.

### **334 Conditions for tax exempt business**

- (1) Section 332(1) above shall not apply to profits arising from tax exempt life or endowment business unless the following provisions of this section are satisfied in relation to that business.
- (2) The following conditions shall apply to every policy for the assurance of a gross sum, or of an annuity, which the friendly society issues, or has issued at any time since 3rd May 1966—

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- (a) the period (in this section called "the term" of the policy) between the payment of the first premium and the time when the gross sum assured is payable (or as the case may be when the first instalment of the annuity is payable) shall be not less than ten years, and must not, on any contingency other than the death, or retirement on grounds of ill health, of the person liable to pay the premiums or whose life is insured, become less than ten years,
- (b) the premiums payable under the policy shall be premiums of equal or rateable amounts payable at yearly or shorter intervals over the whole term of the policy of assurance, or over the whole term of the policy of assurance apart from any period after the person liable to pay the premiums or whose life is insured attains a specified age, being an age which he will attain at a time not less than ten years after the beginning of the term of the policy of assurance,
- (c) until the expiration of three-quarters of the term of the policy of assurance, or of ten years from the beginning of the term, whichever is the shorter, the policy may not be surrendered to the friendly society for consideration exceeding the amount of the premiums paid, except that, if a surrender value is prescribed for the surrender by section 24 of the Industrial Assurance Act 1923 or section 3 of the Industrial Assurance and Friendly Societies Act 1929, or by the Industrial Assurance and Friendly Societies Act (Northern Ireland) 1929, the limit on the consideration shall be either that value or the amount of the premiums paid, whichever is the greater;

and the friendly society shall not be a party to any variation of the terms of a policy which infringes the conditions in this subsection.

- (3) Notwithstanding subsection (2)(a) above, the policy—
  - (a) may provide for a payment to a person of an age not exceeding 18 years at any time not less than five years from the beginning of the term of the policy if the premium or premiums payable in any period of twelve months in the term of the policy do not exceed £13,
  - (b) may provide for a payment at any time not less than five years from the beginning of the term of the policy, if it is one of a series of payments falling due at intervals of not less than five years, and the amount of any payment, other than the final payment, does not exceed four-fifths of the premiums paid in the interval before its payment.
- (4) Notwithstanding subsection (2)(b) above, the policy—
  - (a) may allow a payment at any time after the expiration of one-half of the term of the policy of assurance, or of ten years from the beginning of the term, whichever is the earlier, being a payment in commutation of the liability to pay premiums falling due after that time,
  - (b) may allow the person liable to pay the premiums to commute any liability for premiums where he ceases to reside in the United Kingdom or gives satisfactory proof of intention to emigrate, and
  - (c) may allow any liability for premiums to be discharged in consideration of surrendering a sum which has become payable on the maturity of any other policy of assurance issued by the same friendly society to the person liable to pay the premiums, or to his parent, where that other policy of assurance is issued as part of the friendly society's tax exempt life or endowment business.

### **335 Life or endowment business: further provisions**

- (1) Subject to section 332(1) above, the Corporation Tax Acts shall apply to the life or endowment business carried on by registered friendly societies in the same way as they apply to mutual life assurance business carried on by insurance companies, so however that the Treasury may by regulations contained in a statutory instrument subject to annulment in pursuance of a resolution of the Commons House of Parliament provide that those Acts as so applied shall have effect subject to such modifications and exceptions as may be prescribed by the regulations, and those regulations may in particular require any part of any business to be treated as a separate business.
- (2) If a friendly society registered not later than 3rd May 1966 begins after that date to carry on tax exempt life or endowment business or, in the opinion of the Chief Registrar of Friendly Societies, begins to carry on tax exempt life or endowment business on an enlarged scale, or of a new character, and it appears to the Chief Registrar, having regard to the restrictions placed on friendly societies registered after the said date by subsection (1)(b) of section 333 above, that for the protection of the revenue it is expedient to do so, he may serve a notice on the friendly society referring to the provisions of this subsection and stating that he is considering the question whether, for the protection of the revenue, it is expedient to give a direction that, as from such date as may be specified in the notice, being the date when in the opinion of the Chief Registrar the relevant change in the society's activities took place, the society is to be treated as one within the said subsection (1)(b).
- (3) The Chief Registrar shall consider any representations or undertakings made or offered to him by the friendly society within the period of one month from service of the notice, and if the society so requests shall afford it an opportunity of being heard by him not later than three weeks after the end of that period of one month.
- (4) If after consideration of any such representations or undertakings, the Chief Registrar remains of opinion that it is expedient to do so, he shall direct that the society shall, subject to any further direction given by him cancelling that direction, be treated for the purposes of section 333 above as a friendly society registered after 3rd May 1966, but subject to the like right of appeal as is conferred by section 77(6) of the Friendly Societies Act 1896 on cancellation of registration.
- (5) In the application of this section to Scotland for references to the Chief Registrar of Friendly Societies there shall be substituted references to the assistant registrar for Scotland.

### **336 Saving for contracts made not later than 3rd May 1966**

Sections 333, 334 and 335 above shall not withdraw exemption under section 332(1) above for profits arising from any part of a life or endowment business relating to contracts made not later than 3rd May 1966.

### **337 Interpretation**

- (1) This section has effect for the interpretation of the preceding provisions of this Chapter, together with this section, but excluding section 331 (unregistered friendly societies).
- (2) In the said provisions " life or endowment business" means any business within section 8(1)(b) or (d) or (dd) of the Friendly Societies Act 1896 (life insurance and

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endowments and insurance of money payable on the duration of a life for a specified period) and any other life assurance business, but—

- (a) shall include business within section 8(1) (a) of the Friendly Societies Act 1896 for the relief or maintenance of any person in old age (meaning any age after fifty),
- (b) shall not include the granting of approved annuities (as defined in section 226(13) of this Act),
- (c) shall not include the assurance of any annuity the consideration for which consists of sums obtainable on the maturity, or on the surrender, of any other policy of assurance issued by the friendly society, being a policy of assurance forming part of the tax exempt life or endowment business of the friendly society.

(3) In the said provisions—

" industrial assurance business " has the meaning given by section 1(2) of the Industrial Insurance Act 1923,

" life assurance business " means the issue of, or the undertaking of liability under, policies of assurance upon human life, or the granting of annuities upon human life, not being industrial assurance business,

" tax exempt life or endowment business " has the meaning given by subsection (2)(b) of section 332 above, that is to say, it means life or endowment business other than business profits arising from which are excluded from subsection (1) of that section by subsection (2)(a) of that section,

" policy ", in relation to life or endowment business, includes an instrument evidencing a contract to pay an annuity upon human life, and references in the said provisions to a friendly society include references to any branch of that friendly society.

(4) It is hereby declared that for the purposes of the said provisions a registered friendly society formed on the amalgamation of two or more friendly societies is to be treated as different from the amalgamated societies:

Provided that—

- (a) the society shall be treated as registered not later than 3rd May 1966 if at the time of the amalgamation all the friendly societies amalgamated were societies which, subject to satisfying the conditions of section 334 above, were eligible for the exemption conferred by section 332(1) above in respect of life or endowment business and at least one of them was a society not within section 333(1)(b) above,
- (b) in determining, as respects a society resulting from an amalgamation and coming within section 335(2) above by virtue of proviso (a) above, the questions in that subsection in the period immediately following the amalgamation, the activities of the amalgamated societies in the period immediately preceding the amalgamation shall be treated as if they were the activities then being carried on by the society resulting from the amalgamation.

(5) In the application of the said provisions to a friendly society which is for the time being registered or deemed to be registered in Northern Ireland under the enactments relating to friendly societies in Northern Ireland—

- (a) for references to section 1(2) and section 24 of the Industrial Assurance Act 1923 there shall be substituted references to section 1(2) and section 24 respectively of the Industrial Assurance Act (Northern Ireland) 1924,
- (b) for references to the Friendly Societies Act 1896 or to any provision of that Act there shall be substituted references to that Act or provision as it applies in Northern Ireland,
- (c) for references to the Chief Registrar of Friendly Societies there shall be substituted references to the registrar having corresponding functions under the law of Northern Ireland.

### *Trade unions*

#### **338 Exemption for trade unions**

- (1) A registered trade union which is precluded by Act of Parliament, or by its rules, from assuring to any person a sum exceeding £500 by way of gross sum or £104 a year by way of annuity shall, on the making of a claim, be entitled—
  - (a) to exemption from income tax and corporation tax in respect of its income which is not trading income and which is applicable and applied for the purpose of provident benefits,
  - (b) to exemption from tax in respect of chargeable gains which are applicable and applied for the purpose of provident benefits.
- (2) In this section " provident benefits " includes any payment, expressly authorised by the registered rules of the trade union, which is made to a member during sickness or incapacity from personal injury or while out of work, or to an aged member by way of superannuation, or to a member who has met with an accident, or has lost his tools by fire or theft, and includes a payment in discharge or aid of funeral expenses on the death of a member or the wife of a member or as provision for the children of a deceased member.
- (3) In determining for the purposes of this section whether a registered trade union is by Act of Parliament or by its rules precluded from assuring to any person a sum exceeding £104 a year by way of annuity, there shall be disregarded any approved annuities (as defined in section 226(13) of this Act).

## **CHAPTER IV**

### SAVINGS BANKS, INDUSTRIAL AND PROVIDENT SOCIETIES, BUILDING SOCIETIES AND MUTUAL BUSINESS

#### **339 Savings banks**

- (1) Any trustee savings bank within the meaning of section 95(1) of the Trustees Saving Banks Act 1969 shall, on making a claim, be entitled to exemption from income tax and corporation tax in respect of its income arising from investments with the National Debt Commissioners.
- (2) Any savings bank, including any such trustee savings bank, shall, on making a claim, be entitled to exemption from income tax and corporation tax in respect of the income

of its funds, to the extent that such income is applied in the payment or credit of interest to any depositor:

Provided that, subject to section 414 of this Act (relief for first £15 of deposits), any such interest shall be chargeable under Case III of Schedule D.

### **340 Industrial and provident societies, etc.**

- (1) Notwithstanding anything in the Corporation Tax Acts, share interest or loan interest paid by a registered industrial and provident society shall not be treated as a distribution; and, subject to subsection (6) below, any share or loan interest paid in an accounting period of the society—
  - (a) shall be deductible in computing, for the purposes of corporation tax, the income of the society for that period from the trade carried on by the society, or
  - (b) if the society is not carrying on a trade, shall be treated for the said purposes as a charge on the income of the society.
- (2) Notwithstanding anything in Part II of this Act, any share interest or loan interest paid by a registered industrial and provident society shall be paid without deduction of income tax:

Provided that this subsection shall not apply to any share interest or loan interest payable to a person whose usual place of abode is not within the United Kingdom, and in any such case section 54 of this Act shall apply to the payment as it applies to a payment of yearly interest, and income tax shall be deducted accordingly.
- (3) Any share interest or loan interest paid by a registered industrial and provident society shall be chargeable under Case III of Schedule D.
- (4) Where at any time, by virtue of this section, the income of a person from any source, not having previously been chargeable by direct assessment on that person, becomes so chargeable, section 120(3) of this Act shall apply as if the source of that income were a new source of income acquired by that person at that time.
- (5) Every registered industrial and provident society shall, within three months after the end of any accounting period of the society, deliver to the inspector a return showing—
  - (a) the name and place of residence of every person to whom the society has by virtue of this section paid without deduction of income tax sums amounting to more than £15 in that period, and
  - (b) the amount so paid in that period to each of those persons.
- (6) If for any accounting period a return under subsection (5) above is not duly made by a registered industrial and provident society, share and loan interest paid by the society in that period shall not be deductible in computing its income, or be treated as a charge on income.
- (7) If in the course of, or as part of, a union or amalgamation of two or more registered industrial and provident societies, or a transfer of engagements from one registered industrial and provident society to another, there is a disposal of an asset by one society to another, both shall be treated for the purposes of corporation tax in respect of chargeable gains as if the asset were acquired from the society making the disposal for a consideration of such amount as would secure that neither a gain nor a loss would accrue to that society on the disposal.



(8) Subsections (1) and (7) of this section shall have effect as if references to a registered industrial and provident society included any co-operative association established and resident in the United Kingdom, and having as its object or primary object to assist its members in the carrying on of agricultural or horticultural businesses on land occupied by them in the United Kingdom or in the carrying on of businesses consisting in the catching or taking of fish or shellfish.

(9) In this section—

" co-operative association " means a body of persons having a written constitution from which the Minister is satisfied, having regard to the provision made as to the manner in which the income of the body is to be applied for the benefit of its members and all other relevant provisions, that the body is in substance a co-operative association,

" the Minister " means—

the Minister of Agriculture, Fisheries and Food, as regards England or Wales,

the Secretary of State, as regards Scotland, and

the Ministry of Agriculture for Northern Ireland, as regards Northern Ireland,

" registered industrial and provident society " means a society registered or deemed to be registered under the Industrial and Provident Societies Act 1965 or under the Industrial and Provident Societies Act (Northern Ireland) 1969,

" share interest " means any interest, dividend, bonus or other sum payable to a shareholder of the society by reference to the amount of his holding in the share capital of the society,

" loan interest " means any interest payable by the society in respect of any mortgage, loan, loan stock or deposit, and

references to the payment of share interest or loan interest include references to the crediting of such interest.

### **341 Co-operative housing associations**

(1) Where a housing association makes a claim in that behalf for any year or part of a year of assessment during which the association was approved for the purposes of this section.—

(a) rent to which the association was entitled from its members for the year or part shall be disregarded for tax purposes, and

(b) any yearly interest payable by the association for the year or part shall be treated for tax purposes as payable not by the association but severally by the members of the association who during the year or part were tenants of property of the association, in the proportion which the rents payable by those members for the year or part bear to the aggregate of the rents to which the association was entitled for the year or part from the properties to which the interest relates, and

(c) each member of the association shall be treated for the purposes of section 57 of this Act (relief for interest on loans for purchase or improvement of land) as if he were the owner of the association's estate or interest in the property of which he is the tenant.

(2) Where the property, or any of the properties, to which any such interest as aforesaid relates is for any period not subject to a tenancy, subsection (1)(b) above shall not

apply in relation to so much of the interest as is attributable to the property not subject to a tenancy, but for the purposes of the said subsection (1)(b) as it applies in relation to a tenant of any other property to which the interest relates the association shall be deemed to have received, in respect of the property not subject to a tenancy, rent at the rate payable therefor when it was last let by the association.

- (3) In computing the income of the association no payments shall be deductible under subsections (2), (3) or (4) of section 72 of this Act in so far as attributable to a period as respects which a claim under subsection (1) of this section had effect.
- (4) Where a claim under subsection (1) of this section has effect, any adjustment of the liability to tax of a member or of the association which is required in consequence of the claim may be made by an assessment or by repayment or otherwise, as the case may require.
- (5) Where a housing association makes a claim in that behalf for an accounting period or part of an accounting period during which it was approved for the purposes of this section, the housing association shall be exempt from corporation tax on chargeable gains accruing to it in the accounting period or part thereof on the disposal by way of sale of any property which has been or is being occupied by a tenant of the housing association.
- (6) References in this section to the approval of an association shall be construed as references to approval—
  - (a) by the Minister of Housing and Local Government, in the case of an association in England (excluding Monmouthshire),
  - (b) by the Secretary of State in the case of an association in Scotland, Wales or Monmouthshire,
  - (c) by the Minister of Development for Northern Ireland, in the case of an association in Northern Ireland ;
 and an association shall not be approved unless the approving authority is satisfied—
  - (i) that the association is, or is deemed to be, duly registered under the Industrial and Provident Societies Act 1965 or the Industrial and Provident Societies Act (Northern Ireland) 1969, and is a housing association within the meaning of the Housing Act 1957, the Housing (Scotland) Act 1950 or section 12 of the Housing and Local Government (Miscellaneous Provisions) Act (Northern Ireland) 1946,
  - (ii) that the rules of the association restrict membership to persons who are tenants or prospective tenants of the association, and preclude the granting or assignment (or in Scotland the granting or assignation) of tenancies to persons other than members, and
  - (iii) that the association satisfies such other requirements as may be prescribed by the approving authority, and will comply with such conditions as may for the time being be so prescribed.
- (7) An approval given for the purposes of this section shall have effect as from such date (whether before or after the giving of the approval) as may be specified by the approving authority, and shall cease to have effect if revoked by him.
- (8) The Minister of Housing and Local Government and the Secretary of State as respects England and Wales and Scotland, or the Minister of Development for Northern Ireland as respects Northern Ireland, may make regulations for the purpose of carrying out the provisions of this section ; and from the coming into operation of regulations under this subsection prescribing requirements or conditions for the purposes of subsection (6)

(iii) above, "prescribed" in the said subsection (6)(iii) shall mean prescribed by or under such regulations.

The power to make regulations conferred by this subsection on the Minister of Housing and Local Government and the Secretary of State shall be exercisable by statutory instrument.

- (9) A claim under this section shall be made to the inspector, and shall be made not later than two years after the end of the year of assessment or accounting period to which, or to a part of which, it relates.

Section 42 of the Taxes Management Act 1970 shall not apply to a claim under this section.

- (10) No claim under this section shall have effect unless it is proved that during the year or accounting period, or part thereof, to which the claim relates—
- (a) no property belonging to the association making the claim was let otherwise than to a member of the association;
  - (b) no property let by the association, and no part of such property, was occupied, whether solely or as joint occupier, by a person not being a member of the association;
  - (c) the association making the claim satisfies the conditions specified in subsection (6)(i) and (ii) above and has complied with the conditions prescribed under subsection (6)(iii) above for the time being in force; and
  - (d) any covenants required to be included in grants of tenancies by those conditions have been observed :

Provided that where the Board are satisfied that the requirements of paragraphs (a) to (d) of this subsection are substantially complied with they may direct that the claim shall have effect, but if subsequently information comes to the knowledge of the Board which satisfies them that the direction was not justified they may revoke the direction and thereupon the liability of all persons concerned to tax for all relevant years or accounting periods shall be adjusted by the making of assessments or otherwise.

For the purposes of paragraph (b) above occupation by any other person in accordance with the will, or the provisions applicable on the intestacy, of a deceased member, shall be treated during the first six months after the death as if it were occupation by a member.

- (11) A claim under this section shall be in such form and contain such particulars as may be prescribed by the Board, and, without prejudice to the generality of this provision, the required particulars may include an authority granted by all members of the association for any relevant information contained in any return made by a member under the provisions of the Income Tax Acts to be used by the Board in such manner as the Board may think fit for determining whether the claim ought to be allowed.

### **342 Disposals of land between the Housing Corporation and housing societies**

Where—

- (a) in accordance with a scheme approved under section 5 of the Housing Act 1964 the Housing Corporation acquires from a housing society the society's interest in all the land held by the society for carrying out its objects, or
- (b) after the Housing Corporation has so acquired from a housing society all the land so held by it the Corporation disposes to a single housing society of

the whole of that land (except any part previously disposed of or agreed to be disposed of otherwise than to a housing society), together with all related assets,

then both parties to the disposal of the land to or, as the case may be, by the Housing Corporation shall be treated for the purposes of corporation tax in respect of chargeable gains as if the land and any related assets disposed of therewith (and each part of that land and those assets) were acquired from the party making the disposal for a consideration of such an amount as would secure that on the disposal neither a gain nor a loss accrued to that party.

In this section, "housing society" has the same meaning as in Part I of the Housing Act 1964, and "related assets" means, in relation to an acquisition of land by the Housing Corporation, assets acquired by the Corporation in accordance with the same scheme as that land, and in relation to a disposal of land by the Housing Corporation, assets held by the Corporation for the purposes of the same scheme as that land.

### **343 Building societies**

- (1) The Board and any building society may, as respects any year of assessment, enter into arrangements whereby—
- (a) on such sums as may be determined in accordance with the arrangements the society is liable to account for and pay an amount representing income tax calculated in part at the standard rate and in part at a reduced rate which takes into account the operation of the subsequent provisions of this section ; and
  - (b) provision is made for any incidental or consequential matters,
- and any such arrangements shall have effect notwithstanding anything in this Act:

Provided that in exercising their powers of entering into arrangements under this section, the Board shall at all times aim at securing that (if the amount so payable by the society under the arrangements is regarded as income tax for the year of assessment) the total income tax becoming payable to, and not becoming repayable by, the Crown is, when regard is had to the operation of the subsequent provisions of this section, as nearly as may be the same in the aggregate as it would have been if those powers had never been exercised.

- (2) Where for any year of assessment a building society enters into arrangements under this section, dividends or interest payable in respect of shares in, or deposits with or loans to, the society shall be dealt with for the purposes of corporation tax as follows:
- 
- (a) in computing for any accounting period ending in the year of assessment the total profits of the society there shall be allowed as a deduction the actual amount paid or credited in the accounting period of any such dividends or interest, together with the amount accounted for and paid by the society in respect thereof as representing income tax,
  - (b) in computing the income of a company which is paid or credited in the year of assessment with any such dividends or interest, the company shall be treated as having received an amount which, after deduction of income tax at the standard rate for the year of assessment, is equal to the amount paid or credited, and shall be entitled to a set off or repayment of income tax accordingly, except that the dividends or interest shall not be brought into account under Schedule 9 to this Act (method by which companies are to account for income tax due from them),

- (c) no part of any such dividends or interest paid or credited in the year of assessment shall be treated as a distribution of the society or as franked investment income of any company resident in the United Kingdom.
- (3) Where any arrangements under this section are in force in the case of any society as respects any year of assessment—
- (a) notwithstanding anything in Part II of this Act, income tax shall not be deducted from any dividends or interest payable in that year in respect of shares in or deposits with or loans to that society,
- (b) no assessment to income tax or (subject to subsection (2)(b) above) repayment of income tax shall be made in respect of any such dividends or interest on or to the person receiving or entitled to the dividends or interest,
- (c) subject to subsection (2)(b) above, the amounts actually paid or credited in respect of any such dividends or interest (and no more) shall be treated as income for that year of the person entitled thereto, and
- (d) subject to section 240(4) of this Act (payments by companies not to be treated as paid out of profits or gains brought into charge to income tax), the said amounts (and no more) shall, in applying section 52 and section 53 of this Act to other payments, be treated as profits or gains which have been brought into charge to income tax:

Provided that—

- (i) any such dividends or interest shall be taken into account for the purposes of assessment to surtax; and
- (ii) the amount actually paid or credited in respect of any such dividends or interest shall be deemed for surtax purposes to be a net amount corresponding to a gross amount from which tax at the standard rate for that year has been duly deducted, and the amount on which surtax is to be charged in the case of any person shall be calculated accordingly ; and
- (iii) the provisions of this subsection shall not apply in relation to interest on any bank loan; and
- (iv) the provisions of this subsection shall not apply in relation to any interest which is payable in respect of a loan to the society under a contract made before the beginning of the first year of assessment as respects which the society enters into arrangements under subsection (1) of this section, if and to the extent that, both at the time of the making of the contract and at the time when the interest becomes payable, it is contemplated by the parties that tax shall be deducted on payment of the interest.
- (4) Where any arrangements under this section are in force in the case of any society as respects any year of assessment then, notwithstanding anything in Part II of this Act, income tax shall not be deducted upon payment to the society of any interest on advances, being interest payable in that year.
- (5) If in the course of, or as part of, a union or amalgamation of two or more building societies, or a transfer of engagements from one building society to another, there is a disposal of an asset by one society to another, both shall be treated for purposes of corporation tax in respect of chargeable gains as if the asset were acquired from the one making the disposal for a consideration of such amount as would secure that on the disposal neither a gain nor a loss would accrue to the one making the disposal.
- (6) Any arrangements made under this section as respects any year of assessment shall, if made after the beginning of that year, be deemed to have come into force at the

beginning thereof, and any necessary adjustments shall be made in relation to any sums paid or credited before the date of the making of the arrangements.

- (7) In this section "dividend" includes any distribution as defined for the purposes of the Corporation Tax Acts, whether described as a dividend or otherwise.
- (8) In this section "building society" means a building society within the meaning of the Building Societies Act 1962 or the Building Societies Act (Northern Ireland) 1967.
- (9) This section shall apply in relation to a company within the meaning of the Companies Act 1948, or the corresponding enactments in force in Northern Ireland, which carries on a business which in the opinion of the Board is similar to that carried on by a building society as it applies in relation to a building society, except that in subsections (2) and (3) the references to dividends and shares shall be deemed to be omitted.

#### **344 Building societies: time for payment of corporation tax**

- (1) Where a building society which had for the year 1965-66 entered into arrangements under section 445 of the Income Tax Act 1952 (which is re-enacted in section 343 above) would but for the arrangements have been assessed for that year by reference to a period ending before that year, but under the arrangements (and without any election thereunder by the society) was so assessed by reference to a period ending in that year, then this section shall apply to the society in place of the provisions of Chapter I of Part XI of this Act as to the time for payment of corporation tax.
- (2) Where this section applies to a building society, then—
  - (a) corporation tax assessed on the society for any accounting period shall be paid within one month from the making of the assessment, except that if the society's basis period for the year 1965-66 did not extend into the year 1966, the tax shall not be payable before the like time after the last day of the accounting period as 1st January 1966 is after the last day of that basis period; but
  - (b) if corporation tax has not become payable by the society for an accounting period by the like time from the beginning of that period as there is between the beginning of the said basis period and 1st January 1966, the society shall at that time from the beginning of the accounting period make a provisional payment of tax computed on the amount on which the society is chargeable to corporation tax for the accounting period last ended with such adjustments, if any, as may be required for periods of different length or as may be agreed between the society and the inspector.

References in this subsection to a society's basis period for the year 1965-66 are references to the period by reference to which the society was assessed to income tax for that year under the arrangements referred to in subsection (1) above.

#### **345 Companies trading with their members, and certain industrial and provident societies**

- (1) In the application to any company of any provision of the Tax Acts relating to profits or gains chargeable under Case I of Schedule D, any reference to profits or gains shall be deemed to include a reference to a profit or surplus arising from transactions of the company with its members which would be included in profits or gains for the purposes of that provision if those transactions were transactions with non-members, and the profit or surplus aforesaid shall be determined for the purposes

of that provision on the same principles as those on which profits or gains arising from transactions with non-members would be so determined.

- (2) It is hereby declared that, in computing, for the purposes of any provision of the Tax Acts relating to profits or gains chargeable under Case I of Schedule D, any profits or gains of—
- (a) any registered industrial and provident society which does not sell to persons not members thereof; or
  - (b) any registered industrial and provident society the number of the shares whereof is not limited by its rules or practice ; or
  - (c) any other company, being a company the profits or gains whereof include any income which is chargeable to tax by virtue of subsection (1) of this section, there are to be deducted as expenses any sums which—
    - (i) represent a discount, rebate, dividend or bonus granted by the company to members or other persons in respect of amounts paid or payable by or to them on account of their transactions with the company, being transactions which are taken into account in the said computation ; and
    - (ii) are calculated by reference to the said amounts or to the magnitude of the said transactions and not by reference to the amount of any share or interest in the capital of the company.
- (3) No dividends or bonus deductible in computing income as mentioned in subsection (2) above shall be regarded as a distribution.
- (4) In this section " registered industrial and provident society " means a society registered or deemed to be registered under the Industrial and Provident Societies Act 1965 or under the Industrial and Provident Societies Act (Northern Ireland) 1969.

### **346 Companies carrying on mutual business, or not carrying on a business**

- (1) Subject to subsection (2) below, where a company carries on any business of mutual trading or mutual insurance or other mutual business the provisions of the Corporation Tax Acts relating to distributions shall apply to distributions made by the company notwithstanding that they are made to persons participating in the mutual activities of that business and derive from those activities, but shall so apply only to the extent to which the distributions are made out of profits of the company which are brought into charge to corporation tax or out of franked investment income (including group income).
- (2) In the case of a company carrying on any mutual life assurance business, the provisions of the Corporation Tax Acts relating to distributions shall not apply to distributions made to persons participating in the mutual activities of that business and derived from those activities ; but if the business includes annuity business, the annuities payable in the course of that business shall not be treated as charges on the income of the company to any greater extent than if the business were not mutual but were being carried on by the company with a view to the realisation of profits for the company.
- (3) Subject to the preceding subsections, the fact that a distribution made by a company carrying on any such business is derived from the mutual activities of that business and the recipient is a person participating in those activities shall not affect the character which the payment or other receipt has for purposes of corporation tax or income tax in the hands of the recipient.

- (4) Where a company does not carry on, and never has carried on, a trade or a business of holding investments, and is not established for purposes which include the carrying on of a trade or of such a business, the provisions of the Corporation Tax Acts relating to distributions shall apply to distributions made by the company only to the extent to which the distributions are made out of profits of the company which are brought into charge to corporation tax or out of franked investment income.

### **347 Distribution of assets of body corporate carrying on mutual business**

- (1) Where any person receives any money or money's worth—
- (a) forming part of the assets of a body corporate, other than assets representing capital, or
  - (b) forming part of the consideration for the transfer of the assets of a body corporate, other than assets representing capital, as part of a scheme of amalgamation or reconstruction which involves the winding up of the body corporate, or
  - (c) consisting of the consideration for a transfer or surrender of a right to receive anything falling under paragraph (a) or (b) above, being a receipt not giving rise to any charge to tax on the recipient apart from this section,

and the body corporate has at any time carried on a trade which consists of or includes the conducting of any mutual business (whether confined to members of the body corporate or not), and is being or has been wound up or dissolved, the provisions of this section shall apply to the receipt.

- (2) If a transfer or surrender of a right under subsection (1)(c) of this section is not at arm's length, the person making the transfer or surrender shall, for the purposes of this section, be deemed then to have received consideration equal to the value of the right.
- (3) If in respect of a payment of any amount made to the body corporate for the purposes of its mutual business any deduction has been allowed for the purposes of tax in computing the profits or gains or losses of a trade, then—
- (a) if at the time of the receipt the recipient is the person, or one of the persons, carrying on that trade, the amount or value of the receipt shall be treated for the purposes of tax as a trading receipt of that trade, and
  - (b) if at the time of the receipt the recipient is not the person, or one of the persons, carrying on that trade, but was the person, or one of the persons carrying on that trade when any payment was made to the body corporate for the purposes of its mutual business in respect of which a deduction was allowed for the purposes of tax in computing the profits or gains or losses of the trade, the recipient shall, subject to the provisions of subsection (5) of this section, be charged under Case VI of Schedule D for the chargeable period in which the receipt falls on an amount equal to the amount or value of the receipt.

Paragraph (a) of this subsection applies notwithstanding that, as a result of a change in the persons carrying on the trade, the profits or gains are under section 154 or section 251(1) of this Act (income tax and corporation tax rules for commencement or discontinuance of trade), determined as if it had been permanently discontinued and a new trade set up and commenced.

- (4) Where an individual is chargeable to tax by virtue of subsection (3)(b) of this section and the profits or gains of the trade there mentioned fell to be treated as earned



income for the purposes of the Income Tax Acts, the sums in respect of which he is so chargeable shall also be treated for those purposes as earned income.

- (5) If the trade mentioned in subsection (3)(b) of this section was permanently discontinued before the time of the receipt, then in computing the charge to tax under the said subsection (3)(b) there shall be deducted from the amount or value of the receipt—
- (a) any loss, expense or debit (not being a loss, expense or debit arising directly or indirectly from the discontinuance itself) which, if the trade had not been discontinued, would have been deducted in computing for tax purposes the profits or gains or losses of the person by whom it was carried on before the discontinuance, or would have been deducted from or set off against those profits as so computed, and
  - (b) any capital allowance to which the person who carried on the trade was entitled immediately before the discontinuance and to which effect has not been given by way of relief before discontinuance.

Relief shall not be given under this subsection or under section 145(1) of this Act (post-cessation receipts: allowable deductions) in respect of any loss, expense, debit or allowance if and so far as it has been so given by reference to another charge to tax under this section or under section 143 of this Act (post-cessation receipts).

- (6) For the purposes of subsection (1) of this section assets representing capital consist of—
- (a) assets representing any loan or other capital subscribed, including income derived from any investment of any part of that capital, but not including profits from the employment of that capital for the purposes of the mutual business of the body corporate,
  - (b) assets representing any profits or gains charged to tax as being profits or gains of any part of the trade carried on by the body corporate which does not consist of the conducting of any mutual business,
  - (c) (so far as not comprised in the paragraphs above) assets representing taxed income from any investments.
- (7) In this section " mutual business " includes any business of mutual insurance or mutual trading.
- (8) Subsections (3), (4) and (5) of this section shall apply with any necessary modifications—
- (a) to a profession or vocation, and
  - (b) to the occupation of woodlands the profits or gains of which are assessable under Schedule D,
- as they apply to a trade.
- (9) It is hereby declared that the description of trades in subsection (1) of this section does not include any trade all the profits or gains of which are chargeable to tax and, in particular, does not include such a trade carried on by any registered industrial and provident society.

## CHAPTER V

### STATUTORY BODIES

#### **348 Reserves of marketing boards**

- (1) Where a marketing board to which this section applies carries on a trade which includes the buying and selling of the board's commodity, and the board is required in connection with arrangements for maintaining guaranteed prices to producers of that commodity to pay the whole or part of any surplus derived from dealings in the commodity into a reserve fund satisfying the conditions of the next following subsection, then—
- (a) in computing for the purposes of tax the profits or gains or losses of the said trade there shall be allowed as deductions any sums required to be paid by the board into the reserve fund out of the profits or gains of the trade, and there shall be taken into account as trading receipts any sums withdrawn by the board from the fund except in so far as the sums withdrawn are required to be paid to a Minister of the Crown or Government department or are distributed to producers of the board's commodity, and
  - (b) in computing for the purposes of tax the profits or gains or losses of a trade carried on by any person there shall be taken into account as a trading receipt any payment made to him on a distribution by the board to producers of the board's commodity of sums withdrawn from the fund.
- (2) The conditions to be satisfied by the reserve fund are—
- (a) that no sum may be withdrawn from it by the board without the authority or consent of a Minister of the Crown or Government department, and
  - (b) that, where money has been paid to the board by a Minister of the Crown or Government department in connection with the arrangements for maintaining guaranteed prices to producers of the board's commodity, sums afterwards standing to the credit of the fund are required to be applied in whole or in part in repaying that money, and
  - (c) that the sums standing to the credit of the fund and not otherwise applied become, at intervals fixed by or under any scheme or arrangements approved by or made with a Minister of the Crown or Government department, available for distribution to producers of the board's commodity.
- (3) In this section—
- (a) " marketing board to which this section applies " means any body of persons established by or under any enactment and having for its object or one of its objects to regulate in the interests of producers in the United Kingdom or any class of them the marketing of a particular commodity, and " the board's commodity " refers to that commodity,
  - (b) " required " means required by or under any scheme or arrangements approved by or made with a Minister of the Crown or Government department,
  - (c) " Minister of the Crown or Government department " includes a Minister of the Crown or Government department in Northern Ireland,
  - (d) " producer " includes a person who produces one type or quality of the commodity from another and (except in so far as the context otherwise requires) a person who has been a producer and the personal representatives of a producer who has died.

- (4) For the purposes of subsection (1)(b) of this section, a payment made to a person in respect of a trade he has ceased to carry on, and a payment made to a person's personal representatives but referable to his having carried on the trade in respect of which it is made, shall be treated as if it had been made to him on the last day on which he was engaged in carrying on the trade.

### **349 Electricity Council and Boards**

- (1) For the purposes of the Corporation Tax Acts the Electricity Council shall be treated as carrying on a trade, and those Acts shall have effect as if the trade carried on by the Central Electricity Authority at any time before 1st January 1958 had been the trade of the Electricity Council.
- (2) For the purposes of the Corporation Tax Acts—
- (a) any trade carried on by a Board shall be treated as if it were part of the trade carried on by the Electricity Council,
  - (b) subject to paragraph (c) below, any property, rights or liabilities of a Board shall be treated as property, rights or liabilities of the Electricity Council, and anything done by or to a Board shall be deemed to have been done by or to the Electricity Council,
  - (c) any rights, liabilities or things done—
    - (i) of, by or to the Electricity Council against, to or by a Board, or
    - (ii) of, by or to a Board against, to or by the Electricity Council or any other Board,shall be left out of account, and corporation tax shall be charged accordingly.
- (3) For the purposes of the operation of the Corporation Tax Acts in accordance with the preceding provisions of this section, the Electricity Council shall be deemed to have been in existence as from 1st April 1948, and anything done by, to or in relation to the Central Electricity Authority shall be treated as if it had been done by, to or in relation to the Electricity Council.
- (4) In this section " Board " means—
- (a) any Area Board established by or under the provisions of the Electricity Act 1947, and
  - (b) in relation to any time on or after 1st January 1958, the Central Electricity Generating Board.

### **350 Gas Council and Area Boards**

- (1) Subject to the provisions of this section, for the purposes of the Corporation Tax Acts the Gas Council shall be treated as carrying on a trade from the beginning of April 1962, and from the beginning of that month—
- (a) any trade carried on by an Area Board within the meaning of the Gas Act 1948 shall be treated as part of the trade carried on by the Gas Council;
  - (b) subject to paragraph (c) below, any property, rights or liabilities of any such Board shall be treated as property, rights or liabilities of the Gas Council, and any thing done by or to any such Board shall be deemed to have been done by or to the Gas Council,
  - (c) any rights, liabilities or things done—

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- (i) of, by or to the Gas Council against, to or by any such Board, or
- (ii) of, by or to any such Board against, to or by the Gas Council or any other such Board,

shall be left out of account,

and corporation tax shall be charged accordingly.

- (2) Any losses of the trade of an Area Board for any year of assessment earlier than the year 1962-63 may be carried forward and set off against the profits or gains of the trade of the Gas Council as if incurred by the Gas Council in carrying on that trade.
- (3) The Corporation Tax Acts shall apply in relation to the trade of the Gas Council as if before the beginning of April 1962 it had consisted of the trades of the Area Boards, and (without prejudice to the generality of the foregoing) allowances and balancing charges shall be made to or on the Gas Council accordingly by reference to the capital expenditure of Area Boards and to the allowances made to Area Boards in respect of that expenditure.

### **351 Atomic Energy Authority and National Radiological Protection Board**

- (1) The United Kingdom Atomic Energy Authority and the National Radiological Protection Board shall be entitled to exemption from income tax and corporation tax—
  - (a) under Schedules A, B and C,
  - (b) under Schedule D in respect of any yearly interest or other annual payment received by the Authority or Board,
  - (c) under Schedule F in respect of distributions received by the Authority or Board, and
  - (d) in respect of chargeable gains.
- (2) Income arising from investments or deposits held for the purposes of any pension scheme provided and maintained by the said Atomic Energy Authority shall be treated for the purposes of this section as if that income and the source thereof belonged to the Authority, and similarly with chargeable gains (the exemptions from corporation tax conferred on the Authority having effect as exemptions from income tax or capital gains tax).

### **352 Harbour reorganisation schemes**

- (1) This section has effect where the trade of any body corporate other than a limited liability company is transferred to a harbour authority by or under a certified harbour reorganisation scheme which provides also for the dissolution of the transferor.
- (2) For the purposes of the Corporation Tax Acts, the trade shall not be treated as permanently discontinued, nor shall a new trade be treated as set up and commenced.
- (3) The transferee shall be entitled to relief from corporation tax under section 177(1) of this Act, as for a loss sustained by it in carrying on the transferred trade or any trade of which it comes to form part, for any amount which, if the transferor had continued to carry it on, would have been available to the transferor for carry forward against chargeable profits of succeeding accounting periods, but subject to any claim made by the transferor under subsection (2) of the said section 177.
- (4) There shall be made to or on the transferee in accordance with the Capital Allowances Act 1968 all such allowances and charges as would, if the transferor had continued to

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carry on the trade, have fallen to be made to or on it under that Act and the amount of any such allowance or charge shall be computed as if the transferee had been carrying on the trade since the transferor had begun to do so and as if everything done to or by the transferor had been done to or by the transferee.

No sale or transfer which on the transfer of the trade is made by the transferor to the transferee of any assets in use for the purposes of the trade shall be treated as giving rise to any such allowance or charge.

- (5) The transferor shall not be entitled to relief under section 178 of this Act or section 87 of the Finance Act 1965 (transitional relief for existing companies on cessation of trade) in respect of the trade.
- (6) The transferee shall be entitled to relief from corporation tax in respect of chargeable gains for any amount for which the transferor would have been entitled to claim relief in respect of allowable losses if it had continued to carry on the trade.
- (7) For the purposes of Part III of the Finance Act 1965 any asset transferred on the transfer of the trade shall be deemed to be for a consideration such that no gain or loss accrues to the transferor on its transfer ; and for the purposes of Part II of Schedule 6 to that Act the transferee shall be treated as if the acquisition by the transferor of any asset so transferred had been the transferee's acquisition thereof.
- (8) Where a part only of such trade is transferred to a harbour authority by or under a certified harbour reorganisation scheme, and the transferor continues to carry on the remainder of the trade, or any such trade is, by or under a certified harbour reorganisation scheme which provides also for the dissolution of the transferor, transferred in parts to two or more harbour authorities, this section shall apply as if the transferred part, or each of the transferred parts, had been at all times a separate trade.
- (9) Where a part of any trade is to be treated by virtue of subsection (8) above as having been a separate trade over any period there shall be made any necessary adjustments of accounting periods, and such apportionments as may be just of receipts, expenses, allowances or charges.

Subsection (9) of section 252 of this Act shall apply to any apportionment under this subsection as it applies to an apportionment under subsection (8) of that section.

- (10) This section shall not apply to a transfer of a trade or part of a trade before 3rd August 1966 (the date of the passing of the Finance Act 1966) except that where the trade carried on by any body corporate was, by or under a certified harbour reorganisation scheme, transferred to a harbour authority in the year 1965-66—
  - (a) for all purposes of corporation tax the transferee and all other persons affected shall be treated as if the transferee had carried on the trade from the end of the basis period for that year of the trade as carried on by the transferor, and as if anything done to or by the transferor in carrying on the trade since the end of that period had been done to or by the transferee, and
  - (b) subsections (3), (4), (6) and (7) of this section shall apply.
- (11) In this section—
  - " harbour authority " has the same meaning as in the Harbours Act 1964,
  - " harbour reorganisation scheme " means any statutory provision providing for the management by a harbour authority of any harbour or group of harbours in the United Kingdom, and " certified ", in relation to any harbour reorganisation scheme, means certified by a Minister of the Crown or

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Government department as so providing with a view to securing, in the public interest, the efficient and economical development of the harbour or harbours in question,

" limited liability company " means a company having a limit on the liability of its members,

" statutory provision " means any enactment, or any scheme, order or other instrument having effect under an enactment, and includes an enactment confirming a provisional order,

" transferor ", in relation to any trade, means the body from whom the trade is transferred, whether or not the transfer is effected by that body.

### **353 Local authorities**

(1) A local authority in the United Kingdom—

- (a) shall be exempt from all charge to income tax in respect of its income, and
- (b) shall be exempt from corporation tax and capital gains tax,

and so far as the exemption from income tax conferred by this subsection calls for repayment of tax, effect shall be given thereto by means of a claim.

This subsection shall apply to a local authority association as it applies to a local authority.

(2) In this section " local authority " means—

- (a) in relation to England and Wales, any authority being, within the meaning of the Local Loans Act 1875, an authority having power to levy a rate, and includes a joint board or joint committee of such authorities ;
- (b) in relation to Scotland, any county council, town council or district council, and any statutory authority, commissioners or trustees having power to levy a rate as defined in section 379 of the Local Government (Scotland) Act 1947, or to issue a requisition for payment of money to be raised out of such a rate, and includes any joint board or joint committee of such authorities appointed under any enactment, order or scheme;
- (c) in relation to Northern Ireland, the council of any county, county or other borough, or urban or rural district, any other body of which all or substantially all the members are elected by local government electors and which is established for public local purposes and has power to raise money for those purposes by rates leviable on the basis of assessments in respect of land, and any committee or board appointed wholly or partly by a county or district council or by several such councils jointly.

(3) In subsection (2)(a) and (b) above any reference to a joint board or joint committee of such authorities as are there mentioned applies, and applies only, to a joint board or joint committee of which all the constituent members are such authorities or which, having such authorities and other bodies corporate as its constituent members, is authorised by or under any enactment to require from those authorities, but not from other constituent members, the payment of sums to meet or towards meeting the amount or estimated amount by which its revenue for any period falls short or may fall short of its expenditure for that period; and for this purpose, if a member of a joint board or joint committee is a representative of or appointed by any authority or body, that authority or body (and not he) is to be treated as a constituent member of the board or committee.

- (4) In this section "local authority association" means any incorporated or unincorporated association of which all the constituent members are local authorities, groups of local authorities or local authority associations and which has for its object or primary object the protection and furtherance of the interests in general of local authorities or any description of local authorities; and for this purpose, if a member of an association is a representative of or appointed by any authority, group of authorities or association, that authority, group or association (and not he) is to be treated as a constituent member of the association.

## CHAPTER VI

### UNIT TRUSTS AND INVESTMENT TRUSTS

#### *Unit trusts*

#### **354 Authorised unit trusts**

- (1) In respect of income and chargeable gains arising to the trustees of an authorised unit trust, the Tax Acts shall have effect—
- (a) as if the trustees were a company, resident in the United Kingdom, whose business consists mainly in the making of investments and the principal part of whose income is derived therefrom, and
  - (b) as if the rights of the unit holders were shares in the company, and
  - (c) as if so much of the income arising to the trustees as is available for payment to unit holders or for investment were dividends on such shares paid to them in proportion to their rights, the date of payment, in the case of income not paid to unit holders, being taken to be—
    - (i) the date or latest date provided by the terms of the authorised unit trust for any distribution in respect of the distribution period in question,
    - (ii) if no date is so provided, the last day of the distribution period;
- and references in the Corporation Tax Acts to a body corporate shall be construed in accordance with this subsection.
- (2) Without prejudice to the generality of the preceding provisions—
- (a) sums periodically appropriated out of income or chargeable gains arising as aforesaid for managers' remuneration shall be treated for the purposes of section 304 of this Act as sums disbursed as expenses of management,
  - (b) the proportion of income attributable to any unit holder, being income not paid to unit holders but available for investment, shall be treated as an amount paid to the unit holder after such deduction of tax as is authorised by section 232(3) of this Act (Schedule F),
  - (c) section 242 of this Act (explanation of income tax deductions to be annexed to dividend warrants, etc.) shall apply with any necessary modifications.
- (3) In ascertaining the amount available for distribution to unit holders in respect of any distribution period the trustees of an authorised unit trust may make such adjustments as may be reasonably required to allow for liabilities to and reliefs from tax where the amount of the liability or relief is not yet ascertained.

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- (4) In this section " distribution period " means a period over which income from the investments subject to the trusts is aggregated for the purposes of ascertaining the amount available for distribution to unit holders.

### **355 Cancellation and creation of units**

Where in an accounting period of an authorised unit trust the aggregate of the capital sums paid in respect of the cancellation of units exceeds the aggregate of the capital sums received in respect of the creation of units, then the amount (as computed apart from this section) of any chargeable gain or allowable loss accruing to the unit trust in that period shall be taken as reduced by the fraction of

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

it where—

A is the said excess,

B is the total net consideration received by the unit trust on the disposal of chargeable assets during the period after deduction of the incidental costs of making the disposal;

and if A exceeds B no chargeable gain or allowable loss shall accrue to the unit trust in that period.

#### *Unit trusts and investment trusts*

### **356 Rate of tax on chargeable gains**

The rate of tax payable by an authorised unit trust or by an investment trust on any chargeable gains accruing in any accounting period (as calculated in accordance with section 265 of this Act) shall not exceed that payable in that period by an individual under section 20(3) of the Finance Act 1965.

### **357 Apportionment of chargeable gains**

- (1) For the purposes of section 37 of the Finance Act 1965 (relief for unit holders in respect of chargeable gains of unit trust) the total net gains of an authorised unit trust for an accounting period are the excess, if any, of the chargeable gains accruing to the unit trust in the period over the allowable losses deductible from those gains (as those gains and losses are computed for the charge to tax on the unit trust), after deduction from that excess of the tax which will be charged on the unit trust for the period in respect of chargeable gains, and the proportion attributable to any unit holder of the total net gains for any accounting period shall be determined by the unit trust, regard being among other things had, as between units of different classes, to the proportion of the assets of the unit trust representing gains on capital which would be attributable to the respective classes in a liquidation of the unit trust; and no apportionment which the unit trust makes under this section shall be questionable in any proceedings by the unit holders or by any other person.
- (2) After carrying out an apportionment under subsection (1) of this section the unit trust shall give any unit holder to whom part of the total net gains is attributable a notice referring to the provisions of this section and certifying—



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- (a) the total net gains (employing that term) of the unit trust for the accounting period, so far as known ; and
- (b) the amount apportioned to him ;

and the unit holders between whom the total net gains are to be apportioned shall (except on an apportionment made in accordance with subsection (3) below) be determined by reference to the same date as the right to payment of the first dividend after the end of the accounting period, and that date shall be deemed to be the date when the apportionment is made and shall be specified in the notice.

- (3) The apportionment under subsection (1) of this section shall be carried out separately for each accounting period but a notice may be issued in respect of part of an accounting period apportioned in the light of the information available at the time, and an apportionment (or final apportionment) for an accounting period may be made at or after the end of the period, notwithstanding that any amounts are not finally ascertained; but if at any time it is found that too much or too little has been apportioned it shall be corrected as soon as may be by deduction from or addition to the total net gains of a later accounting period or periods.
- (4) A notice under subsection (2) of this section may be combined with the statement in writing required to be given under section 242 of this Act (explanation of income tax deductions to be annexed to dividend warrants, etc.).
- (5) Before the notices under subsection (2) of this section are sent out, particulars of the apportionments shall be submitted to the inspector, and the notices shall not be sent out without his approval, but subject to a right of appeal to the General Commissioners having jurisdiction in any assessment on the unit trust, being a right of appeal against the refusal of the inspector to give his approval.

In the application of this subsection to Northern Ireland for the reference to the General Commissioners there shall be substituted a reference to the Special Commissioners.

- (6) Anything required by this section to be done by a unit trust shall be done by the managers of the unit trust with the approval of the trustee.
- (7) Subsections (1) to (5) above shall apply to an investment trust as they apply in relation to a unit trust with the necessary adaptations of references to units and unit holders.

#### *Interpretation*

### **358 Definitions of authorised unit trust and unit holder**

In this Chapter—

" authorised unit trust " means, as respects any accounting period, a unit trust scheme in the case of which an order of the Board of Trade under section 17 of the Prevention of Fraud (Investments) Act 1958 or of the Ministry of Commerce for Northern Ireland under section 16 of the Prevention of Fraud (Investments) Act (Northern Ireland) 1940 is in force during the whole or some part of that accounting period,

" unit holder " means a person entitled to a share of the investments subject to the trusts of a unit trust scheme.

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### **359 Definition of investment trust**

- (1) For the purposes of this Chapter " investment trust" means, as respects any accounting period, a company which is not a close company and which is approved for the purposes of this section for that accounting period by the Board, and the Board shall not approve any company unless it is shown to their satisfaction—
- (a) that the company's income is derived wholly or mainly from shares or securities ; and
  - (b) subject to subsection (2) of this section, that no holding in a company, other than an investment trust or a company which would qualify as an investment trust but for paragraph (c) of this subsection, represents more than 15 per cent. by value of the investing company's investments, and
  - (c) that the shares or securities of the company, or a class of them, are quoted on a recognised stock exchange in the United Kingdom, and
  - (d) that the distribution as dividend of surpluses arising from the realisation of investments is prohibited by the company's memorandum or articles of association, and
  - (e) that the company does not retain in respect of any accounting period more than 15 per cent of the income it derives from shares and securities.
- (2) Subsection (1)(b) above shall not apply—
- (a) to a holding in a company acquired before 6th April 1965 which on that date represented not more than 25 per cent. by value of the investing company's investments, or
  - (b) to a holding in a company which, when it was acquired, represented not more than 15 per cent. by value of the investing company's investments,
- so long as no addition is made to the holding.
- (3) For the purposes of subsection (2) above—
- (a) " holding " means the shares or securities (whether of one class or more than one class) held in any one company, and
  - (b) an addition is made to a holding whenever the investing company acquires shares or securities of that one company, otherwise than by being allotted shares or securities without becoming liable to give any consideration, and if an addition is made to a holding that holding is acquired when the addition, or the latest addition, is made to the holding, and
  - (c) where in connection with a scheme of reconstruction or amalgamation, a company issues shares or securities to persons holding shares or securities in a second company in respect of and in proportion to (or as nearly as may be in proportion (a) their holdings in the second company, without those persons becoming liable to give any consideration, a holding of the shares or securities in the second company and a corresponding holding of the shares or securities so issued shall be regarded as the same holding.
- (4) In this section " company " and " shares " shall be construed in accordance with subsections (1) and (8) of section 45 of the Finance Act 1965.

## PART XIII

### SPECIAL EXEMPTIONS

#### 360 Charities

- (1) The following exemptions shall be granted on a claim in that behalf to the Board—
- (a) exemption from tax under Schedules A and D in respect of the rents and profits of any lands, tenements, hereditaments or heritages belonging to a hospital, public school or almshouse, or vested in trustees for charitable purposes, so far as the same are applied to charitable purposes only,
  - (b) exemption from tax under Schedule B in respect of any lands occupied by a charity,
  - (c) exemption—
    - (i) from tax under Schedule C in respect of any interest, annuities, dividends or shares of annuities,
    - (ii) from tax under Schedule D in respect of any yearly interest or other annual payment, and
    - (iii) from tax under Schedule F in respect of any distribution,where the income in question forms part of the income of a charity, or is, according to rules or regulations established by Act of Parliament, charter, decree, deed of trust or will, applicable to charitable purposes only, and so far as it is applied to charitable purposes only,
  - (d) exemption from tax under Schedule C in respect of any interest, annuities, dividends or shares of annuities which are in the names of trustees and are applicable solely towards the repairs of any cathedral, college, church or chapel, or of any building used solely for the purpose of divine worship, so far as the same are applied to those purposes,
  - (e) exemption from tax under Schedule D in respect of the profits of any trade carried on by a charity, if the profits are applied solely to the purposes of the charity and either—
    - (i) the trade is exercised in the course of the actual carrying out of a primary purpose of the charity, or
    - (ii) the work in connection with the trade is mainly carried out by beneficiaries of the charity.
- (2) A charity shall be exempt from tax chargeable under Case VII of Schedule D on any gain accruing from its acquisition and disposal of any assets, and in respect of tax on chargeable gains shall be allowed exemption in accordance with section 35 of the Finance Act 1965.
- (3) In this section "charity" means any body of persons or trust established for charitable purposes only.

#### 361 Agricultural societies

- (1) Profits or gains arising to an agricultural society from any exhibition or show held for the purposes of the society shall be exempt from tax if applied solely to the purposes of the society.

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- (2) In this section " agricultural society " means any society or institution established for the purpose of promoting the interests of agriculture, horticulture, livestock breeding or forestry.

### **362 Scientific research associations**

- (1) Where—

- (a) an Association which has as its object the undertaking of scientific research which may lead to or facilitate an extension of any class or classes of trade is approved for the purposes of this section by the Minister of Technology, and
- (b) the memorandum of association or other similar instrument regulating the functions of the Association precludes the direct or indirect payment or transfer to any of its members of any of its income or property by way of dividend, gift, division, bonus or otherwise howsoever by way of profit,

there shall, on a claim in that behalf to the Board, be allowed in the case of the Association—

- (i) such exemption from tax as falls to be allowed under section 360 above in the case of a charity the whole income of which is applied to charitable purposes, and
  - (ii) exemption from tax in respect of chargeable gains.
- (2) The condition specified in paragraph (b) of subsection (1) above shall not be deemed not to be complied with in the case of any Association by reason only that the memorandum or other similar instrument regulating its functions does not prevent the payment to its members of reasonable remuneration for goods, labour or power supplied, or for services rendered, of reasonable interest for money lent, or of reasonable rent for any premises.
- (3) In this section "scientific research " means any activities in the fields of natural or applied science for the extension of knowledge.
- (4) For the purposes of subsection (1)(a) above any approval given before the passing of this Act under section 449(1)(a) of the Income Tax Act 1952 (which is reproduced in the said subsection (1)(a)) by the Committee of the Privy Council for Scientific and Industrial Research shall be treated as given by the Minister of Technology.

### **363 British Museum**

The Trustees of the British Museum, and the Trustees of the British Museum (Natural History), shall each be entitled, on a claim in that behalf to the Board, to the following exemptions—

- (a) exemption from tax under Schedules A and D in respect of any land, or interest in or right over land, vested in them,
- (b) the like exemptions in respect of any dividends of stock vested in them, or in any other person for their use, and in respect of distributions charged under Schedule F, as are granted to charities under section 360 above, and
- (c) exemption from tax in respect of chargeable gains.

### **364 Funds for reducing National Debt**

Where any property is held upon trust in accordance with directions which are valid and effective under section 9 of the Superannuation and other Trust Funds (Validation) Act 1927 (which provides for the validation of trust funds for the reduction of the national debt), any income arising from that property or from any accumulation of any such income, and any profits of any description otherwise accruing to the property and liable to be accumulated under the trust, shall be exempt from income tax, and a gain shall not be a chargeable gain for the purposes of capital gains tax if accruing on the disposal by the trustees of any settled property held on trusts to which this section applies.

*Armed forces and Victoria Cross and other awards*

### **365 Wounds and disability pensions**

- (1) Income from wounds and disability pensions to which this subsection applies shall be exempt from income tax and shall not be reckoned in computing income for any of the purposes of the Income Tax Acts.
- (2) Subsection (1) above applies to—
  - (a) wounds pensions granted to members of the naval, military or air forces of the Crown,
  - (b) retired pay of disabled officers granted on account of medical unfitness attributable to or aggravated by naval, military or air-force service,
  - (c) disablement or disability pensions granted to members, other than commissioned officers, of the naval, military or air forces of the Crown on account of medical unfitness attributable to or aggravated by naval, military or air-force service,
  - (d) disablement pensions granted to persons who have been employed in the nursing services of any of the naval, military or air forces of the Crown on account of medical unfitness attributable to or aggravated by naval, military or air-force service, and
  - (e) injury and disablement pensions payable under any scheme made under the Injuries in War (Compensation) Act 1914, the Injuries in War Compensation Act 1914 (Session 2), and the Injuries in War (Compensation) Act 1915, or under any War Risks Compensation Scheme for the Mercantile Marine:

Provided that, where the amount of any retired pay or pension to which subsection (1) above applies is not solely attributable to disablement or disability, the relief conferred by the said subsection (1) shall extend only to such part as is certified by the Secretary of State for Social Services, after consultation with the appropriate Government Department, to be attributable to disablement or disability.

- (3) Allowances granted by the Secretary of State for Social Services under a Royal Warrant, Order in Council or order administered by him to widows of members of the naval, military or air forces of the Crown in respect of their children shall not be reckoned in computing the income of such widows for any of the purposes of the Income Tax Acts.

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### 366 Allowances, bounties and gratuities

- (1) Where, under the scheme relating to men in the Armed Forces of the Crown announced on behalf of His Majesty's Government in the United Kingdom on 15th April 1946, or under any other scheme certified by the Treasury to make analogous provision for classes of persons to whom the first mentioned scheme does not apply, a person who has served in the armed forces of the Crown at any time during the continuance in force of the Emergency Powers (Defence) Act 1939 voluntarily undertakes to serve therein for a further period, any sum payable to him in pursuance of the scheme out of moneys provided by Parliament by way of gratuity at the end of his further period of service shall not be regarded as income for any income tax purposes.
- (2) Where, under the scheme relating to members of the Women's Royal Naval Service, the Auxiliary Territorial Service and the Women's Auxiliary Air Force announced on behalf of His Majesty's Government in the United Kingdom on 20th November 1946, or under any other scheme certified by the Treasury to make analogous provision for classes of persons to whom the first mentioned scheme does not apply, a woman who has served in or with the armed forces of the Crown at any time during the continuance in force of the Emergency Powers (Defence) Act 1939 voluntarily undertakes to serve in or with those forces for a further period, any sum payable to her in pursuance of the scheme out of moneys provided by Parliament by way of gratuity at the end of her further period of service shall not be regarded as income for any income tax purposes.
- (3) Any allowance payable out of the public revenue to or in respect of any class of persons, being either members of the armed forces of the Crown or women serving in any of the capacities mentioned at the end of this subsection, as respects which the Minister for the Civil Service certifies either—
- (a) that it is payable to the persons in question in lieu of food or drink normally supplied in kind to members of the armed forces or women serving in any of the capacities so mentioned, or
  - (b) that it is payable in respect of the persons in question as a contribution to the expenses of a mess,
- shall not be regarded as income for any income tax purposes.

*Women's Services*

1. Member of Queen Alexandra's Royal Naval Nursing Service or any reserve thereof.
  2. Member of the Women's Royal Naval Service or any reserve thereof.
  3. Woman medical or dental practitioner serving in the Royal Navy or any naval reserve.
  4. Member of Queen Alexandra's Royal Army Nursing Corps.
  5. Member of Women's Royal Army Corps.
  6. Woman employed with the Royal Army Medical Corps or the Royal Army Dental Corps with relative rank as an officer.
  7. Member of the Princess Mary's Royal Air Force Nursing Service and Reserve.
  8. Member of the Women's Royal Air Force.
  9. Woman officer of the Medical and Dental Branch of the Royal Air Force.
  10. Member of the Voluntary Aid Detachment Reserves employed under the Admiralty Board of the Defence Council.
- (4) The sums known as training expenses allowances payable out of the public revenue to members (whether men or women) of the reserve and auxiliary forces of the Crown,

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and the sums payable by way of bounty out of the public revenue to such members in consideration of their undertaking prescribed training and attaining a prescribed standard of efficiency, shall not be treated as income for any income tax purpose.

- (5) Any sum which, in pursuance of the scheme as to service emoluments contained in the Command Paper laid before Parliament in August 1950, becomes payable out of moneys provided by Parliament by way of bounty to a person who, having served in the armed forces of the Crown, voluntarily undertakes to serve for a further period shall not be regarded as income for any income tax purpose.

### **367 Visiting forces**

- (1) The emoluments paid by the government of any designated country to a member of a visiting force of that country who is not a citizen of the United Kingdom and colonies shall be exempt from income tax.
- (2) A period during which a member of a visiting force to whom subsection (1) above applies is in the United Kingdom by reason solely of his being a member of that force shall not be treated for the purposes of income tax or capital gains tax either as a period of residence in the United Kingdom or as creating a change of his residence or domicile:

Provided that this subsection shall not affect the operation of section 27 of this Act (personal reliefs to be granted, subject to certain exceptions, to United Kingdom residents only) in relation to any person for any year of assessment.

- (3) In subsections (1) and (2) above, references to a visiting force shall apply to a civilian component of a visiting force as they apply to the force itself; and the said subsections shall be construed as one with Part I of the Visiting Forces Act 1952, but so that, for the purposes of this section, references to a designated country shall be substituted in that Act for references to a country to which a provision of that Act applies.
- (4) For the purpose of conferring on persons attached to any designated allied headquarters the like benefits as are conferred by the said subsections (1) and (2) on members of a visiting force or civilian component, any members of the armed forces of a designated country shall, while attached to any such headquarters, be deemed to constitute a visiting force of that country, and there shall be a corresponding extension of the class of persons who may be treated as members of a civilian component of such a visiting force.
- (5) In the case of persons of any category for the time being agreed between Her Majesty's Government in the United Kingdom and the other members of the North Atlantic Council—
- (a) employment by a designated allied headquarters shall be treated for the purposes of subsection (2) above as if it were service as a member of a visiting force of a designated country, and
  - (b) the emoluments paid by a designated allied headquarters to persons employed by such a headquarters shall be exempt from income tax:

Provided that the exemption conferred by paragraph (b) of this subsection shall cease to apply to citizens of the United Kingdom and colonies if it becomes unnecessary that it should so apply for the purpose of giving effect to any agreement between parties to the North Atlantic Treaty.

- (6) For the purposes of this section—

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" allied headquarters " means any international military headquarters established under the North Atlantic Treaty, and

" designated " means designated for the purpose in question by or under any Order in Council made for giving effect to any international agreement.

- (7) Any Order in Council under this section may be varied or revoked by a subsequent Order in Council.

### **368 Victoria Cross and other awards**

The following shall be disregarded for all the purposes of the Income Tax Acts:

- (a) annuities and additional pensions paid to holders of the Victoria Cross,
  - (b) annuities paid to holders of the George Cross,
  - (c) annuities paid to holders of the Albert Medal or of the Edward Medal,
- where paid by virtue of holding the award.

*Crown servants*

### **369 Foreign service allowance**

Where any allowance to any person in the service of the Crown is certified by the Minister for the Civil Service to represent compensation for the extra cost of having to live outside the United Kingdom in order to perform his duties, that allowance shall not be regarded as income for any income tax purpose.

*Central banks*

### **370 Government securities held by non-resident central banks**

- (1) Tax shall not be chargeable on dividends (within the meaning of Schedule C) paid out of the public revenue of the United Kingdom where they are income of any bank or issue department of a bank to which this section for the time being applies:

Provided that this subsection shall not prevent any such dividends being taken into account in computing profits or gains or losses of a business carried on in the United Kingdom.

- (2) A bank or issue department of a bank to which this section for the time being applies shall be exempt from tax in respect of chargeable gains accruing to it:

Provided that subsection (1) above may be applied to a bank or issue department without this subsection, or this subsection without that.

- (3) Her Majesty may by Order in Council direct that this section shall apply to any bank, or to its issue department, if it appears to Her Majesty that the bank is not resident in the United Kingdom and is entrusted by the government of a territory outside the United Kingdom with the custody of the principal foreign exchange reserves of that territory; and Her Majesty may by a further Order in Council revoke or vary any direction so given.



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- (4) No recommendation shall be made to Her Majesty in Council to make an order under this section unless a draft of the order has been laid before the House of Commons and has been approved by resolution of that House.

### **371 Issue departments of Reserve Bank of India and State Bank of Pakistan**

There shall be exempt from tax any profits or income or chargeable gains arising or accruing to the issue department of the Reserve Bank of India constituted under an Act of the Indian legislature called the Reserve Bank of India Act 1934, or to the issue department of the State Bank of Pakistan constituted under certain orders made under section 9 of the Indian Independence Act 1947.

#### *Commonwealth and foreign representatives*

### **372 Commonwealth Agents-General and official agents, etc.**

- (1) An Agent-General who is resident in the United Kingdom shall be entitled to the same immunity from income tax and capital gains tax as that to which the head of a mission so resident is entitled under the Diplomatic Privileges Act 1964.
- (2) Any person having or exercising any employment to which this subsection applies (not being a person employed in any trade, business or other undertaking carried on for the purposes of profit) shall be entitled to the same immunity from income tax and capital gains tax as that to which a member of the staff of a mission is entitled under the Diplomatic Privileges Act 1964.

The employments to which this subsection applies are the employment in the United Kingdom as—

- (a) a member of the personal staff of any Agent-General, or
- (b) an official agent for, or for any state or province of, any of the countries for the time being mentioned in section 1(3) of the British Nationality Act 1948 or the Republic of Ireland, or
- (c) an official agent for any self-governing colony,

of a person certified by the High Commissioner of the country in question or, as the case may be, by the Agent-General for the state, province or self-governing colony in question to be ordinarily resident outside the United Kingdom and to be resident in the United Kingdom solely for the purpose of the performance of his duties as such member or official agent.

- (3) In this section—

" Agent-General " means the Agent-General for any state or province of a country within subsection (2)(b) above or for any self-governing colony ;

" High Commissioner " includes the head of the mission of a country within subsection (2)(b) above, by whatever name called;

" mission " has the same meaning as in the Diplomatic Privileges Act 1964, and references to the head of a mission and a member of the staff of a mission shall be construed in accordance with that Act;

" self-governing colony " means any colony certified by a Secretary of State to be a self-governing colony.

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

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### **373 Consuls and other official agents**

- (1) Income arising from any office or employment to which this section applies shall be exempt from income tax, and no account shall be taken of any such income in estimating the amount of income for any income tax purposes.
- (2) The offices and employments to which this section applies are the following, that is to say—
  - (a) the office of a consul in the United Kingdom in the service of any foreign state ; and
  - (b) the employment of an official agent in the United Kingdom for any foreign state, not being an employment exercised by a British subject or a citizen of the Republic of Ireland or exercised in connection with any trade, business or other undertaking carried on for the purposes of profit.
- (3) In this section—
  - " consul " means a person recognised by Her Majesty as being a consul-general, consul, vice-consul or consular agent; and
  - " official agent " means a person, not being a consul, who is employed on the staff of any consulate, official department or agency of a foreign state, not being a department or agency which carries on any trade, business or other undertaking for the purposes of profit.

### **374 Consular officers and employees**

- (1) Where a consular officer or employee in the United Kingdom of any foreign state to which this section applies—
  - (a) is not a citizen of the United Kingdom and colonies, and
  - (b) is not engaged in any trade, profession, vocation or employment in the United Kingdom, otherwise than as such a consular officer or employee, and
  - (c) either is a permanent employee of that state or was not ordinarily resident in the United Kingdom immediately before he became a consular officer or employee in the United Kingdom of that state ;then any income of his falling within Case IV or V or VII of Schedule D (which relate to income from overseas property and to short-term capital gains) shall be exempt from income tax, and he shall be treated as not resident in the United Kingdom for the purposes of sections 100 and 159(4) of this Act (which exempt certain dividends of non-residents).
- (2) A gain shall not be a chargeable gain for the purposes of capital gains tax if accruing to a consular officer or employee of any foreign state to which this section applies on the disposal of assets which at the time of the disposal were situated outside the United Kingdom.
- (3) Without prejudice to section 373 above, the income arising from a person's employment in the United Kingdom as a consular employee of any foreign state to which this section applies shall be exempt from income tax, except in the case of a person who is not a national of that state but is a citizen of the United Kingdom and colonies.
- (4) For the purposes of this section, " consular employee " includes any person employed, for the purposes of the official business of a consular officer, at any consulate or consular establishment or at any other premises used for those purposes.

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

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- (5) This section shall apply to any foreign state to which Her Majesty by Order in Council directs that it shall apply for the purpose of giving effect to any consular convention or other arrangement with that state making similar provision in the case of Her Majesty's consular officers or employees in that state:

Provided that any such Order in Council may limit the operation of this section in relation to any state in such manner as appears to Her Majesty to be necessary or expedient having regard to the arrangement with that state.

- (6) Any Order in Council under this section may be made so as to have effect from a date earlier than the making of the Order or the passing of this Act (but not earlier than the coming into force of the arrangement with regard to which it is made), may be varied or revoked by a subsequent Order in Council and may contain such transitional provisions as appear to Her Majesty to be necessary or expedient.
- (7) Any statutory instrument under this section shall be subject to annulment in pursuance of a resolution of the Commons House of Parliament.

#### *Other exemptions*

### **375 Scholarship income**

- (1) Income arising from a scholarship held by a person receiving full-time instruction at a university, college, school or other educational establishment shall be exempt from income tax, and no account shall be taken of any such income in computing the amount of income for income tax purposes.
- (2) In this section "scholarship" includes an exhibition, bursary or any other similar educational endowment.
- (3) If any question arises whether any income is income arising from a scholarship held as aforesaid, the Board may consult the Secretary of State for Education and Science.

In the application of this subsection to Scotland and Northern Ireland, the Secretary of State and the Governor of Northern Ireland shall respectively be substituted for the Secretary of State for Education and Science.

### **376 Housing grants**

Where, under any enactment relating to the giving of financial assistance for the provision, maintenance or improvement of housing accommodation or other residential accommodation, a payment is made to a person by way of grant or other contribution towards expenses incurred, or to be incurred, by that or any other person, the payment shall not be treated as a receipt in computing income for any tax purpose:

Provided that the preceding provision shall not apply to a payment in so far as it is made in respect of an expense giving rise to a deduction in computing income for any tax purpose.

### **377 Compensation for National-Socialist persecution**

- (1) Annuities payable under the law of the Federal German Republic relating to the compensation of victims of National-Socialist persecution, being annuities which

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under any such law relating to the taxation of such compensation are specifically exempted from tax of a character similar to that of income tax, shall not be regarded as income for any income tax purpose.

- (2) The preceding subsection shall apply to annuities payable under the law of any part of the Federal German Republic as it applies to annuities payable under the law of that Republic.

## PART XIV

### MISCELLANEOUS SPECIAL PROVISIONS

#### CHAPTER I

##### PATENTS AND KNOW-HOW

###### *Patents*

### **378 Writing-down allowances for capital expenditure on purchase of patent rights**

- (1) Where a person incurs capital expenditure on the purchase of patent rights, there shall, subject to and in accordance with the following provisions of this Chapter, be made to him writing-down allowances in respect of that expenditure during the writing-down period as hereinafter defined:

Provided that no writing-down allowance shall be made to a person in respect of any expenditure unless—

- (a) the allowance falls in accordance with section 385(1) of this Act to be made to him in taxing his trade; or
  - (b) any income receivable by him in respect of the rights-would be liable to tax.
- (2) The writing-down period shall be the seventeen years beginning with the chargeable period related to the expenditure:

Provided that—

- (a) where the rights are purchased for a specified period, the preceding provisions of this subsection shall have effect with the substitution for the reference to seventeen years of a reference to seventeen years or the number of years comprised within that period, whichever is the less ; and
- (b) where the rights purchased begin one complete year or more after the commencement of the patent and paragraph (a) of this proviso does not apply, the said provisions shall have effect with the substitution for the reference to seventeen years of a reference to seventeen years less the number of complete years which, when the rights begin, have elapsed since the commencement of the patent, or, if seventeen complete years have elapsed as aforesaid, of a reference to one year; and
- (c) any expenditure incurred for the purposes of a trade by a person about to carry it on shall be treated for the purposes of this subsection as if it had been incurred by that person on the first day on which he does carry it on, unless, before the said first day, he has sold all the rights on the purchase of which the expenditure was incurred.

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- (3) Subsections (2) and (3) of section 75 of the Capital Allowances Act 1968 (effect of providing for writing-down allowances during a writing-down period of a specified length) shall apply to this section as they apply to the provisions specified in subsection (1) of the said section 75.

### **379 Effect of lapses of patent rights, sales, etc.**

- (1) Where a person incurs capital expenditure on the purchase of patent rights and, before the end of the writing-down period under section 378 above, any of the following events occurs, that is to say—
- (a) the rights come to an end without being subsequently revived, or
  - (b) he sells all those rights or so much thereof as he still owns, or
  - (c) he sells part of those rights and the net proceeds of the sale (so far as they consist of capital sums) are not less than the amount of the capital expenditure remaining unallowed,

no writing-down allowance shall be made to that person for the chargeable period related to the event or for any subsequent chargeable period.

- (2) Where a person incurs capital expenditure on the purchase of patent rights and, before the end of the writing-down period under section 378 above, either of the following events occurs, that is to say—
- (a) the rights come to an end without being subsequently revived, or
  - (b) he sells all those rights, or so much thereof as he still owns, and the net proceeds of the sale (so far as they consist of capital sums) are less than the amount of the capital expenditure remaining unallowed,

there shall, subject to and in accordance with the following provisions of this Chapter, be made to him for the chargeable period related to the event an allowance (in this Chapter referred to as "a balancing allowance") equal, if the event is the rights coming to an end, to the amount of the capital expenditure remaining unallowed, and, if the event is a sale, to the amount of the capital expenditure remaining unallowed less the net proceeds of the sale.

- (3) Where a person who has incurred capital expenditure on the purchase of patent rights sells all or any part of those rights and the net proceeds of the sale (so far as they consist of capital sums) exceed the amount of the capital expenditure remaining unallowed, if any, there shall, subject to and in accordance with the following provisions of this Chapter, be made on him for the chargeable period related to the sale a charge (in this Chapter referred to as "a balancing charge") on an amount equal to the excess or, where the amount of the capital expenditure remaining unallowed is nil, to the said net proceeds.
- (4) Where a person who has incurred capital expenditure on the purchase of patent rights sells a part of those rights and subsection (3) of this section does not apply, the amount of any writing-down allowance made in respect of that expenditure for the chargeable period related to the sale or any subsequent chargeable period shall be the amount arrived at by—
- (a) subtracting the net proceeds of the sale (so far as they consist of capital sums) from the amount of the expenditure remaining unallowed at the time of the sale, and

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- (b) dividing the result by the number of complete years of the writing-down period which remained at the beginning of the chargeable period related to the sale,
- and so on for any subsequent sales.
- (5) References in the preceding provisions of this section to the amount of any capital expenditure remaining unallowed shall, in relation to any event, be construed as references to the amount of that expenditure less any writing-down allowances made in respect thereof for chargeable periods before that related to the event, and less also the net proceeds of any previous sale by the person who incurred the expenditure of any part of the rights acquired by the expenditure, so far as those proceeds consist of capital sums.
- (6) Notwithstanding anything in the preceding provisions of this section, no balancing allowance shall be made in respect of any expenditure unless a writing-down allowance has been, or, but for the happening of the event giving rise to the balancing allowance, could have been, made in respect of that expenditure, and the total amount on which a balancing charge is made in respect of any expenditure shall not exceed the total writing-down allowances actually made in respect of that expenditure, less, if a balancing charge has previously been made in respect of that expenditure, the amount on which that charge was made.

### **380 Taxation as income of capital sums received for sale of patent rights**

- (1) Where a person resident in the United Kingdom sells all or any part of any patent rights and the net proceeds of the sale consist wholly or partly of a capital sum, he shall, subject to the provisions of this Chapter, be charged to tax under Case VI of Schedule D, for the chargeable period in which the sum is received by him and successive chargeable periods, being charged in each period on the same fraction of the sum as the period is of six years (or such less fraction as has not already been charged):

Provided that if that person, by notice in writing served on the inspector not later than two years after the end of the chargeable period in which the said amount was received, elects that the whole of the said sum shall be charged to tax for the said chargeable period, it shall be charged to tax accordingly.

References in this subsection to tax for a chargeable period shall be construed, in relation to corporation tax, as referring to the tax for any financial year which is charged in respect of that period.

- (2) Where a person not resident in the United Kingdom sells all or any part of any patent rights and the net proceeds of the sale consist wholly or partly of a capital sum, and the patent is a United Kingdom patent, then, subject to the provisions of this Chapter—
- (a) he shall be chargeable to tax in respect of that sum under Case VI of Schedule D; and
  - (b) section 53 of this Act (deduction of income tax at source) shall apply to that sum as if it was an annual sum payable otherwise than out of profits or gains charged to income tax; and
  - (c) all the other provisions of the Tax Acts shall, save as therein otherwise provided, have effect accordingly:

Provided that if, not later than two years after the end of the year of assessment in which the sum is paid, the person to whom it is paid, by notice in writing to the Board, elects that the said sum shall be treated for the purpose of income tax for that year and

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each of the five succeeding years as if one-sixth thereof, and no more, were included in his income chargeable to tax for all those years respectively, it shall be so treated, and all such repayments and assessments of tax for each of those years shall be made as are necessary to give effect to the election, so, however, that—

- (i) the election shall not affect the amount of tax which is to be deducted and assessed under the said section 53; and
  - (ii) where any sum is deducted under the said section 53, any adjustments necessary to give effect to the election shall be made by way of repayment of tax; and
  - (iii) the said adjustments shall be made year by year and as if one-sixth of the sum deducted had been deducted in respect of tax for each year, and no repayment of, or of any part of, that portion of the tax deducted which is to be treated as deducted in respect of tax for any year shall be made unless and until it is ascertained that the tax (other than surtax) ultimately falling to be paid for that year is less than the amount of tax (other than surtax) paid for that year.
- (3) In subsection (2) above the word " tax" shall mean income tax, unless the seller of the patent rights, being a company, would be within the charge to corporation tax in respect of any proceeds of the sale not consisting of a capital sum; and where the subsection applies to charge a company to corporation tax in respect of a sum paid to it, the proviso shall not apply, but the company may, by notice in writing given to the Board not later than two years after the end of the accounting period in which the sum is paid, elect that the sum shall be treated as arising rateably in the accounting periods ending not later than six years from the beginning of that in which the sum is paid (being accounting periods during which the company remains within the charge to corporation tax as aforesaid), and there shall be made all such repayments of tax and assessments to tax as are necessary to give effect to any such election.
- (4) Where the person selling all or any part of any patent rights acquired the rights sold, or the rights out of which they were granted, by purchase and the price paid by him consisted wholly or partly of a capital sum, the preceding provisions of this section shall apply as if any capital sum received by him when he sells the rights were reduced by the amount of that sum:

Provided that—

- (a) where between the said purchase and the said sale he has sold part of the rights acquired by him and the net proceeds of that sale consist wholly or partly of a capital sum, the amount of the reduction falling to be made under this subsection in respect of the subsequent sale shall be itself reduced by the amount of that sum;
  - (b) nothing in this subsection shall affect the amount of income tax which is to be deducted and assessed under section 53 of this Act by virtue of subsection (2) of this section, and, where any sum is deducted under that section, any adjustment necessary to give effect to the provisions of this subsection shall be made by way of repayment of tax.
- (5) A claim for relief under this section shall be made to the Board.

### **381 Capital sums: death, winding-up or partnership change**

- (1) Where a person on whom, by reason of the receipt of a capital sum, a charge falls or would otherwise fall to be made under section 380 above dies or, being a body corporate, commences to be wound up—

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- (a) no sums shall be charged under the said section on that person for any chargeable period subsequent to that in which the death takes place or the winding up commences; and
- (b) the amount falling to be charged for the chargeable period in which the death occurs or the winding up commences shall be increased by the total amounts which, but for the death or winding up, would have fallen to be charged for subsequent chargeable periods ;

Provided that, in the case of a death, the personal representatives may, by notice in writing served on the inspector not later than thirty days after notice has been served on them of the charge falling to be made by virtue of this subsection, require that the income tax (including surtax) payable out of the estate of the deceased by reason of the increase provided for by this subsection shall be reduced so as not to exceed the total amount of income tax (including surtax) which would have been payable by him or out of his estate by reason of the operation of section 380 above in relation to that sum, if, instead of the amount falling to be charged for the year in which the death occurs being increased by the whole amount of the sums charged for subsequent years, the several amounts falling to be charged for the years beginning with that in which the capital sum was received and ending with that in which the death occurred had each been increased by the said whole amount divided by the number of those years.

- (2) Where, under section 79 of the Capital Allowances Act 1968 as applied by section 387 below, a charge under section 380 above falls to be made on two or more persons jointly as being the persons for the time being carrying on a trade, and that trade is discontinued, subsection (1) above shall have effect in relation to the discontinuance as it has effect where a body corporate commences to be wound up:

Provided that—

- (a) the additional sum which, under subsection (1) above, falls to be charged for the chargeable period in which the discontinuance occurs shall be apportioned among the members of the partnership immediately before the discontinuance, according to their respective interests in the partnership profits before the discontinuance, and each partner (or, if he is dead, his personal representatives) shall be charged separately for his proportion; and
  - (b) each partner, or, if he is dead, his personal representatives, shall have the same right to require a reduction of the total income tax (including surtax) payable by him or out of his estate by reason of the increase as would have been exercisable by the personal representatives under subsection (1) above in the case of a death, and the proviso to that subsection shall have effect accordingly, but as if references to the amount of income tax (including surtax) which would have been payable by the deceased or out of his estate in the event therein mentioned were a reference to the amount of income tax (including surtax) which would in that event have fallen to be paid or borne by the partner in question or out of his estate.
- (3) In this section, any references to the income tax (including surtax) paid or borne or payable or falling to be paid or borne by a person include, in cases where the income of a wife is deemed to be income of the husband, references to the income tax (including surtax) paid or borne, or payable or falling to be paid or borne, by his wife or her husband, as the case may be.



### **382 Relief for expenses**

- (1) Where—
  - (a) a person, otherwise than for the purposes of a trade carried on by him, pays any fees or incurs any expenses in connection with the grant or maintenance of a patent, or the obtaining of an extension of a term of a patent, or a rejected or abandoned application for a patent, and
  - (b) those fees or expenses would, if they had been paid or incurred for the purposes of a trade, have been allowable as a deduction in estimating the profits or gains thereof,there shall be made to him, for the chargeable period in which those expenses were paid or incurred, an allowance equal to the amount thereof.
- (2) Where a patent is granted in respect of any invention, an allowance equal to so much of the net amount of any expenses incurred by an individual who, whether alone or in conjunction with any other person, actually devised the invention as is properly ascribable to the devising thereof (not being expenses in respect of which, or of assets representing which, an allowance falls to be made under any other provision of the Income Tax Acts) shall be made to that individual for the year of assessment in which the expenses were incurred.

### **383 Patent income to be earned income in certain cases**

Any income from patent rights arising to an individual where the patent was granted for an invention actually devised by him, whether alone or jointly with any other person, shall be treated for all purposes as earned income:

Provided that where any part of the rights in question or of any rights out of which they were granted has at any time belonged to any other person, so much only of the said income shall be treated as earned income as is not properly attributable to the rights which have belonged to that other person.

### **384 Spreading of patent royalties over several years**

- (1) Where a royalty or other sum to which section 52 or 53 of this Act (deduction of income tax at standard rate) applies is paid in respect of the user of a patent, and that user extended over a period of six complete years or more, the person receiving the payment may on the making of a claim require that the income tax (including surtax) or corporation tax payable by him by reason of the receipt of that sum shall be reduced so as not to exceed the total amount of income tax (including surtax) or corporation tax which would have been payable by him if that royalty or sum had been paid in six equal instalments at yearly intervals, the last of which was paid on the date on which the payment was in fact made.
- (2) Subsection (1) of this section shall apply in relation to a royalty or other sum where the period of the user is two complete years or more but less than six complete years as it applies to the royalties and sums mentioned in that subsection, but with the substitution for the reference to six equal instalments of a reference to so many equal instalments as there are complete years comprised in that period.
- (3) In this section, any reference to the income tax (including surtax) payable by a person includes, in cases where the income of a wife is deemed to be the income of the husband, references to the income tax (including surtax) payable by his wife or her husband, as the case may be.

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- (4) Nothing in this section shall apply to any sum to which section 53 of this Act applies by virtue of section 380(2)(i) above.

### **385 Manner of making allowances and charges**

- (1) An allowance or charge under section 378 or section 379 of this Act shall be made to or on a person in taxing his trade if—
- (a) he is carrying on a trade the profits or gains of which are, or, if there were any, would be, chargeable to tax under Case I of Schedule D for the chargeable period for which the allowance or charge is made, and
  - (b) at any time in that chargeable period or its basis period the patent rights in question, or other rights out of which they were granted, were or were to be used for the purposes of that trade.
- (2) Where an allowance falls to be made to a person for any year of assessment under section 378, 379 or 382 of this Act as those provisions apply for the purposes of income tax, and the allowance is not to be made in taxing a trade—
- (a) the amount of the allowance shall be deducted from or set off against his income from patents for that year of assessment, and
  - (b) if the amount to be allowed is greater than the amount of his income from patents for that year of assessment, the balance shall be deducted from or set off against his income from patents for the next year of assessment, and so on for subsequent years of assessment, and tax shall be discharged or repaid accordingly.

Relief shall be given under this subsection on the making of a claim.

- (3) Where an allowance falls to be made to a company for any accounting period under section 378, 379 or 382 of this Act as those provisions apply for the purposes of corporation tax, and is not to be made in taxing a trade—
- (a) the allowance shall, as far as may be, be given effect by deducting the amount of the allowance from the company's income from patents of the accounting period,
  - (b) where the allowance cannot be given full effect under paragraph (a) above in that period by reason of a want or deficiency of income from patents, then (so long as the company remains within the charge to corporation tax) the amount unallowed shall be carried forward to the succeeding accounting period, and shall be treated for the purposes of paragraph (a) above, and of any further application of this paragraph, as the amount of a corresponding allowance for that period.
- (4) Effect shall be given to any balancing charge under section 379 of this Act which is not to be made in taxing a trade—
- (a) if a charge to income tax, by making the charge under Case VI of Schedule D,
  - (b) if a charge to corporation tax, by treating the amount on which the charge is to be made as income from patents.

*Know-how (income tax, corporation tax and capital gains tax)*

**386 Dealings in know-how**

- (1) Subject to subsections (3) and (6) below, where after 19th March 1968 a person—
- (a) acquires know-how for use in a trade carried on by him, or
  - (b) acquires know-how, and thereafter sets up and commences a trade in which it is used,

writing-down allowances in respect of his expenditure on the acquisition, so far as not otherwise deducted for the purposes of corporation tax or income tax, shall be made in taxing the trade during a writing-down period of six years beginning with the chargeable period related to the expenditure ; and if during that period he ceases to carry on the trade, an allowance equal to the amount of that expenditure then unallowed shall be made in taxing the trade for the chargeable period related to the discontinuance.

For the purposes of this subsection, a person incurring expenditure on know-how before the setting up and commencement of the trade in which it is used shall be treated as incurring it on that setting up and commencement.

- (2) Subject to the said subsection (6), where after 19th March 1968 a person disposes of know-how which has been used in a trade carried on by him, and continues to carry on the trade after the disposal, the amount or value of any consideration received by him for the disposal shall, so far as it is not chargeable to tax as a revenue or income receipt, be treated for all purposes as a trading receipt.
- (3) Where after the said 19th March a person disposes of a trade or part of a trade and, together therewith, of know-how used therein, any consideration received by him for the know-how shall be dealt with in relation both to him and to the person acquiring the know-how, if that person provided the consideration, and for the purposes of corporation tax, income tax and capital gains tax, as a payment for goodwill:

Provided that this subsection shall not apply—

- (a) to either of the persons concerned if they so elect by notice in writing given jointly to the inspector within two years of the disposal, or
- (b) to the person acquiring the know-how if the trade in question was, before the acquisition, carried on wholly outside the United Kingdom ;

and where know-how is disposed of with a trade or part of a trade, but this subsection is excluded in relation to the person acquiring it, subsection (1) above shall apply as if that person had acquired it for use in a trade previously carried on by him.

- (4) Subject to subsection (6) below, any consideration received by a person for the disposal of know-how shall, if it is neither chargeable to tax under subsection (2) above, or otherwise as a revenue or income receipt, nor dealt with in relation to him as a payment for goodwill as mentioned in subsection (3) above, be treated as a profit or gain chargeable to tax under Case VI of Schedule D:

Provided that, where the person concerned has incurred expenditure wholly and exclusively in the acquisition or disposal of the know-how, the amount which would apart from this proviso be treated as a profit or gain so chargeable shall be reduced by the amount of that expenditure; but a deduction shall not be twice made in respect of the same expenditure, whether under this proviso or otherwise.

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- (5) Where subsection (4) above has effect in the case of an individual who devised the know-how in question, whether alone or jointly with any other person, the amount in respect of which he is chargeable to tax by virtue of that subsection shall be treated for all purposes as earned income.
- (6) The preceding provisions of this section, except subsection (3), shall not apply on any sale of know-how where the buyer is a body of persons over whom the seller has control, or the seller is a body of persons over whom the buyer has control, or both the seller and the buyer are bodies of persons and some other person has control over both of them; and the said subsection (3) shall apply on any such sale with the omission of the proviso.

In this subsection, references to a body of persons include references to a partnership.

- (7) In this section " know-how " means any industrial information and techniques likely to assist in the manufacture or processing of goods or materials, or in the working of a mine, oil-well or other source of mineral deposits (including the searching for, discovery, or testing of deposits or the winning of access there(a), or in the carrying out of any agricultural, forestry or fishing operations.
- (8) Where, in connection with any disposal of know-how, a person gives an undertaking (whether absolute or qualified, and whether legally valid or not) the tenor or effect of which is to restrict his or another's activities in any way, any consideration received in respect of the giving of the undertaking or its total or partial fulfilment shall be treated for the purposes of this section as consideration received for the disposal of the know-how.
- (9) Subsection (2) of section 75 of the Capital Allowances Act 1968 (effect of providing writing-down allowances during writing-down period of a specified length) shall apply to this section as it applies to the provisions specified in subsection (1) of that section.

### *Supplemental*

#### **387 Application of Capital Allowances Act 1968**

- (1) The Tax Acts shall have effect as if this Chapter were contained in Part I of the Capital Allowances Act 1968, and any reference in the Tax Acts to any capital allowance to be given " by way of discharge or repayment of tax and to be available or available primarily against a specified class of income " shall include a reference to any capital allowance given in accordance with subsection (2) or subsection (3) of section 385 above.
- (2) In the said Part I as so applied to patent rights, the sum referred to in paragraph 4(1)(a) of Schedule 7 to the said Act (special provisions as to controlled sales) is the amount of any capital expenditure on the acquisition of the patent rights remaining unallowed, computed in accordance with the provisions of section 379 of this Act.
- (3) The reference in section 82(1) of the Capital Allowances Act 1968 (certain payments not to be treated as capital expenditure) to any expenditure or sum in the case of which a deduction of income tax falls or may fall to be made under Part II of this Act does not include a sum in the case of which such a deduction falls or may fall to be so made by virtue of section 380(2) (b) above.

- (4) In Part I of the Capital Allowances Act 1968 as so applied to know-how—
- (a) references in that Part to property and its purchase or sale include references to know-how and its acquisition or disposal,
  - (b) section 78, with Schedule 7 to the Act (special provisions as to controlled sales), shall be omitted.

### **388 Interpretation of provisions about patents**

- (1) In this Chapter—
- " income from patents " means—
    - (a) any royalty or other sum paid in respect of the user of a patent; and
    - (b) any amount on which tax is payable for any chargeable period by virtue of section 379(3), section 380 or section 381 of this Act;
  - " the commencement of the patent " means, in relation to a patent, the date as from which the patent rights become effective;
  - " patent rights " means the right to do or authorise the doing of anything which would, but for that right, be an infringement of a patent;
  - " United Kingdom patent " means a patent granted under the laws of the United Kingdom.
- (2) In this Chapter, any reference to the sale of part of patent rights includes a reference to the grant of a licence in respect of the patent in question, and any reference to the purchase of patent rights includes a reference to the acquisition of a licence in respect of a patent:
- Provided that if a licence granted by a person entitled to any patent rights is a licence to exercise those rights to the exclusion of the grantor and all other persons for the whole of the remainder of the term for which the rights subsist, the grantor shall be treated for the purposes of this Chapter as thereby selling the whole of the rights.
- (3) Where, under sections 46 to 49 of the Patents Act 1949 or any corresponding provisions of the law of any country outside the United Kingdom, an invention which is the subject of a patent is made, used, or exercised or vended by or for the service of the Crown or the government of the country concerned, the provisions of this Chapter shall have effect as if the making, user, exercise or vending of the invention had taken place in pursuance of a licence, and any sums paid in respect thereof shall be treated accordingly.
- (4) Expenditure incurred on or after 9th July 1952 (the commencement of the Finance Act 1952) in obtaining a right to acquire in the future patent rights as respects any invention in respect of which the patent has not yet been granted shall be deemed for all the purposes of this Chapter to be expenditure on the purchase of patent rights, and if the patent rights are subsequently acquired the expenditure shall be deemed for those purposes to have been expenditure on the purchase of those rights.
- (5) Any sum received from a person which by virtue of subsection (4) above is deemed to be expenditure incurred by him on the purchase of patent rights shall be deemed to be proceeds of a sale of patent rights.

## CHAPTER II

### COPYRIGHT AND ARTISTS' RECEIPTS

#### *Copyright*

#### **389 Relief for copyright payments**

(1) Where—

- (a) an author of a literary, dramatic, musical or artistic work assigns the copyright therein wholly or partially, or grants any interest in the copyright by licence ; and
- (b) the consideration for the assignment or grant consists wholly or partially of a payment to which this section applies, being a payment the whole amount of which would, but for this section, be included in computing the amount of his profits or gains for a single year of assessment; and
- (c) the author was engaged on the making of the work for a period of more than twelve months,

he may on making a claim require that effect shall be given to the following provisions of this section in connection with that payment.

- (2) If the period for which he was engaged on the making of the work does not exceed twenty-four months, then, for all income tax purposes, one-half only of the amount of the payment shall be treated as having become receivable on the date on which it actually became receivable, and the remaining half shall be treated as having become receivable twelve months before that date.
- (3) If the period for which he was engaged on the making of the work exceeds twenty-four months, then, for all income tax purposes, one-third only of the amount of the payment shall be treated as having become receivable on the date on which it actually became receivable, and one-third shall be treated as having become receivable twelve months, and one-third twenty-four months, before that date.
- (4) This section applies—
  - (a) to a lump sum payment, including an advance on account of royalties which is not returnable, and
  - (b) to any payment of or on account of royalties or sums payable periodically, except that it shall not by virtue of paragraph (b) above apply to payments in respect of the copyright in any work which only become receivable more than two years after its first publication.
- (5) A claim under this section with respect to any payment to which it applies by virtue only of subsection (4)(b) above shall have effect as a claim with respect to all such payments in respect of the copyright in the same work which are receivable by the claimant, whether before or after the claim ; and such a claim may be made at any time not later than 5th April next following the expiration of eight years after the work's first publication.
- (6) A claim cannot be made under this section in respect of a payment if a prior claim has been made under section 390 below as respects that payment.
- (7) In this section—
  - " author " includes a joint author,

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and any reference to the first publication of a work is a reference to the first occasion on which the work or a reproduction of it is published, performed or exhibited.

### **390 Relief where copyright sold after ten years or more**

- (1) Where not less than ten years after the first publication of the work the author of a literary, dramatic, musical or artistic work assigns the copyright therein wholly or partially, or grants any interest in the copyright by licence, and—
  - (a) the consideration for the assignment or grant consists wholly or partially of a lump sum payment the whole amount of which would, but for this section, be included in computing the amount of his profits or gains for a single year of assessment, and
  - (b) the copyright or interest is not assigned or granted for a period of less than two years,he may by making a claim require that effect shall be given to the following provisions of this section in connection with that payment.
- (2) Except where the copyright or interest is assigned or granted for a period of less than six years, the amount of the payment shall for income tax purposes be treated as becoming receivable in six equal instalments at yearly intervals, the first of which becomes receivable on the date on which the payment actually became receivable.
- (3) Where the copyright or interest is assigned or granted for a period of less than six years, the payment shall for income tax purposes be treated as becoming receivable in a number of equal instalments at yearly intervals the first of which becomes receivable on the date when the payment actually became receivable, the number being the number of whole years in that period.
- (4) Subject to subsection (5) below, if the author dies, any instalment which under this section would, but for the death, be treated as becoming receivable after the death shall for income tax purposes be treated as becoming receivable on the date when the last instalment before the death is to be treated as becoming receivable.
- (5) If the personal representatives so elect—
  - (a) the total amount of income tax (including surtax) which would have been payable by the deceased or out of his estate in respect of the payment if the copyright or interest had been assigned or granted for a period beginning with the date when the first instalment is treated as becoming receivable and ending with the day before the death shall be computed, and
  - (b) the income tax (including surtax) payable out of the estate by reason of the provisions of subsection (4) above shall be reduced so as not to exceed the amount at (a) above.

The references in this subsection to the income tax (including surtax) payable by a person include, in cases where the income of a wife is deemed to be income of the husband, references to the income tax (including surtax) payable by his wife or her husband, as the case may be.

- (6) If the payment would, apart from this section, have been taken into account in assessing the profits or gains of a profession or vocation, and the profession or vocation is permanently discontinued (otherwise than on death) after the date on which the payment actually became receivable, any instalment which under this section would, but for the discontinuance, be treated as receivable on a date after the

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discontinuance shall for income tax purposes be treated as becoming receivable when the last instalment before the discontinuance is to be treated as becoming receivable, unless the author elects to be treated (for all purposes) as if the copyright or interest had been assigned or granted for a period beginning with the date when the first instalment is treated as becoming receivable and ending with the day before the discontinuance.

- (7) Notice of any election under subsection (5) or subsection (6) above shall be served on the inspector within two years of the death, or as the case may be of the discontinuance.
- (8) Where, but for this section, the payment would be included in computing any profits or gains chargeable to tax under Case VI of Schedule D, and any amount would be deductible from that payment in computing those profits or gains (whether under the general provisions relating to Case VI or under section 145(1) of this Act (post-cessation receipts: allowable deductions)), the amount which, under this section, is to be treated as receivable in instalments shall be the amount of the payment after that deduction, and effect shall not be given to that deduction in any other way.
- (9) A claim cannot be made under this section in respect of a payment if a prior claim has been made under section 389 above as respects that payment.
- (10) Where it is necessary, in order to give effect to a claim or election under this section, or as a result of the claim or election, to make any adjustment by way of an assessment on any person, the assessment shall not be out of time if it is made within one year of the final determination of the claim, or as the case may be within one year from the giving of notice of the election.
- (11) In this section—  
     " author " includes a joint author,  
     " lump sum payment " includes an advance on account of royalties which is not returnable,  
 and the reference to the first publication of a work is a reference to the first occasion on which the work or a reproduction of it is published, performed or exhibited.

### **391 Taxation of copyright royalties where owner's usual place of abode is abroad**

- (1) Subject to the provisions of this section, where the usual place of abode of the owner of a copyright is not within the United Kingdom, section 53 of this Act shall apply to any payment of or on account of any royalties or sums paid periodically for or in respect of that copyright as it applies to annual payments not payable out of profits or gains brought into charge to income tax.

In this subsection—

" copyright " does not include a copyright in any dramatic work being a cinematograph production, or in any artistic work being a photograph intended to be used for the purposes of the exhibition of pictures or other optical effects by means of a cinematograph or other similar apparatus; and

" owner of a copyright " includes a person who, notwithstanding that he has assigned a copyright to some other person, is entitled to receive periodical payments in respect of that copyright; and

the reference to royalties or sums paid periodically for or in respect of a copyright does not include royalties or sums paid in respect of copies of works which are shown on a claim to have been exported from the United Kingdom for distribution outside the United Kingdom.



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- (2) Where any payment to which subsection (1) of this section applies is made through an agent resident in the United Kingdom and that agent is entitled as against the owner of the copyright to deduct any sum by way of commission in respect of services rendered, the amount of the payment shall, for the purposes of section 53 of this Act, be taken to be the amount thereof as diminished by the sum which the agent is so entitled to deduct:

Provided that, where the person by or through whom any such payment is made does not know that any such commission is payable or does not know the amount thereof, any income tax deducted by or assessed and charged on him shall be computed in the first instance on, and the account to be delivered of the payment shall be an account of, the total amount of the payment without regard being had to any diminution thereof, and in that case, on proof of the facts on a claim, there shall be made to the agent on behalf of the owner of the copyright such repayment of income tax as is proper in respect of the sum deducted by way of commission.

- (3) The time of the making of a payment to which subsection (1) of this section applies shall, for all tax purposes, be taken to be the time when it is made by the person by whom it is first made and not the time when it is made by or through any other person.
- (4) Any agreement for the making of any payment to which subsection (1) of this section applies in full and without deduction of income tax shall be void.

#### *Artists' receipts*

### **392 Relief for painters, sculptors and other artists**

- (1) Where the artist obtains any sum for the sale of a painting, sculpture or other work of art, or by way of commission or fee for the creation of the work of art, and—
- (a) he was engaged on the making of the work of art for a period of more than twelve months, or
  - (b) he was engaged for a period of more than twelve months in making a number of works of art for an exhibition, and the work is one of them,
- he may by making a claim require that effect shall be given to the following provisions of this section as respects that sum.
- (2) If the period for which he was engaged on the making of the work does not exceed twenty-four months, then, for all income tax purposes, one-half only of the amount of the payment shall be treated as having become receivable on the date on which it actually became receivable, and the remaining half shall be treated as having become receivable twelve months before that date.
- (3) If the period for which he was engaged on the making of the work exceeds twenty-four months, then, for all income tax purposes, one-third only of the amount of the payment shall be treated as having become receivable on the date on which it actually became receivable, and one-third shall be treated as having become receivable twelve months, and one-third twenty-four months, before that date.

## CHAPTER III

### LIFE POLICIES, LIFE ANNUITIES AND CAPITAL REDEMPTION POLICIES

#### 393 Introductory

- (1) This Chapter shall have effect for the purpose of imposing, in the manner and to the extent therein provided, charges to surtax and to tax under section 289 of this Act (shortfall in distributions of close company) in respect of gains to be treated in accordance with this Chapter as arising in connection with policies of life insurance, contracts for life annuities, and capital redemption policies.
- (2) Nothing in this Chapter shall apply—
- (a) to any policy of life insurance having as its sole object the provision on an individual's death or disability of a sum substantially the same as any amount then outstanding under a mortgage of his residence, or of any premises occupied by him for the purposes of a business, being a mortgage the principal amount secured by which is repayable by instalments payable annually or at shorter regular intervals, or
  - (b) to any policy of life insurance issued in connection with a sponsored superannuation scheme as defined in section 226(11) of this Act if one-half at least of the cost of the scheme is borne by the person or persons under whom the relevant offices or employments are held.

In the application of this subsection to Scotland, for the reference to a mortgage there shall be substituted a reference to a heritable security within the meaning of the Conveyancing (Scotland) Act 1924 (but including a security constituted by *ex facie* absolute disposition or assignment).

- (3) In this Chapter—
- " life annuity " means any annuity to which section 230 of this Act (purchased life annuities) applies,
  - " capital redemption policy " means any insurance effected in the course of a capital redemption business as defined in section 324(3) of this Act,
  - " assignment ", in relation to Scotland, means an assignment.
- (4) This Chapter shall have effect only as respects policies of life insurance issued in respect of insurances made after 19th March 1968, contracts for life annuities entered into after that date, and capital redemption policies effected after that date.
- (5) A policy of life insurance issued in respect of an insurance made on or before 19th March 1968 shall be treated for the purposes of subsection (4) above and the following provisions of this Chapter as issued in respect of one made after that date if it is varied after that date so as to increase the benefits secured or to extend the term of the insurance:

Provided that a variation effected before the end of the year 1968 shall be disregarded for the purposes of this subsection if its only effect was to bring into conformity with paragraph 2 of Schedule 1 to this Act (qualifying conditions for endowment policies) a policy previously conforming therewith except as respects the amount guaranteed on death, and no increase was made in the premiums payable under the policy.

### **394 Life policies: chargeable event**

- (1) Subject to the provisions of this section, in this Chapter "chargeable event" means, in relation to a policy of life insurance—
  - (a) unless it is a policy which falls within subsection (2) below, any of the following—
    - (i) any death giving rise to benefits under the policy,
    - (ii) the maturity of the policy,
    - (iii) the surrender in whole or in part of the rights conferred by the policy, and
    - (iv) the assignment for money or money's worth of those rights or of any share therein; and
  - (b) if it is a policy falling within subsection (2) below, any of the above events, but—
    - (i) in the case of death or maturity, only if the policy is converted into a paid-up policy before the expiry of ten years from the making of the insurance, or, if sooner, of three-quarters of the term for which the policy is to run if not ended by death or disability,
    - (ii) in the case of a surrender or assignment, only if it is effected within that time, or the policy has been converted into a paid-up policy within that time.
- (2) A policy falls within this subsection if (whether or not the premiums thereunder are eligible for relief under section 19 of this Act) it is a qualifying policy within the meaning of Part I of Schedule 1 to this Act.
- (3) The maturity of a policy is not a chargeable event in relation thereto if a new policy is issued in consequence of the exercise of an option conferred by the maturing policy unless the person making the insurance in respect of which the new policy is issued was an infant when the former policy was issued, and the former policy was one securing a capital sum payable either on a specified date falling not later than one month after his attaining twenty-five or on the anniversary of the policy immediately following his attainment of that age.
- (4) No event is a chargeable event in relation to a policy if the rights conferred by the policy have at any time before the event been assigned for money or money's worth.
- (5) No account shall be taken for the purposes of this section of any assignment effected by way of security for a debt, or on the discharge of a debt secured by the rights or share concerned, or of any assignment between spouses living together; and references in subsection (1) above to the surrender of the rights conferred by a policy do not include references to the surrender of any right to a bonus.
- (6) Where subsection (1)(b) above applies to a policy which has been varied so as to increase the premiums payable thereunder, it shall so apply as if the references in subsection (1)(b)(i) to the making of the insurance and the term of the policy were references respectively to the taking effect of the variation and the term of the policy as from the variation.

### **395 Life policies: computation of gain**

- (1) On the happening of a chargeable event in relation to any policy of life insurance, there shall be treated as a gain arising in connection with the policy—

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- (a) if the event is a death, the excess (if any) of the surrender value of the policy immediately before the death, plus the amount or value of any relevant capital payments, over the total amount previously paid under the policy by way of premiums ;
  - (b) if the event is the maturity of the policy, or the surrender in whole or in part of the rights thereby conferred, the excess (if any) of the amount or value of the sum payable or other benefits arising by reason of the event, plus the amount or value of any relevant capital payments, over the total amount previously paid under the policy by way of premiums, or, in the case of a partial surrender, over the same proportion of that amount as is borne by the amount or value of the said sum or other benefits to the amount or value of the sum or other benefits which would have been payable, or would have arisen, if the rights had been wholly surrendered;
  - (c) if the event is an assignment—
    - (i) if it is an assignment of all the rights conferred by the policy, the excess (if any) of the amount or value of the consideration, plus the amount or value of any relevant capital payments, over the total amount previously paid under the policy by way of premiums, and
    - (ii) if it is an assignment of a share only in those rights, the excess (if any) of the amount or value of the consideration, plus the amount or value of any relevant capital payments so far as attributable to the share assigned and received by the assignor or by any person at his direction, over the same proportion of the total amount previously paid under the policy by way of premiums as is borne by the amount or value of the consideration to the market value of the rights.
- (2) Where, in a case falling within subsection (1)(b) above, a right to periodical payments arises by reason of the event, there shall be treated as payable by reason thereof an amount equal to the capital value of those payments at the time the right arises.
- (3) Where, in a case falling within subsection (1)(c) above, the assignment is between persons who are connected with each other within the meaning of section 533 of this Act, the assignment shall be deemed to have been made for a consideration equal to the market value of the rights or share assigned.
- (4) In this section, " relevant capital payments " means, in relation to any policy, any sum or other benefit of a capital nature, other than one attributable to a person's disability, paid or conferred under the policy before the happening of the chargeable event, and any sum paid, or other benefit conferred, by reason of any surrender before that time of a right to a bonus under the policy; and references in this subsection and (in relation to premiums) in subsection (1) above to " the policy " include references to any related policy, that is to say, to any policy in relation to which the policy is a new policy within the meaning of paragraph 9 of Schedule 1 to this Act, any policy in relation to which that policy is such a policy, and so on.

### **396 Life annuity contracts: chargeable event**

- (1) Subject to subsections (2) and (3) below, in this Chapter " chargeable event " means, in relation to any contract for a life annuity, the surrender in whole or in part of the rights conferred by the contract, or the assignment for money or money's worth of those rights or of any share therein.

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

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Where the terms of a contract provide for the payment of a capital sum as an alternative, in whole or in part, to payments by way of annuity, the taking of the capital sum shall be treated for the purposes of this section and section 397 below as a surrender in whole or in part of the rights conferred by the contract.

- (2) An event referred to in subsection (1) above is not a chargeable event in relation to any contract if the rights conferred by the contract have at any time before the event been assigned for money or money's worth.
- (3) Subsection (5) of section 394 above shall, with any necessary modification, apply for the purposes of this section as it applies for the purposes of the said section 394.

### **397 Life annuity contracts: computation of gain**

- (1) On the happening of a chargeable event in relation to any contract for a life annuity, there shall be treated as a gain arising in connection with the contract—
  - (a) if the event is the surrender in whole or in part of the rights conferred by the contract, the excess (if any) of the amount payable by reason of the event over—
    - (i) the total amount previously paid under the contract, whether by way of premiums or as lump sum consideration, reduced, if before the happening of the event one or more payments have been made on account of the annuity, by the capital element in the said payment or payments, as determined in accordance with section 230 of this Act, or
    - (ii) in the case of a partial surrender, the same proportion of that amount (as so reduced where appropriate) as is borne by the amount payable by reason of the event to the amount which would have been so payable if the rights had been wholly surrendered ;
  - (b) if the event is the assignment for money or money's worth of the rights conferred by the contract, or of any share therein, the excess (if any) of the amount or value of the consideration over—
    - (i) the amount specified in subsection (1)(a)(i) above, or
    - (ii) if the assignment is of a share only, the same proportion of that amount (reduced as therein mentioned where appropriate) as is borne by the amount or value of the consideration to the market value of the rights.
- (2) Subsection (3) of section 395 above shall apply for the purposes of subsection (1) above as it applies for the purposes of subsection (1)(c) of that section.

### **398 Capital redemption policies**

- (1) Subject to subsection (2) below, in this Chapter "chargeable event" means, in relation to a capital redemption policy, any of the following—
  - (i) the maturity of the policy,
  - (ii) the surrender in whole or in part of the rights conferred by the policy, and
  - (iii) the assignment for money or money's worth of those rights or of any share therein.
- (2) Subsection (5) of section 394 above shall apply for the purposes of this section as it applies for purposes of the said section 394.

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

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- (3) The provisions of section 395 above, except subsection (3) thereof, shall, so far as appropriate and subject to subsection (4) below, apply to capital redemption policies as they apply to policies of life insurance.
- (4) Where a chargeable event happens in relation to a capital redemption policy which has previously been assigned for money or money's worth, the said section 395 shall have effect in relation thereto as if, for the references to the total amount previously paid under the policy by way of premiums, there were substituted references to the amount or value of the consideration given for the last such assignment, plus the total amount of the premiums paid under the policy since that assignment.

### **399 Method of charging gain to tax**

- (1) Where, under the preceding provisions of this Chapter, a gain is to be treated as arising in connection with any policy or contract—
  - (a) if, immediately before the happening of the chargeable event in question, the rights conferred by the policy or contract were vested in an individual as beneficial owner, or were held on trusts created by an individual (including trusts arising under section 11 of the Married Women's Property Act 1882, section 2 of the Married Women's Policies of Assurance (Scotland) Act 1880, or section 4 of the Law Reform (Husband and Wife) Act (Northern Ireland) 1964) or as security for a debt owed by an individual, the amount of the gain shall be deemed for the purposes of surtax (but not for any other income tax purpose except the furnishing of information) to form part of that individual's total income for the year in which the event happened;
  - (b) if, immediately before the happening of that event, the said rights were in the beneficial ownership of a close company, or were held on trusts created, or as security for a debt owed, by a close company, then—
    - (i) for the purposes of section 289 of this Act (shortfall in distributions) the company's distributable income (but not its estate or trading income) for the accounting period in which the event happened shall be treated as increased by the amount of the gain, and
    - (ii) the amount of the gain shall also be deemed to form part of the company's income for that period for the purposes of section 296 of this Act (surtax apportionments);
  - (c) if, immediately before the happening of that event, the said rights were vested in personal representatives within the meaning of Part XV of this Act, the amount of the gain shall, as regards surtax, be deemed for the purposes of the said Part XV to be part of the aggregate income of the estate of the deceased:

Provided that nothing in this subsection shall apply to any amount which is chargeable to tax apart from this subsection.

- (2) Where, immediately before the happening of a chargeable event, the rights conferred by any policy or contract were vested beneficially in two or more persons, or were held on trusts created, or as security for a debt owed, by two or more persons, paragraphs (a) and (b) of subsection (1) above shall have effect in relation to each of those persons as if he had been the sole owner, settlor or debtor, but with references to the amount of the gain construed as references to the part of it proportionate to his share in the rights at the time of the event or, as the case may require, when the trusts were created.

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- (3) References in subsections (1) and (2) above to the rights conferred by a policy or contract are, in the case of an assignment of a share only in any rights, references to that share.

#### **400 Relief where gain charged directly to surtax**

- (1) The following provisions of this section shall have effect for the purpose of giving relief, on a claim in that behalf being made by him to the Board, in respect of any increase in an individual's liability to tax which is attributable to one or more amounts being included in his total income for a year of assessment by virtue of section 399(1) (a) above.

- (2) Where one amount only is so included, there shall be computed—
- (a) the surtax which would be chargeable in respect of the amount if relief under this section were not available and it constituted the highest part of the claimant's total income for the year, and
  - (b) the surtax (if any) which would be chargeable in respect of the amount if calculated, in accordance with subsection (3) below, by reference to its appropriate fraction,

and the relief shall consist of a reduction or repayment of tax equal to the difference between the two amounts of surtax so computed, or, if surtax would not be chargeable on a calculation by reference to the appropriate fraction, of a reduction or repayment of the tax equal to the surtax computed under paragraph (a) above.

- (3) In subsection (2) above " appropriate fraction " means, in relation to any amount, such a sum as bears thereto the same proportion as that borne by one to the number of complete years for which the policy or contract has run before the happening of the chargeable event; and the computation required by paragraph (b) of that subsection shall be made by applying to the amount in question the rate or rates of surtax (if more than one, in corresponding proportions) which would apply if it were reduced to that fraction, treating it, as so reduced, as still constituting the highest part of the claimant's total income for the year, and treating so much of it (if any) as would then not be chargeable to surtax as if it were chargeable thereto at a nil rate.

For the purposes of this subsection, the number of years for which a policy of life insurance has run before the happening of a chargeable event shall be calculated, where appropriate, from the issue of the earliest related policy, meaning, any policy in relation to which the policy is a new policy within the meaning of paragraph 9 of Schedule 1 to this Act, any policy in relation to which that policy is such a policy, and so on.

- (4) Where by virtue of the said section 399(1)(a) two or more amounts are included in an individual's total income for any year of assessment, subsections (2) and (3) above shall apply as if they together constituted a single amount, but with the appropriate fraction of the whole determined by adding together the appropriate fractions of the individual amounts.
- (5) A provision of this section requiring surtax to be calculated as if an amount constituted the highest part of a claimant's total income shall apply notwithstanding any provision of the Income Tax Acts directing any other amount to be treated as the highest part thereof, but, for the purposes of this section, a claimant's total income shall be deemed not to include any amount in respect of which he is chargeable to tax under sections 80, 81 or 82 of this Act (premiums, etc. treated as rent) or section 187 of this Act (payments on retirement or removal from office or employment).

#### **401 Right of individual to recover tax from trustees**

- (1) Where an amount is included in an individual's income by virtue of section 399(1)(a) above, and the rights or share in question were held immediately before the happening of the chargeable event on trust, the individual shall be entitled to recover from the trustees, to the extent of any sums, or to the value of any benefits, received by them by reason of the event, an amount equal to that (if any) by which the tax with which he is chargeable for the year of assessment in question, reduced by the amount of any relief available under section 400 above in respect of the amount so included, exceeds the tax with which he would have been chargeable for the year if the said amount had not been so included.
- (2) Where, for the purposes of relief under the said section 400, two or more amounts are to be treated as one, the reduction required by subsection (1) above on account of the relief available in respect of any of them shall consist of a proportionate part of the relief available in respect of their aggregate.
- (3) An individual may require the Board to certify any amount recoverable by him by virtue of this section, and the certificate shall be conclusive evidence of the amount.

#### **402 Information: duty of insurers**

- (1) Subject to subsection (2) below, where a chargeable event within the meaning of this Chapter has happened in relation to any policy or contract, the body by or with whom the policy or contract was issued, entered into or effected shall, within three months of the event or, if it is a death or an assignment, within three months of their receiving written notification thereof, deliver to the inspector a certificate specifying—
  - (a) the name and address of the policy holder,
  - (b) the nature of the event, and the date on which it happened,
  - (c) as may be required for computing the gain to be treated as arising by virtue of this Chapter—
    - (i) the surrender value of the policy, or the sum payable, or other benefits to be conferred, by the body in question by reason of the event,
    - (ii) the amount or value of any relevant capital payments,
    - (iii) the amounts previously paid under the policy or contract by way of premiums, or otherwise by way of consideration for an annuity, and
    - (iv) the capital element in any payment previously made on account of an annuity, and
  - (d) the number of years relevant for computing the appropriate fraction of the gain for the purposes of section 400(3) above.
- (2) Subsection (1) above shall not apply where—
  - (a) the body in question are satisfied that no gain is to be treated as arising by reason of the event, or
  - (b) the amount of the surrender value or sum, or the value of the other benefits, referred to in paragraph (c)(i) of that subsection, together with the amount or value of any payments within paragraph (c)(ii) thereof, does not exceed £500, but the inspector may by notice in writing require a like certificate in any such case, and it shall be the duty of the body to deliver the certificate within thirty days of receipt of the notice.



## CHAPTER IV

### INSURANCE: BORROWING TO PAY PREMIUMS AND BORROWING AGAINST LIFE POLICIES

#### **403 Interest on loans used for payment of premiums, etc.: disallowance as deduction for surtax**

- (1) Subject to the exceptions contained in section 404 below, in computing for the purposes of surtax the total income for any year of assessment of an individual who has entered into a contract of assurance, no deduction shall be allowed in respect of any interest on any borrowed money which has been applied directly or indirectly to or towards the payment of any premium under that contract, or of any sum paid in lieu of any such premium.
- (2) Where the benefit of a contract of assurance entered into by any person has become vested in another person, being an individual, subsection (1) above shall apply in relation to that individual—
  - (a) as if the contract had been a contract entered into by him, and
  - (b) in a case where the benefit of the contract became vested in him by virtue of an assignment and any payment was made by him in consideration of the assignment, as if that payment were the payment of a premium under the contract, and
  - (c) in a case where, either as being the person in whom the said benefit is vested, or by reason of any agreement under or in pursuance of which the said benefit became vested in him, he pays any interest on any borrowed money, as if that money had been applied to the payment of a premium under 'the contract.
- (3) The provisions of section 22 of the Taxes Management Act 1970 with regard to the delivery of particulars as to deductions claimed to be allowed shall be extended so as to enable the Board to require such particulars with respect to deductions and otherwise as they may consider necessary for the purpose of carrying this section and section 404 below into effect.
- (4) In this section and the said section 404—
  - (a) " contract of assurance " means a contract of assurance or a contract similar in character to a contract of assurance, being in either case a contract under which a capital sum is expressed to be payable in the future in return for one or more antecedent payments, and " premium " means any such antecedent payment,
  - (b) " interest " includes any sum payable in respect of any borrowed money,
  - (c) any reference to borrowed money applied to or towards any payment shall be deemed to include a reference to borrowed money applied directly or indirectly to or towards the replacement of any money so applied, and
  - (d) any reference to a capital sum payable on death under a contract of assurance shall be construed as a reference to the actual capital sum assured on death, exclusive of any addition which has arisen or may arise from any bonus, share of profits, return of premiums or otherwise, and, in the case of a contract under which different capital sums are payable on death in different events, as a reference to the least of those sums.

#### **404 Exceptions from disallowance for surtax**

- (1) Subject to the provisions of this section, section 403 above shall not, where the interest is payable at a rate not exceeding 10 per cent. per annum, apply to—
- (a) interest on money borrowed mainly on the security of property other than a contract of assurance, if the premium in question either—
    - (i) is payable under a contract of assurance entered into in order to provide against the failure of a contingent interest in any property, and to serve as additional security for the loan and for no other purpose, or
    - (ii) is the first of a series of premiums payable under a contract of assurance entered into solely in order to provide for the repayment of the money borrowed and does not exceed 10 per cent. of the sum assured under that contract, or
  - (b) interest on borrowed money applied to or towards the payment of premiums under a contract of assurance which assures throughout the term of the contract a capital sum payable on death, if—
    - (i) neither the amount of the first premium under the contract, nor the amount subsequently payable by way of premiums thereunder in respect of any period of twelve months, exceeds one-eighth of the capital sum payable on death, and
    - (ii) it is shown to the satisfaction of the Board that it is exceptional for the individual in question to apply borrowed money to or towards the payment of premiums to which this paragraph applies, and that no such money has been so applied by him in any of the three years of assessment immediately preceding that in which he so applies the money on which the interest in question is payable, or
  - (c) interest on borrowed money applied to or towards the payment of premiums which—
    - (i) are not premiums such as those specified in paragraph (a), (d) or (e) of this subsection, and
    - (ii) are either premiums payable under a policy of life insurance which is a qualifying policy within the meaning of Part I of Schedule 1 to this Act or premiums each of which is one of a series of equal premiums payable at equal intervals of not more than one year,

except so far as such interest exceeds in the year of assessment £100 in all, or
  - (d) interest on borrowed money applied to or towards the payment of any premium under a contract of assurance entered into before 15th April 1930 which assures a fixed capital sum payable either—
    - (i) on death only, or
    - (ii) on the expiry of a period of not less than ten years from the date of the commencement of the contract or on earlier death, or
  - (e) interest on money borrowed before 6th. April 1929, unless—
    - (i) the money was borrowed from an insurance company, and
    - (ii) the repayment thereof was secured on a contract of assurance, and
    - (iii) the premium in question was a premium under that contract.
- (2) In relation to—
- (a) interest on borrowed money applied to or towards the payment of premiums under any policy of life insurance falling within paragraph (a)

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or (b) of section 393(2) of this Act (mortgage repayments and sponsored superannuation schemes), and

(b) interest on money borrowed on or before 19th March 1968,

subsection (1) above shall have effect with the omission of paragraph (b)(ii) and paragraph (c), but subsection (3) below shall apply.

(3) Section 403 above shall not apply to interest—

(a) which is payable at a rate not exceeding 10 per cent. per annum, and

(b) which is within subsection (2) (a) or (b) above, and

(c) which is interest on borrowed money applied to or towards the payment of premiums which—

(i) are not premiums such as those specified in paragraph (a), (b), (d) or (e) of subsection (1) above, and

(ii) are premiums each of which is one of a series of equal premiums payable at equal intervals of not more than one year,

except so far as such interest exceeds in the year of assessment £100 in all.

#### **405 Borrowings against life policies to be treated as income in certain cases**

(1) Where—

(a) under any contract or arrangements made on or after 7th April 1949, provision is made for the making to any person, at intervals until the happening of an event or contingency dependent on human life, of payments by way of loan ; and

(b) under the contract or arrangements, the loans are secured upon a policy of life assurance which assures moneys payable on the happening of such an event or contingency and need not be repaid until the policy moneys become payable ; and

(c) the amount of the moneys payable on the happening of the event or contingency is made by the policy to increase by reference to the length of a period ending on the happening thereof,

the payments by way of loan shall be treated for tax purposes as annual payments falling within Case III of Schedule D, or, if they are made to a person residing in the United Kingdom and the contract or arrangements were made outside the United Kingdom, as income from a possession out of the United Kingdom and, for income tax, as falling within section 122(1) of this Act.

(2) The amount of the moneys payable under a policy of life assurance shall not be deemed for the purposes of this section to be made to increase by reference to the length of a period ending on the happening of an event or contingency dependent on human life by reason only that those moneys are to increase from time to time if profits are made by the persons liable under the policy.

(3) This section shall not apply to any payments by way of loan if the Board are satisfied as respects those payments that it is not one of the objects of the contract or arrangements under which the payments are made that the recipient thereof, should enjoy the advantages which would, apart from any question of liability to tax, be enjoyed by a person in receipt of payments of the same amounts paid at the same times by way of annuity.

## CHAPTER V

### SCHEMES FOR RATIONALIZING INDUSTRY

#### **406 Deduction from profits of contributions paid under certified schemes**

- (1) Notwithstanding anything contained in section 130 of this Act (general rules as to deductions not allowable), but subject to the following provisions of this Chapter, where a person pays, wholly and exclusively for the purposes of a trade in respect of which he is chargeable under Case I of Schedule D, a contribution in furtherance of a scheme which is for the time being certified by the Board of Trade under this section, the contribution shall, in so far as it is paid in furtherance of the primary object of the scheme, be allowed to be deducted as an expense in computing the profits or gains of the said trade.
- (2) The Board of Trade shall certify a scheme under this section if they are satisfied—
  - (a) that the primary object of the scheme is the elimination of redundant works or machinery or plant from use in an industry in the United Kingdom; and
  - (b) that the scheme is in the national interest and in the interest of the said industry as a whole; and
  - (c) that such number of persons engaged in the said industry as are substantially representative of the industry are liable to pay contributions in furtherance of the primary object of the scheme by agreement between them and the body of persons carrying out the scheme.

References in this subsection to an industry in the United Kingdom shall include references to the business carried on by owners of ships or of a particular class of ships, wherever that business is carried on, and, in relation to that business, references in this subsection to works or machinery or plant shall include references to ships.

- (3) The Board of Trade shall cancel any certificate granted under this section if they cease to be satisfied as to any of the matters referred to in subsection (2) of this section.
- (4) The Board of Trade may at any time require the body of persons carrying out a scheme certified under this section to produce any books or documents of whatever nature relating to the scheme and, if the requirement is not complied with, the Board of Trade may cancel the certificate.
- (5) In this section and section 407 below, "contribution", in relation to a scheme, does not include a sum paid by a person by way of loan or subscription of share capital, or in consideration of the transfer of assets to him, or by way of a penalty for contravening or failing to comply with the scheme.

#### **407 Repayment of contributions**

- (1) In the event of the repayment, whether directly or by way of distribution of assets on a winding up or otherwise, of a contribution or any part thereof which has been allowed to be deducted under section 406 above, the deduction of the contribution, or of so much thereof as has been repaid, shall be deemed to be an unauthorised deduction in respect of which an assessment shall be made, and, notwithstanding the provisions of the Tax Acts requiring assessments to be made within six years after the end of the chargeable period to which they relate, any such assessment and, in the case of an income tax assessment any consequential assessment to surtax, may be made at any

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time within three years after the end of the chargeable period in which the repayment was made.

- (2) For the purposes of this section, a sum received by any person by way of repayment of contributions shall be deemed to be by way of repayment of the last contribution paid by him, and, if the sum exceeds the amount of that contribution, by way of repayment of the penultimate contribution so paid, and so on.

#### **408 Payments under certified schemes which are not repayments of contributions**

- (1) Subject to the provisions of this section, where under any scheme which is for the time being certified or has at any time been certified by the Board of Trade under section 406 above, any payment (not being a payment made by way of repayment of contributions) is made to a person carrying on a trade to which the scheme relates, that payment shall be treated for the purposes of the Tax Acts as a trading receipt of the trade, and shall accordingly be taken into account in computing the profits or gains of the trade for those purposes.
- (2) Where on a claim it is shown in accordance with the provisions of Part II of Schedule 11 to this Act that the payments which have been made under such a scheme in respect of a trade (not being payments made by way of repayment of contributions) have been made wholly or partly in respect of damage in respect of which no relief may be given under the Tax Acts, then, subject to and in accordance with the provisions of that Schedule, relief shall be given in respect of those payments by reducing the amounts which are to be treated as trading receipts of the trade under subsection (1) of this section, but, where such relief is given, the said section 406 shall, in relation to contributions subsequently paid under the scheme in respect of the trade, have effect subject to the modifications specified in Part III of that Schedule.
- (3) The provisions of this section and of the said Schedule shall apply in relation to any payment made to a person who has ceased to carry on a trade to which any such scheme as aforesaid relates as they apply in relation to payments made to a person carrying on such a trade, subject to the modification that so much of that payment as falls to be treated as a trading receipt by virtue of the said provisions shall be deemed for the purposes of those provisions to have been made to him on the last day on which he was engaged in carrying on the trade.
- (4) In determining, for the purposes of this section and of the said Schedule—
- (a) whether any trade has ceased to be carried on ; or
  - (b) whether any contribution is paid in respect of a trade in respect of which a payment has been made ; or
  - (c) whether any payment is made in respect of a trade in respect of which a contribution has been paid,

no regard shall be had to any event which, by virtue of any of the provisions of section 154 (income tax consequences of change in ownership of trade) or section 251(1) (corporation tax rules for commencement or discontinuance of trade) of this Act, is to be treated as effecting a discontinuance of a trade.

#### **409 Cancellation of certificates of Board of Trade**

- (1) Where any certificate granted with respect to a scheme under section 406 of this Act is cancelled by the Board of Trade, and any deductible contributions paid in furtherance of the scheme have not been repaid at the expiration of one year from the

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cancellation, the body of persons carrying out the scheme shall, for the chargeable period in which the said year expires, be charged to tax under Case VI of Schedule D upon the aggregate amount of the deductible contributions which have not been repaid at that time:

Provided that the charge shall not be made if the total amount of any contributions, other than deductible contributions, which have been paid under the scheme and have not been repaid before that time is greater than the available resources of the scheme, and shall not in any case be made upon an amount greater than the excess, if any, of those resources over that total amount.

In this subsection, " the available resources ", in relation to any scheme, means a sum representing the total funds held for the purposes of the scheme at the expiration of one year from the cancellation of the certificate plus a sum representing any funds held for the purposes of the scheme which, during that year, have been applied otherwise than in accordance with the provisions of the scheme as in force when the certificate was granted.

- (2) Where the body of persons carrying out a scheme are charged to tax by virtue of subsection (1) of this section, and, after the expiration of the said year, any deductible contribution paid in furtherance of the scheme is repaid, the amount upon which the charge is made shall on the making of a claim be reduced by the amount repaid, and all such repayments of tax shall be made as are necessary to give effect to the provisions of this subsection.
- (3) In this section, "contribution " includes a part of a contribution, and " deductible contribution " means a contribution allowed to be deducted under section 406 above, any reduction thereof under Part III of Schedule 11 to this Act being left out of account.
- (4) For the purposes of this section, a sum received by any person by way of repayment of contributions shall be deemed to be by way of repayment of the last contribution paid by him, and, if the sum exceeds the amount of that contribution, by way of repayment of the penultimate contribution so paid, and so on.

#### **410 Application to statutory redundancy schemes**

- (1) Sections 407, 408 and 409 above, and Schedule 11 to this Act, shall, subject to the adaptations specified in sub-section (2) of this section, apply in relation to a statutory redundancy scheme as they apply in relation to a scheme certified under section 406 above.
- (2) The said adaptations are as follows, that is to say—
  - (a) for any reference to a contribution allowed to be deducted under the said section 406 there shall be substituted a reference to a contribution allowed to be deducted under any provision of the Tax Acts other than the said section 406; and
  - (b) any provision that the said section 406 shall, in relation to contributions, have effect subject to modifications, shall be construed as a provision that so much of any provision of the Tax Acts other than the said section 406 as authorises the deduction of contributions shall, in relation to the contributions in question, have effect subject to the modifications in question; and
  - (c) for any reference to the cancellation of a certificate with respect to a scheme there shall be substituted a reference to the scheme ceasing to have effect; and

- (d) for any reference to the provisions of the scheme as in force when the certificate was granted there shall be substituted a reference to the provisions of the scheme as in force when contributions were first paid thereunder.
- (3) In this section, "statutory redundancy scheme " means a scheme for the elimination or reduction of redundant works, machinery or plant, or for other similar purposes, to which effect is given by or under any Act, whether passed before or after this Act.

## CHAPTER VI

### OTHER PROVISIONS

#### 411 Business entertaining expenses

- (1) Subject to the provisions of this section—
  - (a) no deduction shall be made in computing profits or gains chargeable to tax under Schedule A or Schedule D for any expenses incurred in providing business entertainment, and such expenses shall not be included in computing any expenses of management in respect of which relief may be given under the Tax Acts;
  - (b) no deduction for expenses so incurred shall be made from emoluments chargeable to tax under Schedule E ; and
  - (c) for the purposes of Chapter II of Part I of the Capital Allowances Act 1968 (capital allowances for machinery and plant) the use of any asset for providing business entertainment shall be treated as use otherwise than for the purposes of a trade.
- (2) Subsection (1) of this section shall not apply to expenses incurred in, or the use of an asset for, the provision by a person carrying on a trade in the United Kingdom (in this section referred to as a " United Kingdom trader "), or by a member of his staff, of entertainment for an overseas customer of that person, being entertainment of a kind and on a scale which is reasonable having regard to all the circumstances.
- (3) The expenses to which paragraph (a) of subsection (1) of this section applies include, in the case of any person, any sums paid by him to, or on behalf of, or placed by him at the disposal of, a member of his staff exclusively for the purpose of defraying expenses incurred or to be incurred by him in providing business entertainment, but where—
  - (a) any such sum falls to be included in his emoluments chargeable to tax under Schedule E; and
  - (b) the deduction or inclusion of that sum as mentioned in that paragraph falls to be disallowed in whole or in part by virtue of this section ;paragraph (b) of that subsection shall not preclude the deduction of any expenses defrayed out of that sum.
- (4) Where by virtue of subsection (2) of this section a person claims to deduct or include any expenses as mentioned in paragraph (a) or (b) of subsection (1) of this section or claims any allowance under the provisions mentioned in paragraph (c) of that subsection he shall, if the inspector so requires, furnish particulars of the entertainment in question and of the person for whom it was provided.
- (5) For the purposes of this section " business entertainment " means entertainment (including hospitality of any kind) provided by a person, or by a member of his staff,

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in connection with a trade carried on by that person, but does not include anything provided by him for bona fide members of his staff unless its provision for them is incidental to its provision also for others.

- (6) For the purposes of this section "overseas customer" means, in relation to any United Kingdom trader—
- (a) any person who is not ordinarily resident nor carrying on a trade in the United Kingdom and avails himself, or may be expected to avail himself, in the course of a trade carried on by him outside the United Kingdom, of any goods, services or facilities which it is the trade of the United Kingdom trader to provide; and
  - (b) any person who is not ordinarily resident in the United Kingdom and is acting, in relation to such goods, services or facilities, on behalf of an overseas customer within paragraph (a) of this subsection or on behalf of any government or public authority of a country outside the United Kingdom.
- (7) In this section any reference to expenses incurred in, or to the use of an asset for, providing entertainment includes a reference to expenses incurred in, or to the use of an asset for, providing anything incidental thereto; references to a trade include references to any business, profession or vocation; and references to the members of a person's staff are references to persons employed by that person, directors of a company or persons engaged in the management thereof being for this purpose deemed to be persons employed by it.
- (8) This section shall apply in relation to the provision of a gift as it applies in relation to the provision of entertainment, except that it shall not by virtue of this subsection apply in relation to the provision for any person of a gift consisting of an article incorporating a conspicuous advertisement for the donor, being an article—
- (a) which is not food, drink, tobacco or a token or voucher exchangeable for goods ; and
  - (b) the cost of which to the donor, taken together with the cost to him of any other such articles given by him to that person in the same year, does not exceed £1.
- (9) Nothing in this section shall be taken as precluding the deduction of expenses incurred in, or any claim for capital allowances in respect of the use of an asset for, the provision by any person of anything which it is his trade to provide, and which is provided by him in the ordinary course of that trade for payment or, with the object of advertising to the public generally, gratuitously.

#### **412 Statutory redundancy payments**

- (1) Any redundancy payment, and the corresponding amount of any other employer's payment, shall be exempt from income tax under Schedule E.
- (2) Where a redundancy payment or other employer's payment is made in respect of employment wholly in a trade, profession or vocation carried on by the employer, and within the charge to tax, the amount of the redundancy payment or the corresponding amount of the other employer's payment shall (if not otherwise so allowable) be allowable as a deduction in computing for the purposes of Schedule D the profits or gains or losses of the trade, profession or vocation, but if it is so allowed by virtue of this section the amount of the rebate recoverable shall (if it is not otherwise to be so treated) be treated as a receipt to be brought into account in computing those profits or gains; and if the employer's payment was made after the discontinuance of the trade, profession or vocation the net amount so deductible shall be treated as if it were a



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payment made on the last day on which the trade, profession or vocation was carried on.

- (3) Where a redundancy payment or other employer's payment is made in respect of employment wholly in a business carried on by the employer, and expenses of management of the business are eligible for relief under section 304 or section 305 of this Act the amount by which the redundancy payment, or the corresponding amount of the other employer's payment, exceeds the recoverable rebate shall (if not otherwise so allowable) be allowable as expenses of management eligible for relief under that section; and if the employer's payment was made after the discontinuance of the business the net amount so allowable shall be treated as if it were expenses of management incurred on the last day on which the business was carried on.
- (4) Where a redundancy payment or other employer's payment is made in respect of employment wholly in maintaining or managing property the expenses of maintaining or managing which were eligible for relief under the provisions of section 72(1) or section 74 of this Act (allowable deductions for tax under Schedule A), the amount by which the redundancy payment or the corresponding amount of the other employer's payment exceeds the recoverable rebate shall (if not otherwise allowable under those provisions) be treated for the purposes of the said provisions as a payment made by the employer in respect of the maintenance or management of the property, or of such part of it as he may elect; and if the employer's payment was made after the latest time when it could be taken into account for the purposes of relief under the said provisions as a payment in respect of the maintenance or management of the property or any part of it, it shall be treated as having been made at that time.
- (5) Relief shall not be given under subsections (2), (3) and (4) above, or otherwise, more than once in respect of any employer's payment, and if the employee was being employed by the employer in such a way that different parts of the employee's remuneration fell for tax purposes to be treated in different ways, the amount by which the redundancy payment, or the corresponding amount of the other employer's payment, exceeds the recoverable rebate shall be apportioned to the different capacities in which the employee was employed, and subsections (2), (3) and (4) above shall apply separately to the employment in those capacities, and by reference to the apportioned part of the said amount, instead of by reference to the full amount of the employer's payment, and the full amount of the rebate.
- (6) Where the Minister pays a sum under section 32 of the Redundancy Payments Act 1965 or section 42 of the Contracts of Employment and Redundancy Payments Act (Northern Ireland) 1965 in respect of an employer's payment this section shall apply as if that sum had been paid on account of that redundancy or other employer's payment and, so far as the employer has reimbursed the Minister, as if it had been so paid by the employer.
- (7) In this section " redundancy payment", " employer's payment" and " rebate " have the same meaning as in Part II of the Redundancy Payments Act 1965 or Part III of the Contracts of Employment and Redundancy Payments Act (Northern Ireland) 1965, and—
  - (a) references to the corresponding amount of an employer's payment (other than a redundancy payment) are references to the amount of that employer's payment so far as not in excess of the amount of the relevant redundancy payment (and so that where in consequence of section 30(2) of the Redundancy Payments Act 1965 or section 40(2) of the said Act of Northern

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Ireland, there is no relevant redundancy payment, the corresponding amount of the employer's payment is nil),

- (b) " relevant redundancy payment" shall be construed in accordance with paragraph 8 of Schedule 5 to the Redundancy Payments Act 1965 or paragraph 8 of Schedule 6 to the said Act of Northern Ireland,
  - (c) in subsection (6) above " the Minister ", in relation to the Redundancy Payments Act 1965, means the Secretary of State and, in relation to the said Act of Northern Ireland, means the Ministry of Health and Social Services,
- and a source of income is " within the charge to tax " if tax is chargeable on the income arising from it, or would be so chargeable if there were any such income.
- (8) In subsection (1) above the reference to tax under Schedule E does not include a reference to tax under section 187 of this Act (payments on retirement or removal from office or employment) and accordingly payments exempted by subsection (1) above may be taken into account under that section.

#### **413 Funds in court**

- (1) If any common investment fund established under section 1 of the Administration of Justice Act 1965 is for the time being designated for the purposes of this subsection by an agreement between the Board and the Public Trustee—
  - (a) the Public Trustee shall be entitled to exemption from income tax in respect of so much of the income derived from that fund or any investment thereof as is paid by him by way of dividend on the shares into which the fund is divided ; and
  - (b) dividends on those shares shall be paid without deduction of income tax and shall be chargeable under Case III of Schedule D.
- (2) A claim for exemption under subsection (1)(a) above shall be made to the Board.
- (3) Where at any time, by virtue of subsection (1) of this section, the income of a person from any source becomes chargeable to income tax as therein provided, not having previously been chargeable by direct assessment on that person, section 120(3) of this Act shall apply as if the source of that income were a new source of income acquired by that person at that time.
- (4) The Accountant General shall as respects each year of assessment furnish to the Board, at such time and in such manner as they may direct, particulars of any sums paid without deduction of tax by virtue of subsection (1) of this section and of the persons to whom such sums were paid, except that particulars shall not be required of any case where the total of such sums paid to any person in that year did not exceed £15.
- (5) An agreement designating a fund for the purposes of subsection (1) of this section may provide for incidental and consequential matters, including arrangements for giving effect to subsection (1)(a) of this section by provisional repayments of tax deducted at source, and may be determined by the Board or the Public Trustee by one year's notice in writing expiring with the end of any year of assessment.
- (6) The reference in this section to the Accountant General is a reference to the Accountant General of the Supreme Court of Judicature in England and, in relation to any such moneys as are mentioned in section 30 of the Administration of Justice Act 1965 (which relates to Northern Ireland), or money in a county court in Northern Ireland, and in relation to investments representing such moneys, includes a reference to the

Accountant General of the Supreme Court of Judicature of Northern Ireland or any other person by whom such funds are held.

#### **414 Relief from income tax on certain savings bank interest**

- (1) Where the total income of an individual for the year of assessment includes, or would but for this section include, any sums paid or credited in respect of interest on—
- (a) deposits with the National Savings Bank, other than investment deposits,
  - (b) ordinary deposits with a trustee savings bank, or
  - (c) deposits with a seamen's savings bank,

those sums shall be disregarded for all the purposes of the Income Tax Acts, other than surtax or the furnishing of information, if or in so far as they do not exceed £15 ; and for this purpose the question whether or how far those sums exceed £15 shall, where by virtue of section 37 of this Act, a woman's income is deemed to be her husband's, be determined separately as regards the part of his income which is his by virtue of that section and the part which is his apart from that section.

- (2) Where by virtue of subsection (1) above the total income of an individual for any year of assessment is treated as reduced by any amount for the purposes of income tax chargeable at the standard rate, it shall for the purposes of surtax be treated as having in the first place been reduced by a like amount but having thereafter been increased by such amount as would after deduction of income tax at the standard rate for that year be equal to the amount of the reduction.
- (3) Where, on the application in that behalf of any savings bank maintained under a local Act, the Treasury are satisfied, having regard to the rules to be adopted by the bank, the conditions subject to which deposits are to be accepted by it or any department to be formed by it, and such other matters as the Treasury may require to be proposed in the application, that the deposits will, if the application is granted, sufficiently correspond with savings account deposits in a trustee savings bank to justify a certificate under this section, the Treasury may certify the bank or department for the purposes of this section, and, while the certificate is in force—
- (a) the interest payable on the deposits shall not exceed the rate of 2 ½ per cent. per annum, but the interest shall be treated for the purposes of this section as if it were such interest as is mentioned in subsection (1) above, and
  - (b) the deposits shall be invested with the National Debt Commissioners, and
  - (c) the provisions of the Trustee Savings Banks Act 1969 specified below shall apply in relation to the bank or department as they apply in relation to trustee savings banks, but subject to such modifications as the Treasury may by order provide, including, if the order so provides, a reduction of the rate which the Treasury may by order under section 34(2) of the said Act of 1969 fix as the rate of interest on receipts for the bank's or department's payments into the Fund for the Banks for Savings.

The provisions of the Trustee Savings Banks Act mentioned in paragraph (c) above are sections 32, 33(1) and (2), 34 (except subsections (3) and (5)), 35 to 37 and 39 to 42.

- (4) The Treasury may by order under subsection (3) above make for any bank or department for the time being certified under that subsection provision as to the manner in which sums standing to the credit of the bank or department in the books of the National Debt Commissioners may be withdrawn, the manner in which payments may be made on any such withdrawal and the manner in which a valid discharge is to be given to the Commissioners for any such payment.

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- (5) An order under subsection (3) above shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament, and may be varied or revoked by a subsequent order.
- (6) If the Treasury at any time cease to be satisfied that a certificate under subsection (3) above is justified they may revoke the certificate and give such directions as they think fit for the withdrawal by the bank or department of any money standing to its credit in the books of the National Debt Commissioners.
- (7) In this section—
- " investment deposit ", in relation to the National Savings Bank, has the meaning given by section 1(2) of the Post Office Savings Bank Act 1966,
  - " trustee savings bank ", " ordinary deposit " and " savings account deposit " have the same meanings as in the Trustee Savings Banks Act 1969,
  - " seamen's savings bank " means a bank maintained under section 148 of the Merchant Shipping Act 1894.

#### **415 Contractual savings schemes: income tax and capital gains tax**

- (1) Any terminal bonus, or interest or other sum, payable under a certified contractual savings scheme—
- (a) in respect of money raised under section 12 of the National Loans Act 1968, or
  - (b) in respect of shares in a building society,
- shall be disregarded for all purposes of the Income Tax Acts and of the enactments relating to capital gains tax.
- (2) In this section " certified contractual savings scheme " means, except in relation to a building society, a scheme—
- (a) governed by regulations made under section 12 of the National Debt Act 1958 or section 52 of the Finance Act 1969, and
  - (b) providing for periodical contributions by individuals for a specified period, and the repayment in accordance with the regulations of contributions together with any additional sum by way of bonus or interest, and
  - (c) certified by the Treasury as qualifying for exemption under this section.
- (3) In this section " certified contractual savings scheme " means, in relation to a building society, a scheme—
- (a) providing for periodical contributions by individuals for a specified period, being contributions by way of investment in shares in the building society, and
  - (b) certified by the Treasury as corresponding to a scheme certified under subsection (2) above, and as qualifying for exemption under this section.
- (4) Nothing in this section shall be taken as affecting section 343 (2) (a) of this Act (allowance of dividends on building society's shares in computing the society's profits for corporation tax), and that paragraph shall apply to any terminal bonus paid by the society under a certified contractual savings scheme as if it were a dividend on a share in the society.
- (5) In this section " building society " means a building society within the meaning of the Building Societies Act 1962 or the Building Societies Act (Northern Ireland) 1967.

#### **416 Local authority borrowing in foreign currency**

- (1) If the Treasury direct that this section shall apply to any securities issued by a local authority and expressed in the currency of a country which at the time of the issue is outside the scheduled territories, interest on those securities—
  - (a) shall be paid without deduction of income tax, and
  - (b) so long as the beneficial owner is not resident in the United Kingdom, shall be exempt from income tax (but not from corporation tax).
- (2) Where for repayment of the principal amount due under the securities there is an option between one or more currencies within subsection (1) above and one or more other currencies, that subsection shall be applicable to the securities if the option is exercisable only by the holder of the securities, and shall not be applicable to the securities in any other case.
- (3) Where any income of any person is by virtue of any provision of the Income Tax Acts to be deemed to be income of any other person, that income shall not be exempt from tax by virtue of this section by reason of the first-mentioned person not being resident in the United Kingdom.
- (4) In this section "the scheduled territories" means the territories specified in Schedule 1 to the Exchange Control Act 1947 as for the time being in force.

#### **417 Funding bonds issued in respect of interest on certain debts**

- (1) Where any funding bonds are issued to a creditor in respect of any liability to pay interest on any debt to which this section applies—
  - (a) the issue of the bonds shall be treated for all the purposes of the Tax Acts as if it were the payment of an amount of that interest equal to the value of the bonds at the time of their issue, and
  - (b) the redemption of the bonds shall not be treated for those purposes as the payment of any amount of that interest.
- (2) Where an issue of bonds is treated by virtue of subsection (1) above as if it were the payment of an amount of interest, and any person by or through whom the bonds are issued would be required by virtue of any provision of the Tax Acts to deduct income tax from that amount of interest if it had been actually paid by or through him, the following provisions shall have effect—
  - (a) subject to paragraph (b) below, any such person—
    - (i) shall retain bonds the value of which at the time of their issue is equal to income tax on the said amount of interest at the standard rate for the year of assessment in which the bonds are issued, and
    - (ii) shall be acquitted in respect of any such retention in the same way as if he had deducted such tax from the interest, and
    - (iii) shall be chargeable with the said tax accordingly, but may tender the bonds so retained in satisfaction thereof;
  - (b) where the Board are satisfied that it is impracticable to retain bonds on account of income tax under paragraph (a) above—
    - (i) they may relieve any such person from the obligation to retain bonds and account for income tax under that paragraph, on his furnishing to them a statement of the names and addresses of the persons to whom the bonds have been issued and the amount of the bonds issued to each such person, and

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- (ii) tax in respect of the amount of interest treated by virtue of this section as having been paid by the issue of the bonds shall be charged under Case VI of Schedule D for the chargeable period in which the bonds are issued on the persons receiving or entitled to the bonds.
- (3) This section applies to any debt incurred, whether in respect of any money borrowed or otherwise, by any government, public authority or public institution whatsoever, or by any body corporate whatsoever.
- (4) For the purposes of this section " funding bonds " includes any bonds, stocks, shares, securities or certificates of indebtedness.

#### *Unremittable overseas income*

### **418 Relief for unremittable income**

- (1) Where a person is chargeable to tax by reference to the amount of any income arising in a territory outside the United Kingdom (hereafter in this section referred to as " overseas income"), then for the purposes of tax this section shall apply to the overseas income in so far as—
  - (a) he is prevented from transferring the amount of the overseas income to the United Kingdom, either by the laws of that territory or any executive action of its Government or by the impossibility of obtaining foreign currency in that territory ; and
  - (b) he has not realised the overseas income outside that territory for a consideration in sterling or a consideration in some other currency which he is not prevented from transferring to the United Kingdom.

Overseas income to which this section applies is hereafter in this section referred to as unremittable.

- (2) Where a person chargeable as aforesaid gives written notice of his desire to be assessed in accordance with this subsection, then, in the first instance, account shall not be taken of the overseas income to the extent to which he shows to the satisfaction of the Board that the following conditions are satisfied with respect to it, that is to say—
  - (a) that it is unremittable ; and
  - (b) that subsection (1)(a) above would continue to apply notwithstanding any reasonable endeavours on his part,
 and tax shall be assessed and charged on all persons concerned and for all periods accordingly; but, on the Board ceasing, as respects any part of the income, to be satisfied that the said conditions are satisfied, such assessments, reductions of assessments and repayments of tax shall be made as may be necessary to take account of it, and of any tax payable in respect of it under the law of the territory where it arises, according to their value at the date when, in the opinion of the Board, the said conditions cease to be satisfied with respect to it, and may be so made at any time not later than six years after that date.
- (3) Any notice under subsection (2) above shall be delivered to the inspector before an assessment made by reference to that income otherwise than in accordance with that subsection has become final and conclusive; and there shall be made all such assessments, reductions of assessments or repayments of tax as may be required by reason of any such notice.

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- (4) In the case of the death of a person who, if he had not died, would, under subsection (2) above, have become chargeable to any income tax, the tax which would have been so chargeable shall be assessed and charged upon his executors or administrators, and shall be a debt due from and payable out of his estate.
- (5) Subject to subsection (2) above, the amount of any unremittable overseas income shall be determined by reference to the generally recognised market value in the United Kingdom (if any) or, in the absence of any such value, according to the official rate of exchange of the territory where the income arises.
- (6) Any appeal against an assessment which involves a question as to the operation of this section shall be made to the Special Commissioners, and not to the General Commissioners.
- (7) In this section " overseas income " shall include any gains chargeable under Case VII of Schedule D which arise in a territory outside the United Kingdom, but so long as gains so arising in any year of assessment are treated as unremittable, losses arising in that year in the same territory shall be allowable under Case VII only in so far as they exceed those gains or the part thereof for the time being treated as unremittable.

#### **419 Relief from tax on delayed remittances**

- (1) A person charged or chargeable for any year of assessment in respect of income from any source with tax which (apart from this section) falls to be computed under Case IV or V of Schedule D, or under Case III of Schedule E, on the amount of income received in the United Kingdom in the basis year for that year of assessment, may by making a claim require that the following provisions of this section shall apply, on showing that the following conditions are satisfied, that is to say—
  - (a) that of the income so received all or part arose before the basis year but he was unable to transfer it to the United Kingdom before that year; and
  - (b) subject to subsection (2) below, that that inability was due to the laws of the territory where the income arose, or to executive action of its government, or to the impossibility of obtaining foreign currency in that territory; and
  - (c) that the inability was not due to any want of reasonable endeavours on his part.
- (2) For the purposes of this section, where in any year of assessment a person is granted a pension or increase of pension retrospectively, the amount paid in respect of any previous year of assessment by virtue of the grant shall be treated as income arising in that previous year, whenever it is paid, and he shall be treated as having possessed the source of income from the time as from which the grant has effect; and subsection (1) (b) above shall not apply in relation to any amount so paid, except as respects the period after it becomes payable.
- (3) Where a person claims that the provisions of this section shall apply for any year of assessment as respects the income from any source, then for purposes of income tax—
  - (a) there shall be deducted from the income received in the United Kingdom in the basis year for that year the amount as respects which the conditions in paragraphs (a), (b) and (c) of subsection (1) above are satisfied, so far as applicable; but
  - (b) the part (if any) of that amount arising in each previous year of assessment shall be treated as if it were income received in the United Kingdom in the basis year for that previous year.

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- (4) Nothing in this section shall alter the year which is to be taken as the basis year for computing tax chargeable for any year of assessment under Case IV or V of Schedule D, and where under subsection (3) (b) above income is treated as received in the United Kingdom in a year which is the basis year for two years of assessment, it shall not by reason thereof be taken into account except in the year in which it arose.
- (5) Where a person makes a claim under this section for any year of assessment as respects income from any source chargeable under the said Case IV or V, and that year is the basis year for computing the tax with which he is chargeable on the income from that source both for that and for the succeeding year of assessment, tax shall not be chargeable for either of those years of assessment on the amount referred to in paragraph (a) of subsection (3) of this section (without however being charged a second time by virtue of paragraph (b) of that subsection).
- (6) No claim under this section shall be made in respect of any income more than six years after the end of the year of assessment in which the income is received in the United Kingdom.
- (7) There shall be made all such adjustments, whether by way of repayment of tax, assessment or otherwise, as may be necessary to give effect to this section, and notwithstanding anything in the Income Tax Acts, any adjustment to give effect to a claim under this section may be made at any time.
- (8) A person's executors or administrators may make any claim under this section which he might have made, if he had not died, and after a person's death—
  - (a) any tax paid by him and repayable by virtue of a claim under this section (whoever made the claim) shall be repaid to his executors or administrators ; and
  - (b) any additional tax chargeable by virtue of such a claim shall be assessed and charged upon his executors or administrators and shall be a debt due from and payable out of his estate.
- (9) In this section " basis year " means, in relation to tax chargeable for any year of assessment under Case IV or V of Schedule D in respect of income from any source, the year by reference to which the amount of the income chargeable finally falls to be computed, and in relation to tax chargeable for any year of assessment under Case III of Schedule E, means that year of assessment; and any reference in this section to a source of income includes a part of a source.

*War risks and war injuries*

**420 Disallowance of deductions for war risk premiums**

- (1) In computing the amount of the profits or gains of any person for any tax purpose, no sum shall be deducted in respect of any payment made by him to which this section applies.
- (2) No payment to which this section applies shall be included in computing the expenses of management in respect of which relief may be given under section 304 or section 305 of this Act.
- (3) This section applies to any payment made by any person under any contract or arrangement under which that person is, in the event of war damage, entitled or



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eligible, either absolutely or conditionally, to or for any form of indemnification, whether total or partial, and whether by way of a money payment or not, in respect of that war damage:

Provided that—

- (a) where the payment is made in respect of the right or eligibility aforesaid and also in respect of other matters, the deduction or inclusion of so much of the payment as is properly attributable to the other matters shall not be disallowed by virtue only of subsection (1) or subsection (2) of this section ; and
  - (b) this section shall not apply to any payment made under—
    - (i) any policy of insurance issued under Part II of the War Risks Insurance Act 1939, or any similar enactment in force in any country outside the United Kingdom; or
    - (ii) any contract of marine insurance, or any contract of insurance of an aircraft, or any contract of insurance of goods in transit.
- (4) In this section, " war damage " means loss or damage arising from action taken by an enemy of Her Majesty, or action taken in combating such an enemy or in repelling an imagined attack by such an enemy, or action taken in anticipation of or in consequence of an attack by such an enemy.

#### **421 Disallowance of certain payments in respect of war injuries to employees**

- (1) In computing the amount of the profits or gains, or total income, of any person for any tax purpose, no sum shall be deducted in respect of any payment made by him to which this section applies.
- (2) No payment to which this section applies shall be included in computing—
  - (a) the expenses of management in respect of which relief may be given under section 304 or section 305 of this Act; or
  - (b) the expenses of management or supervision in respect of which relief may be given under section 158 of this Act (expenses of owner of mineral rights).
- (3) This section applies—
  - (a) to any payments by way of benefit made by any person to, or to the personal representatives or dependants of, any employees of his on account of their incapacity, retirement or death owing to war injuries, whether sustained in the United Kingdom or elsewhere; and
  - (b) to any payments made by any person by way of premium or contribution under any policy, agreement, scheme or arrangement providing for the payment of benefits to, or to the personal representatives or dependants of, any employees of his on account of their incapacity, retirement or death as aforesaid:

Provided that—

- (i) this section shall not apply to any payment (whether by way of benefit or by way of premium or contribution) which is payable under any policy, agreement, scheme or arrangement made before 3rd September 1939, except to the extent that the amount of the payment is increased by any variation of the terms of that policy, agreement, scheme or arrangement made on or after that date;
- (ii) this section shall not apply to any payment by way of benefit if, in the opinion of the Board, that payment was made under an established practice which

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was such that the same or a greater payment would have been made if the incapacity, retirement or death had not been due to war injuries.

- (4) Where a person makes a payment by way of benefit to which this section applies and, in the opinion of the Board, there is an established practice under which a smaller payment would have been made if the incapacity, retirement or death had not been due to war injuries, the deduction or inclusion of an amount equal to that smaller payment shall not be disallowed by virtue only of subsection (1) or subsection (2) of this section.
- (5) Where a person makes a payment to which this section applies by way of premium or contribution, and the policy, agreement, scheme or arrangement provides for the payment of any benefit in the event of incapacity, retirement or death not due to war injuries, the deduction or inclusion of so much of the payment of premium or contribution as, in the opinion of the Board, is properly attributable to benefit payable in the event of incapacity, retirement or death not due to war injuries shall not be disallowed by virtue only of subsection (1) or subsection (2) of this section.
- (6) In this section " war injuries " means physical injuries—
- (a) caused by—
    - (i) the discharge of any missile (including liquids and gas);
    - (ii) the use of any weapon, explosive or other noxious thing; or
    - (iii) the doing of any other injurious act,
 

either by the enemy or in combating the enemy or in repelling an imagined attack by the enemy; or
  - (b) caused by the impact on any person or property of any enemy aircraft, or any aircraft belonging to, or held by any person on behalf of, or for the benefit of, Her Majesty or any allied power, or any part of, or anything dropped from, any such aircraft.

*Pre-war provisions for tax free annuities, salaries, pensions, etc.*

#### **422 Modification of pre-war provisions for tax free annuities, etc.**

- (1) Subject to the provisions of this section, any provision, however worded, for the payment, whether periodically or otherwise, of a stated amount free of income tax, or free of income tax other than surtax, being a provision which—
- (a) is contained in any deed or other instrument, in any will or codicil, in any order of any court, in any local or personal Act, or in any contract, whether oral or in writing, and
  - (b) was made before 3rd September 1939, and
  - (c) has not been varied on or after that date,
- shall, as respects payments falling to be made during any year of assessment the standard rate of income tax for which exceeds 27.5 per cent., have effect as if for the stated amount there were substituted an amount equal to the appropriate fraction thereof.
- (2) Where any such provision as is mentioned in subsection (1) of this section is a provision for a payment free of income tax (and not merely a provision for a payment free of income tax other than surtax) the sum, if any, to be paid under that provision to make good the requirement that the payment shall be free of surtax shall, in the case of surtax for the year preceding any such year of assessment as is mentioned in the said subsection (1), be reduced to the appropriate fraction of the sum which would have

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been sufficient for that purpose if the rates of surtax in force for the year 1937-38 had applied to the year for which the surtax is payable.

- (3) If, in the case of a payment to which subsection (1) of this section applies, the relations of the payee and the payor are such that the payee is accountable to the payor for so much of any relief from income tax which he receives as is ascribable to the payment—
- (a) the liability of the payee to account to the payor shall be limited to the appropriate fraction of the sum for which he would have been accountable if the 1938-39 rates of income tax, other than surtax, had applied to the year of assessment in which the payment falls to be made, and the preceding provisions of this section had not been passed; and
  - (b) the relief to be given shall be calculated as if—
    - (i) the gross sum represented by the payment were what it would have been if the 1938-39 rates of income tax, other than surtax, had applied to the year of assessment in which the payment falls to be made, and the preceding provisions of this section had not been passed ; and
    - (ii) that gross sum had borne income tax at the standard rate of tax for the year of assessment in which the payment falls to be made.
- (4) This section shall not—
- (a) affect any provision falling within section 391(4) of this Act or section 106(2) of the Taxes Management Act 1970 (which render invalid agreements not to deduct income tax), or
  - (b) affect any provision if, by virtue of any provision in the same or any other deed, instrument, will, codicil, order, local or personal Act or contract which contemplates rises in the rates of income tax, the payments thereunder have ceased or, in the event of further rises in the rates of income tax, may cease, to be wholly free of income tax, or, as the case may be, wholly free of income tax other than surtax; or
  - (c) apply to any emoluments of any office, employment, annuity, pension or stipend taxed under Schedule E ; or
  - (d) apply to any dividends or shares of profits:

Provided that the reference in this subsection to any annuity taxed under Schedule E shall not include a reference to any annuity so taxed by virtue of section 208(3) of this Act (approved superannuation funds).

- (5) In this section " the appropriate fraction " in relation to any year of assessment is

$$\frac{100-A}{72.5}$$

where A is the standard rate of income tax for the year expressed as a percentage.

#### **423 Modification of pre-war provisions for tax free salaries, pensions, etc.**

- (1) This section applies to offices, employments, annuities, pensions and stipends taxed under Schedule E, where by virtue of—
- (a) some provision which is contained in a contract (whether oral or in writing) made before the 3rd September 1939, and which has not been varied on or after that date; or
  - (b) some provision which is contained in an enactment passed before 3rd September 1939 and which has not been amended on or after that date,

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the emoluments include a payment to or for the benefit of the recipient of the emoluments in respect of his income tax:

Provided that the reference in this subsection to annuities taxed under Schedule E shall not include a reference to any annuities so taxed by virtue of section 208(3) of this Act (approved superannuation funds).

- (2) The amount, if any, payable, in a case to which this section applies, to or for the benefit of the recipient of the emoluments in respect of his income tax for any year of assessment, other than surtax, shall not exceed the amount which would have been payable if the 1938-39 rates of income tax, other than surtax, had applied to the year of assessment in question.
- (3) The amount, if any, payable, in a case to which this section applies, to or for the benefit of the recipient of the emoluments in respect of his surtax for any year of assessment shall not exceed the amount which would have been payable if the rates of surtax in force for the year 1937-38 had applied to the year of assessment in question.

#### **424 Interpretation of last two preceding sections**

For the purposes of sections 422 and 423 above—

- (a) a provision, however worded, for the payment of such sum as will after deduction of income tax be equal to a stated amount, shall be treated as a provision for the payment of the said stated amount free of income tax, other than surtax; and
- (b) the expression "a stated amount" includes a stated fraction of the gross amount of any specified income (that is to say, of the amount of that income before income tax has been charged thereon, whether by deduction or otherwise), but does not include a stated fraction of the net amount of any specified income (that is to say, of the amount of that income after it has been charged to income tax, whether by deduction or otherwise); and
- (c) the expression "if the 1938-39 rates of income tax, other than surtax, had applied" means, in relation to a year of assessment, if the standard rate of tax for the year had been 27-5 per cent. and the enactments relating to relief from income tax had not been amended in any respect by any Act passed since 3rd September 1939.

*Arrangements for payment of interest less tax or of fixed net amount*

#### **425 Application to interest payable without deduction of tax**

- (1) It is hereby declared that any provision made before or after the passing of this Act, whether orally or in writing, for the payment of interest "less tax", or using words to that effect, is to be construed, in relation to interest payable without deduction of tax, as if the words "less tax", or the equivalent words, were not included.
- (2) In relation to interest on which the recipient is chargeable to tax under Case III of Schedule D, and which is payable without deduction of tax, any provision, made before or after the passing of this Act, whether orally or in writing, and however worded, for the payment of interest at such a rate (referred to below in this subsection as the "gross rate") as shall, after the deduction of the standard rate of income tax for the time being in force, be equal to a stated rate, shall be construed as if it were a provision requiring the payment of interest at the gross rate.

## PART XV

### ESTATES OF DECEASED PERSONS IN COURSE OF ADMINISTRATION

#### 426 Limited interests in residue

- (1) The following provisions of this section shall have effect in relation to a person who, during the period commencing on the death of a deceased person and ending on the completion of the administration of his estate (in this Part of this Act referred to as "the administration period") or during a part of that period, has a limited interest in the residue of the estate or in a part thereof.
- (2) When any sum has been paid during the administration period in respect of that limited interest, the amount thereof shall, subject to subsection (3) below, be deemed for all tax purposes to have been paid to that person as income for the year of assessment in which that sum was paid or, in the case of a sum paid in respect of an interest that has ceased, for the last year of assessment in which it was subsisting.
- (3) On the completion of the administration of the estate—
  - (a) the aggregate amount of all sums paid before, or payable on, the completion of the administration in respect of that limited interest shall be deemed to have accrued due to that person from day to day during the administration period or the part thereof during which he had that interest, as the case may be, and to have been paid to him as it accrued due, and
  - (b) the amount deemed to have been paid to that person by virtue of paragraph (a) above in any year of assessment shall be deemed for all tax purposes to have been paid to him as income for that year, and
  - (c) where the amount which is deemed to have been paid to that person as income for any year by virtue of this subsection is less or greater than the amount deemed to have been paid to him as income for that year by virtue of subsection (2) above, such adjustments shall be made as are provided in section 431 below.
- (4) Any amount which is deemed to have been paid to that person as income for any year by virtue of this section shall—
  - (a) in the case of a United Kingdom estate, be deemed to be income of such an amount as would after deduction of standard tax for that year be equal to the amount deemed to have been so paid, and to be income that has borne standard tax, and
  - (b) in the case of a foreign estate, be deemed to be income of the amount deemed to have been so paid, and shall be chargeable to standard tax under Case IV of Schedule D as if it were income arising from securities in a place out of the United Kingdom.
- (5) Where a person has been charged to standard tax for any year by virtue of this section in respect of an amount deemed to have been paid to him as income in respect of an interest in a foreign estate and any part of the aggregate income of that estate for that year has borne United Kingdom income tax by deduction or otherwise, the tax so charged on him shall, on proof of the facts on a claim, be reduced by an amount bearing the same proportion thereto as the amount of the said income which has borne United Kingdom income tax, less the tax so borne, bears to the amount of the said aggregate income, less the tax so borne:

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Provided that, where relief has been so given, such part of the amount in respect of which he has been charged to standard tax as corresponds to the said proportion shall, for the purposes of surtax, be deemed to represent income of such an amount as would after deduction of standard tax be equal to that part of the amount charged.

#### **427 Absolute interests in residue**

- (1) The following provisions of this section shall have effect in relation to a person who, during the administration period or during a part of that period, has an absolute interest in the residue of the estate of a deceased person or in a part thereof.
- (2) There shall be ascertained in accordance with section 428 below the amount of the residuary income of the estate for each whole year of assessment, and for each broken part of a year of assessment, during which—
  - (a) the administration period was current, and
  - (b) that person had that interest,

and the amount so ascertained in respect of any year or part of a year, or, in the case of a person having an absolute interest in a part of a residue, a proportionate part of that amount, is in this Part of this Act referred to as the " residuary income " of that person for that year of assessment:

Provided that, when legacy duty charged on the residue, or on the part thereof in which that person has an absolute interest, as the case may be, has been paid in respect of income for any such year or part of a year as aforesaid, his residuary income for that year shall thereafter be treated for the purposes of surtax as reduced by the amount of that duty so far as paid in respect of such income.

- (3) When any sum or sums has or have been paid during the administration period in respect of that absolute interest, the amount of that sum or the aggregate amount of those sums shall, subject to subsection (4) below, be deemed for all tax purposes to have been paid to that person as income to the extent to which, and for the year or years of assessment for which, he would have been treated for those purposes as having received income if he had had a right to receive in each year of assessment—
  - (a) in the case of a United Kingdom estate, his residuary income for that year less standard tax for that year, and
  - (b) in the case of a foreign estate his residuary income for that year,

and that sum or the aggregate of those sums had been available for application primarily in or towards satisfaction of those rights as they accrued and had been so applied.

In the case of a United Kingdom estate, any amount which is deemed to have been paid to that person as income for any year by virtue of this subsection shall be deemed to be income of such an amount as would, after deduction of standard tax for that year, be equal to the amount deemed to have been so paid, and to be income that has borne standard tax.

- (4) On the completion of the administration of the estate—
  - (a) the amount of the residuary income of that person for any year of assessment shall be deemed for all tax purposes to have been paid to him as income for that year, and in the case of a United Kingdom estate shall be deemed to have borne income tax by reference to the standard rate, and

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- (b) where the amount which is deemed to have been paid to that person as income for any year, by virtue of this subsection is less or greater than the amount deemed to have been paid to him as income for that year by virtue of subsection (3) above, such adjustments shall be made as are provided in section 431 below.
- (5) In the case of a foreign estate, any amount which is deemed to have been paid to that person as income for any year by virtue of this section shall be deemed to be income of that amount, and shall be chargeable to standard tax under Case IV of Schedule D as if it were income arising from securities in a place out of the United Kingdom.
- (6) Where a person has been charged to standard tax for any year by virtue of this section in respect of an amount deemed to have been paid to him as income in respect of an interest in a foreign estate, and any part of the aggregate income of that estate for that year has borne United Kingdom income tax by deduction or otherwise, the tax so charged on him shall, on proof of the facts on a claim, be reduced by an amount bearing the same proportion thereto as the amount of the said income which has borne United Kingdom income tax bears to the amount of the said aggregate income.
- (7) For the purposes of any charge to corporation tax under this section, the residuary income of a company shall be computed in the first instance by reference to years of assessment, and the residuary income for any such year shall be apportioned between the accounting periods (if more than one) comprising that year.

#### **428 Supplementary provisions as to absolute interests in residue**

- (1) The amount of the residuary income of an estate for any year of assessment shall be ascertained by deducting from the aggregate income of the estate for that year—
  - (a) the amount of any annual interest, annuity or other annual payment for that year which is a charge on residue and the amount of any payment made in that year in respect of any such expenses incurred by the personal representatives as such in the management of the assets of the estate as, in the absence of any express provision in a will, would be properly chargeable to income, but excluding any such interest, annuity or payment allowed or allowable in computing the aggregate income of the estate, and
  - (b) the amount of any of the aggregate income of the estate for that year to which a person has on or after assent become entitled by virtue of a specific disposition either for a vested interest during the administration period or for a vested or contingent interest on the completion of the administration.
- (2) In the event of its appearing, on the completion of the administration of an estate in the residue of which, or in a part of the residue of which, a person had an absolute interest at the completion of the administration, that the aggregate of the benefits received in respect of that interest does not amount to as much as the aggregate for all years of the residuary income of the person having that interest, his residuary income for each year shall be reduced for the purpose of section 427 above by an amount bearing the same proportion thereto as the deficiency bears to the aggregate for all years of his residuary income.

In this subsection "benefits received" in respect of an absolute interest means the following amounts in respect of all sums paid before, or payable on, the completion of the administration in respect of that interest, that is to say—

- (a) as regards a sum paid before the completion of the administration, in the case of a United Kingdom estate such an amount as would, after deduction of

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standard tax for the year of assessment in which that sum was paid, be equal to that sum, or in the case of a foreign estate the amount of that sum, and

- (b) as regards a sum payable on the completion of the administration, in the case of a United Kingdom estate such an amount as would, after deduction of standard tax for the year of assessment in which the administration is completed, be equal to that sum, or in the case of a foreign estate the amount of that sum.
- (3) In the application of subsection (2) above to a residue or a part of a residue in which a person other than the person having an absolute interest at the completion of the administration had an absolute interest at any time during the administration period, the aggregates therein mentioned shall be computed in relation to those interests taken together, and the residuary income of that other person also shall be subject to reduction thereunder.

#### **429 Special provisions as to certain interests in residue**

- (1) Where the personal representatives of a deceased person have as such a right in relation to the estate of another deceased person such that, if that right were vested in them for their own benefit, they would have an absolute or limited interest in the residue of that estate or in a part thereof, they shall be deemed to have that interest notwithstanding that that right is not vested in them for their own benefit, and any amount deemed to be paid to them as income by virtue of this Part of this Act shall be treated as part of the aggregate income of the estate of the person whose personal representatives they are.
- (2) Where different persons have successively during the administration period absolute interests in the residue of the estate of a deceased person or in a part thereof, sums paid during that period in respect of the residue or of that part thereof, as the case may be, shall be treated for the purpose of this Part of this Act as having been paid in respect of the interest of the person who first had an absolute interest therein up to the amount of—
  - (a) in the case of a United Kingdom estate, the aggregate for all years of that person's residuary income less standard tax, or
  - (b) in the case of a foreign estate, the aggregate for all years of that person's residuary income,
 and, as to any balance up to a corresponding amount, in respect of the interest of the person who next had an absolute interest therein, and so on.
- (3) Where, upon the exercise of a discretion, any of the income of the residue of the estate of a deceased person for any period (being the administration period or a part thereof) would, if the residue had been ascertained at the commencement of that period, be properly payable to any person, or to another in his right, for his benefit, whether directly by the personal representatives or indirectly through a trustee or other person, the amount of any sum paid pursuant to an exercise of the discretion in favour of that person shall be deemed for all tax purposes to have been paid to that person as income for the year of assessment in which it was paid, and the provisions of subsections (4) and (5) of section 426 above shall have effect in relation to an amount which is deemed to have been paid as income by virtue of this subsection.

#### **430 Relief from surtax for estate duty on accrued income**

- (1) Where any income, having accrued before the death of any person, is taken into account both—



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- (a) in estimating the principal value of an estate for the purposes of any estate duty payable on his death, and
- (b) in ascertaining for the purposes of this Part of this Act the residuary income of his estate for any year of assessment,

then, in ascertaining the liability to surtax of any person having an absolute interest in the residue of that or any other estate or part thereof, that residuary income shall be treated as reduced by an amount calculated in accordance with the following provisions of this section.

- (2) The amount of the reduction shall be an amount which, after deduction of standard tax for the said year of assessment, would equal the amount of estate duty payable in respect of so much of the income taken into account as mentioned in subsection (1) above as exceeds any liabilities so taken into account.
- (3) The amount of estate duty payable in respect of any income taken into account in estimating the principal value of an estate shall be taken to be—
  - (a) subject to paragraph (b) below, the amount which would be produced by levying estate duty on the amount of that income at the estate rate applicable to the estate in question under the law in force in Great Britain or, as the case may be, in Northern Ireland or, if estate duty is payable both in Great Britain and in Northern Ireland, whichever is the higher of the respective amounts which would be so produced;
  - (b) where section 16(3)(b) of the Finance Act 1894 or any other provision for corresponding purposes of the law in force in Northern Ireland applies for the purpose of determining the amount of the estate duty payable in Great Britain or, as the case may be, in Northern Ireland in respect of property consisting of or including that income, the amount which would be produced as aforesaid shall be taken to be an amount equal to so much of that amount of estate duty as may reasonably be regarded as attributable to that income.
- (4) The amount of any income accruing before the death of any person and taken into account in estimating the principal value of an estate shall (whether or not the income was valued separately or its amount known at the date of the death) be taken to be the actual amount so accruing less standard tax for the year of assessment in which the death occurred.
- (5) The amounts agreed between the persons accountable for estate duty and the Board (or, as respects estate duty payable under the law of Northern Ireland, the Ministry of Finance for Northern Ireland), or determined in proceedings between them, as being respectively the principal value of an estate and the amount of any estate duty payable shall be conclusive for the purposes of this section; and evidence of those amounts and of any facts relevant to their computation may be given by the production of a document purporting to be a certificate from the Board or, as the case may be, that Ministry.
- (6) In this section references to liabilities taken into account in ascertaining the amount of the residuary income of an estate include references to liabilities allowed or allowable in computing its aggregate income.
- (7) This section shall come into force so as to apply only where the death occurred after 3rd June 1969 (and so that section 19 of the Finance Act 1956 and, where relevant, paragraph 21 of Part III of Schedule 17 to the Finance Act 1969 continue to apply to earlier deaths).

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### **431 Adjustments and information**

(1) Where on the completion of the administration of an estate any amount is deemed by virtue of this Part of this Act to have been paid to any person as income for any year of assessment and—

- (a) that amount is greater than the amount that has previously been deemed to have been paid to him as income for that year by virtue of this Part of this Act, or
- (b) no amount has previously been so deemed to have been paid to him as income for that year,

an assessment may be made upon him for that year and tax charged accordingly or, on a claim being made for the purpose, any relief or additional relief to which he may be entitled shall be allowed accordingly.

(2) Where on the completion of the administration of an estate any amount is deemed by virtue of this Part of this Act to have been paid to any person as income for any year of assessment, and that amount is less than the amount that has previously been so deemed to have been paid to him, then—

- (a) if an assessment has already been made upon him for that year, such adjustments shall be made in that assessment as may be necessary for the purpose of giving effect to the provisions of this Part of this Act which take effect on the completion of the administration, and any tax Overpaid shall be repaid, and
- (b) if—

- (i) any relief has been allowed to him by reference to the amount which has been previously deemed as aforesaid to have been paid to him as income for that year, and
- (ii) the amount of that relief exceeds the amount of relief which could have been given by reference to the amount which, on the completion of the administration, is deemed to have been paid to him as income for that year,

the relief so given in excess may, if not otherwise made good, be charged under Case VI of Schedule D and recovered from that person accordingly.

(3) Notwithstanding anything in the Tax Acts, the time within which an assessment may be made for the purposes of this Part of this Act, or an assessment may be adjusted for those purposes, or a claim for relief may be made by virtue of this Part of this Act, shall not expire before the end of the third year following the year of assessment in which the administration of the estate in question was completed.

(4) The Board or, for the purpose of charging income tax at the standard rate, an inspector may by notice in writing require any person being or having been a personal representative of a deceased person, or having or having had an absolute or limited interest in the residue of the estate of a deceased person or in a part thereof, to furnish them within such time as they may direct (not being less than twenty-eight days) with such particulars as they think necessary for the purposes of this Part of this Act.

### **432 Interpretation**

(1) The following provisions of this section shall have effect for the purpose of the interpretation of the preceding provisions of this Part of this Act.

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- (2) A person shall be deemed to have an " absolute interest" in the residue of the estate of a deceased person, or in a part thereof, if and so long as the capital of the residue or of that part thereof, as the case may be, would, if the residue had been ascertained, be properly payable to him, or to another in his right, for his benefit, or is properly so payable, whether directly by the personal representatives or indirectly through a trustee or other person.
- (3) A person shall be deemed to have a " limited interest" in the residue of the estate of a deceased person, or in a part thereof, during any period, being a period during which he has not an absolute interest in the residue or in that part thereof, as the case may be, where the income of the residue or of that part thereof, as the case may be, for that period would, if the residue had been ascertained at the commencement of that period, be properly payable to him, or to another in his right, for his benefit, whether directly or indirectly as aforesaid.
- (4) " Personal representatives " means, in relation to the estate of a deceased person, his personal representatives as defined in relation to England and Wales by section 55 of the Administration of Estates Act 1925, and persons having in relation to the deceased under the law of another country any functions corresponding to the functions for administration purposes under the law of England and Wales of personal representatives as so defined; and references to " personal representatives as such " shall be construed as references to the personal representatives in their capacity as having such functions as aforesaid.
- (5) " Specific disposition" means a specific devise or bequest made by a testator, and includes the disposition of personal chattels made by section 46 of the Administration of Estates Act 1925 and any disposition having, whether by virtue of any enactment or otherwise, under the law of another country an effect similar to that of a specific devise or bequest under the law of England and Wales.

Real estate included (either by a specific or general description) in a residuary gift made by the will of a testator shall be deemed to be a part of the residue of his estate and not to be the subject of a specific disposition.

- (6) " Charges on residue " means, in relation to the estate of a deceased person, the following liabilities properly payable thereout and interest payable in respect of those liabilities, that is to say—
  - (a) funeral, testamentary and administration expenses and debts, and
  - (b) general legacies, demonstrative legacies, annuities and any sum payable out of residue to which a person is entitled under the law of intestacy in any part of the United Kingdom or any other country, and
  - (c) any other liabilities of his personal representatives as such:

Provided that where, as between persons interested under a specific disposition or in such a legacy as aforesaid or in an annuity and persons interested in the residue of the estate, any such liabilities fall exclusively or primarily upon the property that is the subject of the specific disposition or upon the legacy or annuity, only such part (if any) of those liabilities as falls ultimately upon the residue shall be treated as charges on residue.

- (7) References to the " aggregate income of the estate " of a deceased person for any year of assessment shall be construed as references to the aggregate income from all sources for that year of the personal representatives of the deceased as such, treated as consisting of—

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- (a) any such income which is chargeable to United Kingdom income tax by deduction or otherwise, such income being computed at the amount on which that tax falls to be borne for that year, and
- (b) any such income which would have been so chargeable if it had arisen in the United Kingdom to a person resident and ordinarily resident therein, such income being computed at the full amount thereof actually arising during that year, less such deductions as would have been allowable if it had been charged to United Kingdom income tax,

but excluding any income from property devolving on the personal representatives otherwise than as assets for payment of the debts of the deceased.

As regards surtax, this subsection has effect subject to section 287(2) (close companies: loans to participators), section 297(3) (close companies: surtax apportionments) and section 399(1)(c) (gains from insurance policies, etc.) of this Act.

- (8) " United Kingdom estate " and " foreign estate " mean respectively, as regards any year of assessment—
  - (a) an estate the income of which comprises only income which either has borne United Kingdom income tax by deduction or in respect of which the personal representatives are directly assessable to United Kingdom income tax, not being an estate any part of the income of which is income in respect of which the personal representatives are entitled to claim exemption from United Kingdom income tax by reference to the fact that they are not resident, or not ordinarily resident, in the United Kingdom, and
  - (b) an estate other than a United Kingdom estate.
- (9) In a case in which different parts of the estate of a deceased person are the subjects respectively of different residuary dispositions, this Part of this Act shall have effect in relation to each of those parts with the substitution for references to the estate of references to that part of the estate, and for references to the personal representatives of the deceased as such of references to his personal representatives in their capacity as having the functions referred to in subsection (4) above in relation to that part of the estate.
- (10) References to sums paid or payable in respect of an absolute or limited interest in the residue of the estate of a deceased person, or in a part thereof, shall, in the application of this Part of this Act for the purposes of surtax, be construed as excluding any sum paid or payable in discharge of any legacy duty charged in respect of that absolute or limited interest.
- (11) "Standard tax" means United Kingdom income tax at the standard rate.
- (12) References to sums paid include references to assets that are transferred or that are appropriated by a personal representative to himself, and to debts that are set off or released; references to sums payable include references to assets as to which an obligation to transfer or a right of a personal representative to appropriate to himself is subsisting on the completion of the administration and to debts as to which an obligation to release or set off, or a right of a personal representative so to do in his own favour, is then subsisting; and references to amount shall be construed, in relation to such assets, as references to the value thereof at the date on which they were transferred or appropriated, or at the completion of the administration, as the case may require, and, in relation to such debts, as references to the amount thereof.

### **433 Application to Scotland**

For the purpose of the application of this Part of this Act to Scotland—

- (a) any reference to the completion of, the administration of an estate shall be construed as a reference to the date at which, after discharge of, or provision for, liabilities falling to be met out of the deceased's estate (including without prejudice to the foresaid generality, debts, legacies immediately payable, and legal rights of surviving spouse or children), the free balance held in trust for behoof of the residuary legatees has been ascertained, and
- (b) for paragraph (b) of section 428(1) of this Act the following paragraph shall be substituted—
  - “(b) the amount of any of the aggregate income of the estate for that year to which a person has become entitled by virtue of a specific disposition”, and
- (c) " real estate " means heritable estate, and
- (d) " charges on residue " shall include, in addition to the liabilities specified in section 432(6) of this Act, any sums required to meet claims in respect of legal rights by surviving spouse or children.

## **PART XVI**

### **SETTLEMENTS**

#### **CHAPTER I**

##### **DISPOSITIONS FOR SHORT PERIODS**

### **434 Disposition for period which cannot exceed six years**

- (1) Any income which, by virtue or in consequence of any disposition made, directly or indirectly, by any person (other than a disposition made for valuable and sufficient consideration), is payable to or applicable for the benefit of any other person for a period which cannot exceed six years shall be deemed for all the purposes of the Income Tax Acts to be the income of the person, if living, by whom the disposition was made, and not to be the income of any other person.
- (2) In this Chapter, unless the context otherwise requires, " disposition " includes any trust, covenant, agreement or arrangement.

### **435 Adjustments between disponor and trustees**

- (1) Where, by virtue of this Chapter, any income tax becomes chargeable on and is paid by the person by whom a disposition was made, that person shall be entitled—
  - (a) to recover from any trustee or other person to whom the income is payable by virtue or in consequence of the disposition the amount of the tax so paid; and
  - (b) for that purpose to require the Board or, in relation to tax at the standard rate, an inspector to furnish to him a certificate specifying the amount of the income in respect of which he has so paid tax and the amount of the tax so paid,and any certificate so furnished shall be conclusive evidence of the facts appearing thereby.

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- (2) Where any person obtains in respect of any allowance or relief a repayment of income tax in excess of the amount of the repayment to which he would but for the provisions of this Chapter have been entitled, an amount equal to the excess shall be paid by him to the trustee or other person to whom the income is payable by virtue or in consequence of the disposition, or, where there are two or more such persons, shall be apportioned among those persons as the case may require.

If any question arises as to the amount of any payment or as to any apportionment to be made under this subsection, that question shall be decided by the General Commissioners whose decision thereon shall be final.

- (3) Subject to section 529 of this Act, any income which is deemed by virtue of this Chapter to be the income of any person shall be deemed to be the highest part of his income.

#### **436 Application of Chapter I to dispositions where there is more than one disponent**

- (1) In the case of any disposition where there is more than one person who made the disposition, this Chapter shall, subject to the provisions of this section, have effect in relation to each person who made the disposition as if he were the only person who had made it.
- (2) In the case of any such disposition, references in this Chapter to income payable or applicable by virtue or in consequence of the disposition include, in relation to any person making the disposition, only—
- (a) income from property which that person has provided directly or indirectly for the purposes of the disposition ; and
  - (b) income from property representing that property; and
  - (c) income from so much of any property which represents both property provided as aforesaid and other property as, on a just apportionment, represents the property so provided; and
  - (d) income provided directly or indirectly by that person.
- (3) In this section references to property which represents other property include references to property which represents accumulated income from that other property.

## **CHAPTER II**

### SETTLEMENTS ON CHILDREN

#### **437 The general rule**

- (1) Where, by virtue or in consequence of any settlement to which this Chapter applies and during the life of the settlor, any income is paid to or for the benefit of a child of the settlor in any year of assessment, the income shall, if at the time of the payment the child was unmarried and—
- (a) had not attained the age of eighteen, or
  - (b) had attained that age but had not attained the age of twenty-one and was not working regularly,
- be treated for all the purposes of the Income Tax Acts as the income of the settlor for that year and not as the income of any other person.

- (2) This Chapter applies to every settlement, wheresoever it was made or entered into, and whether it was made or entered into before or after the passing of this Act, except a settlement made or entered into before 22nd April 1936 which immediately before that date was irrevocable.

Paragraph 18 of Schedule 14 to this Act shall have effect as respects certain earlier settlements on children.

- (3) Subsection (1) above shall not have effect in relation to a child who has not attained the age of eighteen for any year of assessment for which his aggregate income, so far as it would fall within subsection (1) above or within section 43(1) of this Act (aggregation of income of parent and child) but for this exception and the corresponding exception in subsection (3) of the said section 43, does not exceed £5.
- (4) Without prejudice to subsection (3) above, income paid to or for the benefit of a child of a settlor shall not be treated as provided in subsection (1) above for any year of assessment in which the child is over the age of eighteen if the aggregate amount of the income paid to or for the benefit of the child which, but for this subsection, would be so treated by virtue of subsection (1) above, does not exceed £5.
- (5) This Chapter shall not apply in relation to any income arising under a settlement in any year of assessment for which the settlor is not chargeable to income tax as a resident in the United Kingdom, and references in this Chapter to income shall be construed accordingly.

#### **438 Accumulation settlements**

- (1) Subject to the provisions of this section, for the purposes of this Chapter—
- (a) income which, by virtue or in consequence of a settlement to which this Chapter applies, is so dealt with that it, or assets representing it, will or may become payable or applicable to or for the benefit of a child of the settlor in the future (whether on the fulfilment of a condition, or the happening of a contingency, or as the result of the exercise of a power or discretion conferred on any person, or otherwise) shall be deemed to be paid to or for the benefit of that child; and
  - (b) any income dealt with as aforesaid which is not required by the settlement to be allocated, at the time when it is so dealt with, to any particular child or children of the settlor shall be deemed to be paid in equal shares to or for the benefit of each of the children to or for the benefit of whom or any of whom the income or assets representing it will or may become payable or applicable.
- (2) Where any income is dealt with as mentioned in subsection (1) of this section by virtue or in consequence of a settlement to which this Chapter applies, being a settlement which, at the time when the income is so dealt with, is an irrevocable settlement—
- (a) the provisions of subsection (1) of this section shall not apply to that income unless and except to the extent that that income consists of, or represents directly or indirectly, sums paid by the settlor which are allowable as deductions in computing his total income; and
  - (b) any sum whatsoever paid thereafter by virtue or in consequence of the settlement, or any enactment relating thereto, to or for the benefit of a child of the settlor, being a child who at the time of the payment is unmarried and within subsection (1)(a) or subsection (1)(b) of section 437 above, shall be deemed for the purposes of that section to be paid as income, unless and except

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to the extent that the sum so paid together with any other sums previously so paid (whether to that child or to any other child who, at the relevant time, was unmarried and within the said subsection (1)(a) or subsection (1)(b)) exceeds the aggregate amount of the income which, by virtue or in consequence of the settlement, has been paid to or for the benefit of a child of the settlor, or dealt with as mentioned in subsection (1) of this section, since the date when the settlement took effect or the date when it became irrevocable, whichever is the later.

- (3) In subsection (2)(b) above " the relevant time " means—
- (a) in relation to a payment made after the year 1957-58, except a payment made in the year 1958-59 to or for the benefit of a child born after 6th April 1958, and so made by virtue or in consequence of a settlement made before 9th July 1958, the date when the payment was made,
  - (b) in relation to a payment made in or before the year 1957-58, or a payment made in the year 1958-59 and excepted from paragraph (a) above, the commencement of the year of assessment in which the payment was made.

#### **439 Meaning of "irrevocable"**

- (1) For the purposes of this Chapter, a settlement shall not be deemed to be irrevocable if the terms thereof provide—
- (a) for the payment to the settlor or, during the life of the settlor, to the wife or husband of the settlor for his or her benefit, or for the application for the benefit of the settlor or, during the life of the settlor, of the wife or husband of the settlor, of any income or assets in any circumstances whatsoever during the life of any child of the settlor to or for the benefit of whom any income, or assets representing it, is or are or may be payable or applicable by virtue or in consequence of the settlement ; or
  - (b) for the determination of the settlement by the act or on the default of any person ; or
  - (c) for the payment of any penalty by the settlor in the event of his failing to comply with the provisions of the settlement:

Provided that a settlement shall not be deemed to be revocable by reason only—

- (i) that it contains a provision under which any income or assets will or may become payable to or applicable for the benefit of the settlor, or the wife or husband of the settlor, on the bankruptcy of any such child as is mentioned in paragraph (a) of this subsection or in the event of an assignment of or charge on that income or those assets being executed by such a child; or
- (ii) that it provides for the determination of the settlement as aforesaid in such a manner that the determination will not, during the lifetime of any such child as aforesaid, benefit the settlor or the wife or husband of the settlor; or
- (iii) in the case of a settlement to which section 33 of the Trustee Act 1925 applies, that it directs income to be held for the benefit of such a child as aforesaid on protective trusts, unless the trust period is a period less than the life of the child or the settlement specifies some event on the happening of which the child would, if the income were payable during the trust period to him absolutely during that period, be deprived of the right to receive the income or part thereof.



- (2) In applying section 438(2)(b) above to a settlement subsisting on 6th April 1958 which would have been revocable if, in paragraph (ii) above, in place of the words " the settlor or the wife or husband of the settlor " (which were inserted by section 20(5) of the Finance Act 1958) there stood " any person other than such a child, or the wife, husband or issue of such a child " the date when it became irrevocable shall be taken as 6th April 1958.

#### 440 Interest paid by trustees

- (1) Where interest is paid by the trustees of a settlement to which this Chapter applies there shall be deemed for the purposes of this Chapter to be paid to or for the benefit of a child of the settlor who at the time of the payment is unmarried and within subsection (1)(a) or subsection (1)(b) of section 437 above (in addition to any other amount deemed to be so paid) an amount equal to a fraction

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

of the interest, where—

A is the whole of the income arising under the settlement in the year of assessment, less any expenses of the trustees of the settlement paid in that year which, in the absence of any express provision of the settlement, would be properly chargeable to income, and

B is such part of A as is paid to or for the benefit of any child of the settlor who is unmarried and within subsection (1)(a) or subsection (1)(b) of section 437 above.

- (2) This section shall not apply to interest in respect of which relief from tax at the standard rate is allowable under any provision of the Income Tax Acts or to interest payable to the settlor or the wife or husband of the settlor (if living with the settlor).
- (3) Nothing in this section shall be construed as affecting the liability to tax of the person receiving or entitled to the interest.
- (4) For the purpose of this section—
- " income arising under the settlement " has the meaning given by section 454 below, which for that purpose shall be deemed to apply in relation to settlements to which this Chapter applies as it applies in relation to settlements to which Chapter III below applies, and
- the reference to the trustees' expenses excludes sums mentioned in section 455(a) below (sums distributed to beneficiaries).

#### 441 Adjustments between disponor and trustees

- (1) Where, by virtue of this Chapter, any income tax becomes chargeable on and is paid by the person by whom a settlement was made or entered into, that person shall be entitled—
- (a) to recover from any trustee or other person to whom the income is payable by virtue or in consequence of the settlement the amount of the tax so paid; and
- (b) for that purpose to require the Board or, in relation to tax at the standard rate, an inspector to furnish to him a certificate specifying the amount of income in respect of which he has so paid tax and the amount of the tax so paid,

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and any certificate so furnished shall be conclusive evidence of the facts appearing thereby.

- (2) Where any person obtains in respect of any allowance or relief a repayment of income tax in excess of the amount of the repayment to which he would but for the provisions of this Chapter have been entitled, an amount equal to the excess shall be paid by him to the trustee or other person to whom the income is payable by virtue or in consequence of the settlement, or, where there are two or more such persons, shall be apportioned among those persons as the case may require.

If any question arises as to the amount of any payment or as to any apportionment to be made under this subsection, that question shall be decided by the General Commissioners whose decision thereon shall be final.

- (3) Subject to section 529 of this Act, any income which is deemed by virtue of this Chapter to be the income of any person shall be deemed to be the highest part of his income.

#### **442 Application of Chapter II to settlements with more than one settlor**

- (1) In the case of any settlement where there is more than one settlor, this Chapter shall, subject to the provisions of this section, have effect in relation to each settlor as if he were the only settlor.
- (2) In the case of any such settlement as aforesaid, only the following can, for the purposes of this Chapter, be taken into account, in relation to any settlor, as income paid by virtue or in consequence of the settlement to or for the benefit of a child of the settlor, that is to say—
- (a) income originating from that settlor; and
  - (b) in a case in which paragraph (b) of subsection (2) of section 438 of this Act applies, any sums which are under that paragraph to be deemed to be paid as income:

Provided that in applying the said paragraph (b) to any settlor—

- (i) the references to sums paid by virtue or in consequence of the settlement or any enactment relating thereto include only sums paid out of property originating from that settlor or income originating from that settlor; and
  - (ii) the reference to income which by virtue or in consequence of the settlement has been paid to or for the benefit of a child of the settlor or dealt with as mentioned in subsection (1) of that section includes only income originating from that settlor.
- (3) References in this section to property originating from a settlor are references to—
- (a) property which that settlor has provided directly or indirectly for the purposes of the settlement; and
  - (b) property representing that property; and
  - (c) so much of any property which represents both property provided as aforesaid and other property as, on a just apportionment, represents the property so provided.
- (4) References in this section to income originating from a settlor are references to—
- (a) income from property originating from that settlor; and
  - (b) income provided directly or indirectly by that settlor.

- (5) In subsections (3) and (4) of this section—
- (a) references to property or income which a settlor has provided directly or indirectly include references to property or income which has been provided directly or indirectly by another person in pursuance of reciprocal arrangements with that settlor but do not include references to property or income which that settlor has provided directly or indirectly in pursuance of reciprocal arrangements with another person; and
  - (b) references to property which represents other property include references to property which represents accumulated income from that other property.

#### **443 Power to obtain information under Chapter II**

The Board or, for the purpose of charging tax at the standard rate, an inspector may by notice in writing require any party to a settlement to furnish them within such time as they may direct (not being less than twenty-eight days) with such particulars as they think necessary for the purposes of this Chapter.

#### **444 Interpretation of Chapter II**

- (1) In this Chapter "child" includes a stepchild, an adopted child and an illegitimate child, and a child is to be treated as working regularly if, and only if, he or she is engaged in a full-time occupation, not being one entered into during an interval not exceeding fifteen months between two periods of full-time education, and intends to be regularly engaged in it or another such occupation.

In this subsection " occupation" means any office, employment, trade, profession or vocation.

- (2) In this Chapter—

" settlement " includes any disposition, trust, covenant, agreement, arrangement or transfer of assets;

" settlor ", in relation to a settlement, includes any person by whom the settlement was made or entered into directly or indirectly, and in particular (but without prejudice to the generality of the preceding words of this definition) includes any person who has provided or undertaken to provide funds directly or indirectly for the purpose of the settlement, or has made with any other person a reciprocal arrangement for that other person to make or enter into the settlement;

" income ", except in the phrase (occurring in section 437(1) above) " be treated for all the purposes of the Income Tax Acts as the income of the settlor for that year and not as the income of any other person ", includes any income chargeable to income tax by deduction or otherwise and any income which would have been so chargeable if it had been received in the United Kingdom by a person resident and ordinarily resident in the United Kingdom.

- (3) For the purpose of adapting the definition of " income " in subsection (2) above in relation to Case VII of Schedule D, that definition shall apply in relation to gains arising from the acquisition and disposal of chargeable assets as it would apply if the gains were profits from a trade of dealing in the assets, and any such gains shall be treated as payable in the first instance to the person to whom they accrue.

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- (4) In the case of settled property as defined for the purposes of Case VII of Schedule D, section 438(1)(a) above shall have effect in relation to gains so arising from the settled property only in so far as they exceed losses so arising from them.

### CHAPTER III

#### REVOCABLE SETTLEMENTS, ETC

#### 445 Revocable settlements allowing release of obligation

- (1) If and so long as the terms of any settlement (where-ever made) are such that—
- (a) any person has or may have power, whether immediately or in the future, and whether with or without the consent of any other person, to revoke or otherwise determine the settlement or any provision thereof and, in the event of the exercise of the power, the settlor or the wife or husband of the settlor will or may cease to be liable to make any annual payments payable by virtue or in consequence of any provision of the settlement; or
  - (b) the settlor or the wife or husband of the settlor may, whether immediately or in the future, cease, on the payment of a penalty, to be liable to make any annual payments payable by virtue or in consequence of any provision of the settlement,

any sums payable by the settlor or the wife or husband of the settlor by virtue or in consequence of that provision of the settlement in any year of assessment shall be treated for all the purposes of the Income Tax Acts as the income of the settlor for that year and not as the income of any other person:

Provided that, where any such power as is referred to in paragraph (a) of this subsection cannot be exercised within the period of six years from the time when the first of the annual payments so referred to becomes payable, and the like annual payments are payable in each year throughout that period, the said paragraph (a) shall not apply so long as the said power cannot be exercised.

- (2) In subsection (1) above—
- (a) the references to a power to revoke or otherwise determine a settlement or any provision thereof shall be deemed to include references to any power to diminish the amount of any payments which are or may be payable under the settlement or any provision thereof and to any power to diminish the amount of any annual payments which the settlor or the wife or husband of the settlor is or may be liable to make by virtue or in consequence of any provision of the settlement ;
  - (b) the references to the settlor or the wife or husband of the settlor ceasing to be liable to make any annual payments payable by virtue or in consequence of any provision of the settlement shall be deemed to include references to a diminution of the amount of any such annual payments which the settlor or the wife or husband of the settlor is or may be liable to make;

but the sums to be treated under the said subsection (1) as the income of the settlor for any year of assessment and not as the income of any other person shall, where that subsection would not apply but for paragraph (b) of this subsection, be such part only of the sums payable as aforesaid by the settlor or the wife or husband of the settlor in that year as corresponds to the diminution mentioned in that paragraph.

- (3) Where, in the case of any settlement made before 16th April 1958, any sums payable by the settlor or by the wife or husband of the settlor would, by virtue of subsection (2) above, fall to be treated as the income of the settlor and not as the income of any other person, but would not fall to be so treated apart from that subsection, the sums shall not be so treated if—
- (a) no power by reason of which they would fall to be so treated has been exercised after 15th April 1958, or is or can become exercisable after 5th April 1959, or such later date as the Board may in any particular case allow, and
  - (b) neither the settlor nor the wife or husband of the settlor has received or is entitled to any consideration or benefit in connection with the fulfilment of the condition set out in paragraph (a) of this subsection,
- or if the settlement was entered into in connection with any judicial separation or any agreement between spouses to live separate and apart, or with the dissolution or annulment of a marriage.

#### **446 Revocable settlements allowing reversion of property**

- (1) If and so long as the terms of any settlement (wherever made) are such that—
- (a) any person has or may have power, whether immediately or in the future, and whether with or without the consent of any other person, to revoke or otherwise determine the settlement or any provision thereof; and
  - (b) in the event of the exercise of the power, the settlor or the wife or husband of the settlor will or may become beneficially entitled to the whole or any part of the property then comprised in the settlement or of the income arising from the whole or any part of the property so comprised,
- any income arising under the settlement from the property comprised in the settlement in any year of assessment or from a corresponding part of that property, or a corresponding part of any such income, as the case may be, shall be treated for all the purposes of the Income Tax Acts as the income of the settlor for that year and not as the income of any other person:
- Provided that, where any such power as aforesaid cannot be exercised within six years from the time when any particular property first becomes comprised in the settlement, this subsection shall not apply to income arising under the settlement from that property, or from property representing that property, so long as the power cannot be exercised.
- (2) In subsection (1) above the references to a power to revoke or otherwise determine a settlement or any provision thereof shall be deemed to include references to—
- (a) any power to diminish the property comprised in the settlement; and
  - (b) any power to diminish the amount of any payments which are or may be payable under the settlement or any provision thereof to any person other than the settlor and the wife or husband of the settlor.
- (3) Where, in the case of any settlement made before 16th April 1958, any income arising under the settlement would, by virtue of subsection (2) above, fall to be treated as the income of the settlor and not as the income of any other person, but would not fall to be so treated apart from that subsection, the income shall not be so treated if—
- (a) no power by reason of which it would fall to be so treated has been exercised after 15th April 1958 or is or can become exercisable after 5th April 1959, or such later date as the Board may in any particular case allow; and

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- (b) neither the settlor nor the wife or husband of the settlor has received or is entitled to any consideration or benefit in connection with the fulfilment of the condition set out in paragraph (a) of this subsection.

#### **447 Settlements where settlor retains an interest**

- (1) If and so long as the settlor has an interest in any income arising under or property comprised in a settlement (wherever made), any income so arising during the life of the settlor in any year of assessment shall, to the extent to which it is not distributed, be treated for all the purposes of the Income Tax Acts as the income of the settlor for that year and not as the income of any other person:

Provided that—

- (a) if and so long as that interest is an interest neither in the whole of the income arising under the settlement nor in the whole of the property comprised in the settlement, the amount of income to be treated as the income of the settlor by virtue of this subsection shall be such part of the income which, but for this proviso, would be so treated as is proportionate to the extent of that interest; and
- (b) where it is shown that any amount of the income which is not distributed in any year of assessment consists of income which falls to be treated as the income of the settlor for that year by virtue of section 445 or 446 above, that amount shall be deducted from the amount of income which, but for this proviso, would be treated as his for that year by virtue of this subsection.
- (2) For the purpose of subsection (1) of this section, the settlor shall be deemed to have an interest in income arising under or property comprised in a settlement if any income or property which may at any time arise under or be comprised in that settlement is, or will or may become, payable to or applicable for the benefit of the settlor or the wife or husband of the settlor in any circumstances whatsoever:

Provided that the settlor shall not be deemed to have an interest in any income arising under or property comprised in a settlement—

- (a) if and so long as that income or property cannot become payable or applicable as aforesaid except in the event of—
- (i) the bankruptcy of some person who is or may become beneficially entitled to that income or property ; or
  - (ii) any assignment of or charge on that income or property being made or given by some such person ; or
  - (iii) in the case of a marriage settlement, the death of both the parties to the marriage and of all or any of the children of the marriage; or
  - (iv) the death under the age of twenty-five or some lower age of some person who would be beneficially entitled to that income or property on attaining that age; or
- (b) if and so long as some person is alive and under the age of twenty-five during whose life that income or property cannot become payable or applicable as aforesaid except in the event of that person becoming bankrupt or assigning or charging his interest in that income or property.

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#### **448 Settlements: discretionary power for benefit of settlor, etc.**

- (1) If and so long as the terms of any settlement (wherever made) are such that any person has or may have power, whether immediately or in the future, and whether with or without the consent of any person—
  - (a) to pay or apply to or for the benefit of the settlor or the wife or husband of the settlor the whole or any part of the income or property which may at any time arise under or be comprised in the settlement; or
  - (b) to secure the payment or application to or for the benefit of the settlor or the wife or husband of the settlor of the whole or any part of that income or property,being a power exercisable at his discretion, any income arising under the settlement in any year of assessment or, as the case may be, any income so arising from the property comprised in the settlement or from a corresponding part of that property, or a corresponding part of any such income, shall (so far as it is not so treated apart from this section) be treated for all the purposes of the Income Tax Acts as the income of the settlor for that year and not as the income of any other person, subject however to the following provisions of this section.
- (2) Where the power mentioned in subsection (1) of this section cannot be exercised within six years from the time when any income or class of income first arises under the settlement or from the time when any particular property first becomes comprised in the settlement, then, so long as the power cannot be exercised, that subsection shall not apply to any income arising under the settlement or, as the case may be, any income of that class or income from that property or property representing that property.
- (3) Where, under the proviso to section 447(2) above, the settlor is not deemed to have an interest in any income arising under or property comprised in the settlement, subsection (1) of this section shall not apply to that income or, as the case may be, to income arising from that property.
- (4) Where, in the case of any settlement made before 9th July 1958, any income arising under the settlement would, by virtue of the preceding provisions of this section, fall to be treated as the income of the settlor and not as the income of any other person, but would not fall to be so treated apart from those provisions, it shall not be so treated if—
  - (a) no power by reason of which it would fall to be so treated has been exercised after 8th July 1958, or is or can become exercisable after 5th April 1959, or such later date as the Board may in any particular case allow; and
  - (b) neither the settlor nor the wife or husband of the settlor has received or is entitled to any consideration or benefit in connection with the fulfilment of the condition set out in paragraph (a) of this subsection.

#### **449 Provisions supplemental to preceding provisions of Chapter III**

- (1) Tax chargeable at the standard rate by virtue of the preceding provisions of this Chapter shall be charged under Case VI of Schedule D.
- (2) In computing the liability to income tax of a settlor chargeable by virtue of any of the said preceding provisions, the same deductions and reliefs shall be allowed as would have been allowed if the income treated as his by virtue of that provision had been received by him.
- (3) Where, by virtue of any of the said preceding provisions, any income tax becomes chargeable on and is paid by a settlor, he shall be entitled—

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- (a) to recover from any trustee, or other person to whom income arises under the settlement, the amount of the tax so paid ; and
- (b) for that purpose to require the Board or, in relation to tax at the standard rate, an inspector to furnish to him a certificate specifying the amount of income in respect of which he has so paid tax and the amount of tax so paid.

Any certificate so furnished shall be conclusive evidence of the facts stated therein.

- (4) Where any person obtains, in respect of any allowance or relief, a repayment of income tax in excess of the amount of the repayment to which he would, but for any of the said preceding provisions, have been entitled, an amount equal to the excess shall be paid by him to the trustee or other person to whom income arises under the settlement, or, where there are two or more such persons, shall be apportioned among those persons as the case may require.

If any question arises as to the amount of any payment or as to any apportionment to be made under this subsection, that question shall be decided by the General Commissioners whose decision thereon shall be final.

- (5) Subject to section 529 of this Act, any income which is treated by virtue of any of the said preceding provisions as income of a settlor shall be deemed for the purpose of this section to be the highest part of his income.

#### **450 Disallowance of deduction from total income of certain sums paid by settlor**

- (1) Where, by virtue or in consequence of any settlement to which this section applies, the settlor pays directly or indirectly in any year of assessment to the trustees of the settlement any sums which would, but for this subsection, be allowable as deductions in computing his total income for that year for the purposes of surtax, those sums shall not be so allowable to the extent to which the aggregate amount thereof falls within the amount, of income arising under the settlement in that year which has not been distributed, less—
- (a) so much of any income arising under the settlement in that year which has not been distributed as is shown to consist of income which has been treated as the income of the settlor by virtue of section 445, 446 or 448 above, and
  - (b) the amount of income so arising in that year which is treated as the income of the settlor by virtue of section 447 above.
- (2) For the purposes of subsection (1) of this section, any sum paid in any year of assessment by the settlor to any body corporate connected with the settlement in that year shall be treated as if it had been paid to the trustees of the settlement in that year by virtue or in consequence of the settlement.
- (3) No relief shall be given under any of the provisions of the Income Tax Acts on account of tax paid in respect of so much of any income arising under a settlement in any year of assessment as is equal to the aggregate amount of any sums paid by the settlor in that year which are not allowable as deductions by virtue of this section.
- (4) This section shall apply to any settlement (wherever made) made after 26th April 1938, and where income arising under any settlement (wherever made) made on or before that date is treated as the income of the settlor by virtue of section 445 or 446 above but ceases to be so treated by reason of any variation of the terms of the settlement made after that date, or would have been so treated but for such a variation, this section shall apply to that settlement as from the date when the variation takes effect.



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- (5) In this section, references to sums paid by a settlor include references to sums paid by the wife or husband of the settlor.

#### **451 Sums paid to settlor otherwise than as income**

- (1) Any capital sum paid directly or indirectly in any relevant year of assessment by the trustees of a settlement to which this section applies to the settlor shall—
- (a) to the extent to which the amount of that sum falls within the amount of income available up to the end of that year, be treated for all the purposes of the Income Tax Acts as the income of the settlor for that year;
  - (b) to the extent to which the amount of that sum exceeds the amount of income available up to the end of that year but falls within the amount of the income available up to the end of the next following year, be treated for the purposes aforesaid as the income of the settlor for the next following year,
- and so on.
- (2) For the purposes of subsection (1) of this section, the amount of income available up to the end of any year shall, in relation to any capital sum paid as aforesaid, be taken to be the aggregate amount of income arising under the settlement in that year and any previous relevant year which has not been distributed, less—
- (a) the amount of any other capital sums paid to the settlor in any relevant year before that sum was paid, and
  - (b) so much of any income arising under the settlement in that year and any previous relevant year which has not been distributed as is shown to consist of income which has been treated as income of the settlor by virtue of section 445, 446 or 448 above, and
  - (c) any income arising under the settlement in that year and any previous relevant year which has been treated as the income of the settlor by virtue of section 447 above, and
  - (d) any sums paid by virtue or in consequence of the settlement, to the extent that they are not allowable, by virtue of section 450 above, as deductions in computing the settlor's income for that year or any previous relevant year, and
  - (e) an amount equal to tax at the standard rate on—
    - (i) the aggregate amount of income arising under the settlement in that year and any previous relevant year which has not been distributed, less
    - (ii) the aggregate amount of the income and sums referred to in paragraphs (b), (c) and (d) of this subsection.
- (3) Where any amount is included in a person's income by virtue of section 287 of this Act (assessment in respect of loan from close company) in respect of any loan or advance, there shall be a corresponding reduction in the amount (if any) afterwards falling to be so included in respect of it by virtue of this section.
- (4) For the purpose of this section, any capital sum paid to the settlor in any year of assessment by any body corporate connected with the settlement in that year shall be treated as having been paid by the trustees of the settlement in that year.
- (5) Where the whole or any part of any sum is treated by virtue of this section as income of the settlor for any year, it shall be treated as income of such an amount as, after deduction of tax at the standard rate for that year, would be equal to that sum or that part thereof.

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- (6) Tax chargeable at the standard rate by virtue of this section shall be charged under Case VI of Schedule D.
- (7) In computing the liability to income tax of a settlor chargeable by virtue of this section, the same deductions and reliefs shall be allowed as would have been allowed if the amount treated as his income by virtue of this section had been received by him as income.
- (8) This section applies to any settlement wherever made, and whether made before or after the passing of this Act, and in this section—
- " capital sum " means—
- (i) any sum paid by way of loan or repayment of a loan; and
- (ii) any other sum paid otherwise than as income, being a sum which is not paid for full consideration in money or money's worth, but does not include any sum which could not have become payable to the settlor except in one of the events specified in the proviso to section 447(2) above, and
- " relevant year " means any year of assessment after the year 1937-38, and references to sums paid to the settlor include references to sums paid to the wife or husband of the settlor.

#### **452 Application of Chapter III to settlements where there is more than one settlor**

- (1) In the case of any settlement where there is more than one settlor, this Chapter shall, subject to the provisions of this section, have effect in relation to each settlor as if he were the only settlor.
- (2) References in this Chapter to the property comprised in a settlement include, in relation to any settlor, only property originating from that settlor and references in this Chapter to income arising under the settlement include, in relation to any settlor, only income originating from that settlor.
- (3) In considering for the purposes of this Chapter, in relation to any settlor, whether any, and if so, how much, of the income arising under the settlement has been distributed, any sums paid partly out of income originating from that settlor and partly out of other income must (so far as not apportioned by the terms of the settlement) be apportioned evenly over all that income.
- (4) References in sections 445(1) and 450 above to sums payable by virtue or in consequence of any provision of the settlement or sums paid by virtue or in consequence of the settlement include, in relation to any settlor, only sums payable or paid by that settlor.
- (5) References in this section to property originating from a settlor are references to—
- (a) property which that settlor has provided directly or indirectly for the purposes of the settlement; and
- (b) property representing that property ; and
- (c) so much of any property which represents both property provided as aforesaid and other property as, on a just apportionment, represents the property so provided.
- (6) References in this section to income originating from a settlor are references to—
- (a) income from property originating from that settlor; and

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- (b) so much of any such income of a body corporate as is mentioned in section 454(1)(b) below as corresponds to property originating from the settlor which is comprised in the settlement; and
  - (c) income provided directly or indirectly by that settlor.
- (7) In subsections (5) and (6) of this section—
- (a) references to property or income which a settlor has provided directly or indirectly include references to property or income which has been provided directly or indirectly by another person in pursuance of reciprocal arrangements with that settlor, but do not include references to property or income which that settlor has provided directly or indirectly in pursuance of reciprocal arrangements with another person; and
  - (b) references to property which represents other property include references to property which represents accumulated income from that other property.

#### **453 Power to obtain information for purposes of Chapter III**

The Board or, for the purpose of charging tax at the standard rate, an inspector may by notice in writing require any person, being a party to a settlement, to furnish them within such time as they may direct (not being less than twenty-eight days) with such particulars as they think necessary for the purposes of any of the provisions of this Chapter.

#### **454 Interpretation of Chapter III**

- (1) In this Chapter, " income arising under a settlement " includes—
- (a) any income chargeable to income tax by deduction or otherwise, and any income which would have been so chargeable if it had been received in the United Kingdom by a person domiciled, resident and ordinarily resident in the United Kingdom; and
  - (b) where the amount of the income of any body corporate has been apportioned under section 296 of this Act (close companies), or (as respects income arising before the year 1966-67) under Chapter III of Part IX of the Income Tax Act 1952, for any year or period, or could have been so apportioned if the body corporate were incorporated in any part of the United Kingdom, so much of the income of the body corporate for that year or period as is equal to the amount which has been or could have been so apportioned to the trustees of or a beneficiary under the settlement,
- but, where the settlor is not domiciled, or not resident, or not ordinarily resident, in the United Kingdom in any year of assessment, does not include income arising under the settlement in that year in respect of which the settlor, if he were actually entitled thereto, would not be chargeable to income tax by deduction or otherwise by reason of his not being so domiciled, resident or ordinarily resident.
- (2) For the purpose of adapting the definition in subsection (1) above in relation to Case VII of Schedule D, references in that definition to income shall include the amount of any gains arising from the acquisition and disposal of chargeable assets subject to the like deduction for losses so arising as would be made under Case VII; but that amount shall be left out of account under section 450 above.
- (3) In this Chapter, "settlement" includes any disposition, trust, covenant, agreement or arrangement, and " settlor ", in relation to a settlement, means any person by whom the

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settlement was made ; and a person shall be deemed for the purposes of this Chapter to have made a settlement if he has made or entered into the settlement directly or indirectly, and in particular but without prejudice to the generality of the preceding words) if he has provided or undertaken to provide funds directly or indirectly for the purpose of the settlement, or has made with any other person a reciprocal arrangement for that other person to make or enter into the settlement.

- (4) For the purposes of this Chapter, a body corporate shall be deemed to be connected with a settlement in any year of assessment if it is at any time in the year a close company (or only not a close company because it is not resident in the United Kingdom) and the participators then include the trustees of or a beneficiary under the settlement.
- (5) In relation to income arising before the year 1966-67 subsection (4) above shall not apply and, for the purposes of this Chapter, a body corporate shall be deemed to have been connected with a settlement in any year of assessment if any of the income thereof for any year or period ending in that year of assessment—
- (a) has been apportioned to the trustees of or a beneficiary under the settlement under Chapter III of Part IX of the Income Tax Act 1952, or could have been so apportioned if the body corporate had been incorporated in the United Kingdom, or
  - (b) could have been so apportioned if the income of the body corporate for that year or period had not been distributed to the members thereof and, in the case of a body corporate incorporated outside the United Kingdom, if the body corporate had been incorporated in the United Kingdom.
- (6) The provisions of this Chapter shall be in addition to and not in derogation of any other provisions of this Act.

#### **455 Ascertainment of undistributed income**

For the purposes of this Chapter, income arising under a settlement in any year of assessment shall be deemed not to have been distributed if and to the extent that it exceeds the aggregate amount of—

- (a) the sums, excluding all payments of interest, paid in that year by the trustees of the settlement to any persons (not being a body corporate connected with the settlement and not being the trustees of another settlement made by the settlor or the trustees of the settlement) in such manner that they fall to be treated in that year, otherwise than by virtue of section 451 above, as the income of those persons for the purposes of income tax, or would fall to be so treated if those persons were domiciled, resident and ordinarily resident in the United Kingdom and the sums had been paid to them therein, and
- (b) subject to section 456 below, any expenses of the trustees of the settlement paid in that year which, in the absence of any express provision of the settlement, would be properly chargeable to income, in so far as such expenses are not included in the sums mentioned in paragraph (a) of this section, and
- (c) in a case where the trustees of the settlement are trustees for charitable purposes, the amount by which any income arising under the settlement in that year in respect of which exemption from tax may be granted under section 360 of this Act exceeds the aggregate amount of any such sums or expenses as aforesaid paid in that year which are properly chargeable to that income.

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#### **456 Ascertainment of undistributed income: interest paid by trustees**

- (1) Paragraph (b) of section 455 above shall apply to any interest paid by the trustees of the settlement subject to the provisions of this section.
- (2) If no sums within paragraph (a) of that section were paid to any person other than the settlor, or the wife or husband of the settlor, the whole of the interest shall be excluded from the said paragraph (b).
- (3) If any sum was so paid, there shall be excluded from the said paragraph (b) a fraction

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

of the interest where—

A is the whole of the income arising under the settlement in the year of assessment, less the sums referred to in the said paragraph (b) apart from this section, and

B is so much of the sums within the said paragraph (a) as is paid to persons other than the settlor, or the wife or husband of the settlor.

- (4) This section shall not apply to interest in respect of which relief from tax at the standard rate is allowable under any provision of the Income Tax Acts or to interest payable to the settlor or the wife or husband of the settlor (if living with the settlor).
- (5) Nothing in this section shall be construed as affecting the liability to tax of the person receiving or entitled to the interest.

### **CHAPTER IV**

#### **SURTAX LIABILITY OF SETTLORS IN CERTAIN CASES**

#### **457 Settlements made on or after 7th April 1965**

- (1) Where, during the life of the settlor, income arising under a settlement made on or after 7th April 1965 is, under the settlement and in the events that occur, payable to or applicable for the benefit of any person other than the settlor, then, unless, under the settlement and in the said events, the income either—
  - (a) consists of annual payments made under a partnership agreement to or for the benefit of a former member, or the widow or dependants of a deceased former member, of the partnership, being payments made under a liability incurred for full consideration, or
  - (b) is excluded by subsection (2) below, or
  - (c) is income arising under a settlement made by one party to a marriage by way of provision for the other after the dissolution or annulment of the marriage, or while they are separated under an order of a court or under a separation agreement or in such circumstances that the separation is likely to be permanent, being income payable to or applicable for the benefit of that other party, or
  - (d) is income from property of which the settlor has divested himself absolutely by the settlement, or

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- (e) is income which, by virtue of some provision of the Income Tax Acts not contained in this Chapter, is to be treated for the purposes of those Acts as income of the settlor,  
the income shall be treated for the purposes of surtax as the income of the settlor and not as the income of any other person.
- (2) Subsection (1) above shall not apply to income consisting of annual payments made by an individual, in connection with the acquisition by him of the whole or part of a business—
- (a) to or for the benefit of the individual from whom it is acquired or, if he is dead, to or for the benefit of his widow or dependants, or
- (b) if the acquisition was from a partnership, to or for the benefit of a former member, or the widow or dependants of a deceased former member, of that or any preceding partnership, or to or for the benefit of an individual from whom the business or part was acquired by that or any preceding partnership or, if he is dead, to or for the benefit of the widow or dependants of such an individual,  
being payments made under a liability incurred for full consideration.
- (3) Payments made in respect of any individual under a liability incurred in connection with an acquisition from a partnership shall only be excluded from the operation of subsection (1) above by virtue of subsection (2)(b) above if, and to the extent that, they are made in substitution for, or matched by reductions in, other payments which would themselves be excluded from its operation.
- (4) Where the right of a former member of a partnership to payments falling due not more than ten years after he ceased to be a member of that partnership has devolved on his death, subsections (1)(a) and (2) above shall apply to the payments as they would apply if he had not died.
- (5) For the purposes of this section—
- (a) " former member ", in relation to a partnership, means an individual who has ceased to be a member of that partnership on retirement or death,
- (b) a partnership becomes a " preceding partnership " of another if it transfers its business or part of its business to another and one or more individuals are members of both, and any preceding partnership of the transferor by reference to any part of the business transferred shall also become a preceding partnership of the transferee.
- (6) The settlor shall not be deemed for the purposes of this section to have divested himself absolutely of any property if that property or any income therefrom or any property directly or indirectly representing proceeds of, or of income from, that property or any income therefrom is, or will or may become, payable to or applicable for the benefit of the settlor or the wife or husband of the settlor in any circumstances whatsoever:

Provided that a settlor shall not be deemed not to have divested himself absolutely of any property by reason only that that property or income therefrom or any such other property or income as aforesaid may become payable or applicable as aforesaid in the event of—

- (a) the bankruptcy of some person who is or may become beneficially entitled to any such property or income; or
- (b) an assignment of or charge on any such property or income being made or given by some such person; or

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- (c) in the case of a marriage settlement, the death of both parties to the marriage and of all or any of the children of the marriage ; or
- (d) the death under the age of twenty-five or some lower age of some person who would be beneficially entitled to that property or income on attaining that age.

#### **458 Settlements made before 7th April 1965, but on or after 10th April 1946**

- (1) Where, during the life of the settlor, income arising under a settlement made before 7th April 1965, but on or after 10th April 1946, is, under the settlement and in the events that occur, payable to or applicable for the benefit of any person other than the settlor, then, unless under the settlement and in the said events, the income either—
- (a) is payable to an individual for his own use, or
  - (b) is applicable for the benefit of an individual named in that behalf in the settlement or of two or more individuals named in that behalf therein, or
  - (c) is applicable for the benefit of a child or children of an individual named in that behalf in the settlement, or
  - (d) is income from property of which the settlor has divested himself absolutely by the settlement, or
  - (e) is income which, by virtue of some provision of the Income Tax Acts not contained in this Chapter, is to be treated for the purposes of those Acts as income of the settlor,

the income shall be treated for the purposes of surtax as the income of the settlor and not as the income of any other person :

Provided that the exceptions provided for by paragraphs (a), (b) and (c) of this subsection shall not apply where the named individual or individuals or, in the case of the said paragraph (c) , either the named individual or the child or any of the children in question, is in the service of the settlor or accustomed to act as the solicitor or agent of the settlor.

- (2) The settlor shall not be deemed for the purposes of this section to have divested himself absolutely of any property if that property or any income therefrom or any property directly or indirectly representing proceeds of, or of income from, that property or any income therefrom is, or will or may become, payable to him or applicable for his benefit in any circumstances whatsoever:

Provided that a settlor shall not be deemed not to have divested himself absolutely of any property by reason only that that property or income therefrom or any such other property or income as aforesaid may become payable to him or applicable for his benefit in the event of—

- (a) the bankruptcy of some person who is or may become beneficially entitled to any such property or income, or
- (b) an assignment of or charge on any such property or income being made or given by some such person, or
- (c) in the case of a marriage settlement, the death of both parties to the marriage and of all or any of the children of the marriage, or
- (d) the death under the age of twenty-five or some lower age of some person who would be beneficially entitled to that property or income on attaining that age.

**459 Supplemental provisions for Chapter IV**

- (1) In this Chapter " income arising under a settlement ", " settlement" and " settlor" have the meanings assigned to them for the purposes of Chapter III above by section 454 above.
- (2) Section 452 above shall have effect in relation to this Chapter as it has effect in relation to Chapter III above.

**PART XVII**

## TAX AVOIDANCE

**CHAPTER I**

## CANCELLATION OF TAX ADVANTAGES FROM CERTAIN TRANSACTIONS IN SECURITIES

**460 Cancellation of tax advantage**

- (1) Where—
  - (a) in any such circumstances as are mentioned in section 461 below, and
  - (b) in consequence of a transaction in securities or of the combined effect of two or more such transactions,

a person is in a position to obtain, or has obtained, a tax advantage, then unless he shows that the transaction or transactions were carried out either for bona fide commercial reasons or in the ordinary course of making or managing investments, and that none of them had as their main object, or one of their main objects, to enable tax advantages to be obtained, this section shall apply to him in respect of that transaction or those transactions:

Provided that this section shall not apply to him if—

- (i) the transaction or transactions in securities were carried out, and
- (ii) any change in the nature of any activities carried on by a person, being a change necessary in order that the tax advantage should be obtainable, was effected,

before 5th April 1960.

- (2) Subject to section 468(3) below, for the purposes of this Chapter a tax advantage obtained or obtainable by a person shall be deemed to be obtained or obtainable by him in consequence of a transaction in securities or of the combined effect of two or more such transactions, if it is obtained or obtainable in consequence of the combined effect of the transaction or transactions and of the liquidation of a company.
- (3) Where this section applies to a person in respect of any transaction or transactions, the tax advantage obtained or obtainable by him in consequence thereof shall be counteracted by such of the following adjustments, that is to say an assessment, the nullifying of a right to repayment or the requiring of the return of a repayment already made (the amount to be returned being chargeable under Case VI of Schedule D and recoverable accordingly), or the computation or recomputation of profits or gains, or liability to tax, on such basis as the Board may specify by notice in writing served on him as being requisite for counteracting the tax advantage so obtained or obtainable.



- (4) Subject to section 468(3) below, an assessment under subsection (3) above to counteract a tax advantage consisting of the avoidance or reduction of an assessment to income tax which would be payable by a company under section 232(2) of this Act (Schedule F) in respect of a distribution may be made under Case VI of Schedule D on a person other than the company, and may be so made in addition to any assessment to counteract a tax advantage in respect of surtax.

An assessment so made on a person other than the company may be of an amount arrived at without regard to any set-off to which the company would have been entitled under Schedule 9 to this Act.

- (5) Subject to section 468(3) below, in the case of a man and his wife living with him (whether or not she is separately assessed to tax), this Chapter shall be treated as applying to him in respect of any transaction or transactions as it would apply if any property, rights or liabilities of the wife were his property, rights or liabilities in relation to which she had acted only as nominee for him, and shall be treated as applying to the wife in respect of any transaction or transactions as it would apply if any property, rights or liabilities of the man were her property, rights or liabilities in relation to which he had acted only as nominee for her:

Provided that no adjustment made under subsection (3) above by reference to any transaction or transactions to counteract any tax advantage shall by virtue of this subsection be so made that a person bears more tax than if the transaction or transactions had not had as a consequence that any relief or increased relief from, or repayment or increased repayment of, income tax, or any deduction in computing profits or gains, was obtained or obtainable, or that the way in which receipts accrued was such that the recipient did not pay or bear tax on them.

- (6) The Board shall not give a notice under subsection (3) above until they have notified the person in question that they have reason to believe that this section may apply to him in respect of a transaction or transactions specified in the notification; and if within thirty days of the issue of the notification the said person, being of opinion that this section does not apply to him as aforesaid, makes a statutory declaration to that effect stating the facts and circumstances upon which his opinion is based, and sends it to the Board, then subject to subsection (7) below this section shall not apply to him in respect of the transaction or transactions.

- (7) If, when a statutory declaration has been sent to the Board under subsection (6) above, they see reason to take further action in the matter—

- (a) the Board shall send to the tribunal a certificate to that effect, together with the statutory declaration, and may also send therewith a counter-statement with reference to the matter;
- (b) the tribunal shall take into consideration the declaration and the certificate, and the counter-statement, if any, and shall determine whether there is or is not a prima facie case for proceeding in the matter, and if they determine that there is no such case this section shall not apply to the person in question in respect of the transaction or transactions:

Provided that such a determination shall not affect the operation of this section in respect of transactions which include that transaction or some or all of those transactions and also include another transaction or other transactions.

- (8) Subject to section 468(3) below, any notice or notification under subsection (3) or subsection (6) above, or under section 465 below, concerning the application of this

section to a person who has died may be given or issued to his personal representatives, and the provisions of this Chapter relating to the making of a statutory declaration, to rights of appeal and to the giving of information shall be construed accordingly.

- (9) No other provision contained in the Tax Acts shall be construed as limiting the powers conferred by this section, but nothing in this section shall authorise the making of an assessment later than six years after the chargeable period to which the tax advantage relates.

#### 461 The prescribed circumstances

The circumstances mentioned in section 460(1) above are—

“A That in connection with the distribution of profits of a company, or in connection with the sale or purchase of securities being a sale or purchase followed by the purchase or sale of the same or other securities, the person in question, being entitled by reason of—

- (a) any exemption from tax, or
- (b) the setting-off of losses against profits or income, or
- (c) the giving of group relief,

to recover tax in respect of dividends received by him, receives an abnormal amount by way of dividend

OR

(1) That in connection with the distribution of profits of a company, or in connection with the sale or purchase of securities being a sale or purchase followed by the purchase or sale of the same or other securities, the person in question becomes entitled—

- (a) in respect of securities held or sold by him, or
- (b) subject to section 468(3) below, in respect of securities formerly held by him (whether sold by him or not),

to a deduction in computing profits or gains by reason of a fall in the value of the securities resulting from the payment of a dividend thereon or from any other dealing with any assets of a company.

- (2) Where a company in the circumstances mentioned in sub-paragraph (1) above becomes entitled to a deduction as there mentioned, section 460 above shall apply in relation to any tax advantage obtained or obtainable in consequence of that deduction by another company by way of group relief as if obtained or obtainable by the other company in circumstances falling within sub-paragraph (1) above.

OR

(1) That the person in question receives, in consequence of a transaction whereby any other person—

- (a) subsequently receives, or has received, an abnormal amount by way of dividend ; or
- (b) subsequently becomes entitled, or has become entitled, to a deduction as mentioned in paragraph B(1) above,

a consideration which either—

- (i) is, or represents the value of, assets which are (or apart from anything done by the company in question would have been) available for distribution by way of dividend, or

(ii) is received in respect of future receipts of the company, or  
 (iii) is, or represents the value of, trading stock of the company,  
 and the said person so receives the consideration that he does not pay or bear tax on it as income.

- (2) The assets mentioned in sub-paragraph (1) above do not include assets which (while of a description which under the law of the country in which the company is incorporated is available for distribution by way of dividend) are shown to represent a return of sums paid by subscribers on the issue of securities.

OR

- (1) That in connection with the distribution of profits of a company to which this paragraph applies, the person in question so receives as is mentioned in paragraph C(1) above such a consideration as is therein mentioned.

- (2) The companies to which this paragraph applies are—  
 (a) any company under the control of not more than five persons, and  
 (b) any other company which does not satisfy the condition that its shares or stocks or some class thereof (disregarding debenture stock, preferred shares or preferred stock), are authorised to be dealt in on a stock exchange in the United Kingdom, and are so dealt in (regularly or from time to time),

so, however, that this paragraph does not apply to a company under the control of one or more companies to which this paragraph does not apply.

- (3) Subsections (2) to (6) of section 302 of this Act (definition of control) shall apply for the purposes of this paragraph.

OR

- (1) That in connection with the transfer directly or indirectly of assets of a company to which paragraph D above applies to another such company, or in connection with any transaction in securities in which two or more companies to which paragraph D above applies are concerned, the person in question receives non-taxable consideration which is or represents the value of assets available for distribution by such a company, and which consists of any share capital or any security (as defined by section 237(5) of this Act) issued by such a company.

- (2) So far as sub-paragraph (1) above relates to share capital other than redeemable share capital, it shall not apply unless and except to the extent that the share capital is repaid (in a winding-up or otherwise), and where section 460 above applies to a person by virtue of sub-paragraph (1) above on the repayment of any share capital any assessment to tax under subsection (3) of the said section 460 shall be an assessment to tax for the year in which the share capital is repaid.

- (3) In this paragraph—

" assets available for distribution " means assets which are, or apart from anything done by the company in question would have been, available for distribution by way of dividend, or trading stock of the company,

" non-taxable ", in relation to a person receiving consideration, means that the recipient does not pay or bear tax on it as income (apart from the provisions of this Chapter),

" share " includes stock and any other interest of a member in a company,

and the references in sub-paragraph (2) above to the repayment of share capital include references to any distribution made in respect of any shares in a winding-up or dissolution of the company.

- (4) This paragraph has effect subject to section 468(3) below.”

#### **462 Appeal against Board's notice**

- (1) Any person to whom notice has been given under subsection (3) of section 460 above may within thirty days by notice to the Board appeal to the Special Commissioners on the grounds that that section does not apply to him in respect of the transaction or transactions in question, or that the adjustments directed to be made are inappropriate.
- (2) If he or the Board are dissatisfied with the determination of the Special Commissioners they may, on giving notice to the clerk to the Special Commissioners within thirty days after the determination, require the appeal to be re-heard by the tribunal, and the Special Commissioners shall transmit to the tribunal any document in their possession which was delivered to them for the purposes of the appeal.
- (3) Where notice is given under subsection (2) above, the tribunal shall re-hear and determine the appeal and shall have and exercise the same powers and authorities in relation to the appeal as the Special Commissioners might have and exercise, and the determination of the tribunal thereon shall be final and conclusive:

Provided that section 56 of the Taxes Management Act 1970 (statement of case for opinion of High Court) shall apply with the necessary modifications in the case of any such rehearing and determination as it applies in the case of appeals to the General or Special Commissioners.

- (4) On an appeal under this section the Special Commissioners or the tribunal shall have power to cancel or vary a notice under subsection (3) of section 460 above or to vary or quash an assessment made in accordance with such a notice, but the bringing of an appeal or the statement of a case shall not affect the validity of a notice given or of any other thing done in pursuance of the said subsection (3) pending the determination of the proceedings.

#### **463 The tribunal**

For the purposes of this Chapter the tribunal shall consist of—

- (a) a chairman, being either the chairman of the Board of Referees appointed under section 26(7) of the Capital Allowances Act 1968 or a person appointed by the Lord Chancellor, for a specified period or in relation to a specified case, to act as chairman of the tribunal in the absence of the chairman of the Board of Referees on account of illness or for any other reason, and
- (b) two or more persons appointed by the Lord Chancellor as having special knowledge of and experience in financial or commercial matters.

#### **464 Procedure for clearance in advance**

- (1) The following provisions shall have effect where in pursuance of this section a person furnishes to the Board particulars of a transaction or transactions effected or to be effected by him, that is to say—

- (a) if the Board are of opinion that the particulars, or any further information furnished in pursuance of this paragraph, are not sufficient for the purposes of this section, they shall within thirty days of the receipt thereof notify to the said person what further information they require for those purposes, and unless that further information is furnished to the Board within thirty days from the notification, or such further time as the Board may allow, they shall not be required to proceed further under this section ;
- (b) subject to the preceding paragraph, the Board shall within thirty days of the receipt of the particulars, or, where that paragraph has effect, of all further information required, notify the said person whether or not they are satisfied that the transaction or transactions as described in the particulars were or will be such that no notice under section 460(3) above ought to be given in respect of it or them,

and, subject to the following provisions of this section, if the Board notify him that they are so satisfied section 460 above shall not apply to him in respect of that transaction or those transactions.

- (2) If the particulars, and any further information given under this section with respect to any transaction or transactions, are not such as to make full and accurate disclosure of all facts and considerations relating thereto which are material to be known to the Board, any notification given by the Board under this section shall be void.
- (3) In no event shall the giving of a notification under this section with respect to any transaction or transactions prevent section 460 above applying to a person in respect of transactions which include that transaction or all or some of those transactions and also include another transaction or other transactions.

#### **465 Power to obtain information**

Where it appears to the Board that by reason of any transaction or transactions a person may be a person to whom section 460 above applies, the Board may by notice in writing served on him require him, within such time not less than twenty-eight days as may be specified in the notice, to furnish information in his possession with respect to the transaction or any of the transactions, being information as to matters, specified in the notice, which are relevant to the question whether a notice under subsection (3) of that section should be given in respect of him.

#### **466 Meaning of " tax advantage "**

- (1) In this Chapter " tax advantage " means a relief or increased relief from, or repayment or increased repayment of, tax, or the avoidance or reduction of an assessment to tax or the avoidance of a possible assessment thereto, whether the avoidance or reduction is effected by receipts accruing in such a way that the recipient does not pay or bear tax on them, or by a deduction in computing profits or gains.
- (2) Subject to section 468(3) below, for the purposes of subsection (1) above it shall be assumed that a person who might have received from a company any dividend or other distribution (as defined for the purposes of the Corporation Tax Acts) would have borne the income tax chargeable under Schedule F which the company would have had to account for under section 232(2) of this Act in respect of the distribution.

**467 Further interpretation**

(1) In this Chapter—

" company " includes any body corporate, references to dividends include references to interest,

" securities "—

(a) includes shares and stock, and

(b) subject to section 468(3) below, in relation to a company not limited by shares (whether or not it has a share capital) includes also a reference to the interest of a member of the company as such, whatever the form of that interest,

" trading stock " has the same meaning as in section 137 of this Act,

" transaction in securities " includes transactions, of whatever description, relating to securities, and in particular—

(i) the purchase, sale or exchange of securities,

(ii) the issuing or securing the issue of, or applying or subscribing for, new securities,

(iii) the altering, or securing the alteration of, the rights attached to securities.

(2) In section 461 above—

(a) references to profits include references to income, reserves or other assets,

(b) references to distribution include references to transfer or realisation (including application in discharge of liabilities), and

(c) references to the receipt of consideration include references to the receipt of any money or money's worth.

(3) For the purposes of section 461 above an amount received by way of dividend shall be treated as abnormal if the Board, the Special Commissioners or the tribunal, as the case may be, are satisfied—

(a) in the case of a dividend at a fixed rate, that it substantially exceeds the amount which the recipient would have received if the dividend had accrued from day to day and he had been entitled only to so much of the dividend as accrued while he held the securities, so however that an amount shall not be treated as abnormal by virtue only of this paragraph if during the six months beginning with the purchase of the securities the recipient does not sell or otherwise dispose of, or acquire an option to sell, any of those securities or any securities similar to those securities, or

(b) in any case, that it substantially exceeds a normal return on the price paid for the securities:

Provided that there shall be disregarded any amount received by a company before 30th April 1969 by way of dividend from an associated company in so far as the dividend was paid out of income arising to the company paying it since the two companies became associated companies, and Schedule 17 to the Finance Act 1965 shall with the necessary modifications apply for determining the extent to which the dividend was so paid.

In this proviso references to an associated company or companies shall be construed in accordance with paragraphs (c) and (d) of section 486(4) of this Act.

(4) For the purposes of subsection (3) (a) above securities shall be deemed to be similar if they entitle their holders to the same rights against the same persons as to capital and

interest and the same remedies for the enforcement of those rights, notwithstanding 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, and for those purposes rights guaranteed by the Treasury shall be treated as rights against the Treasury.

#### 468 Commencement and other transitory provisions

- (1) No notification shall be issued after 5th April 1970 under section 28(4) of the Finance Act 1960 (which is re-enacted in section 460(6) above) and this Chapter, including the said section 460(6), shall have effect (for all purposes and by reference to all chargeable periods, times and occasions on or before the said date or later) to the exclusion of the enactments re-enacted in this Chapter except in relation to matters and proceedings consequent upon a notification issued (on or before the said date) under the said section 28(4).
- (2) Subject to subsection (1) above, in relation to tax advantages related to corporation tax this Chapter shall apply (without prejudice to any general provision of this Act or the Finance Act 1965 for the continuity of income tax and corporation tax) to transactions taking place before the charge to corporation tax became effective.
- (3) The provisions of this Chapter specified in subsection (4) below shall not apply to a person in respect of any transaction or transactions in securities if they were carried out before the relevant date, and if any change in the nature of any activities carried on by any person, being a change necessary in order that the tax advantage should be obtainable in consequence of the transaction or transactions, was also effected before that date, but nothing in those provisions shall be taken to prejudice the operation of this Chapter, without those provisions, in any such case.

In this subsection " the relevant date " is—

- (a) in relation to the provisions in column 1 in subsection (4) below, 10th April 1962, and
- (b) in relation to the provisions in column 2 of that subsection, 3rd May 1966.

- (4) The said provisions are—

Relevant date: 10th April 1962 Section 460(2)(5)	Relevant date: 3rd May 1966 Section 460(4)(8)
In section 461 paragraph B(1)(b)	In section 461 paragraph E
In section 467(1)paragraph(6)of the definition of " securities "	Section 466(2)
Subsection (5) below.	

- (5) Subject to subsections (3) and (4) above, paragraphs A and B(2) of section 461 above shall have effect as if the references to group relief included references to relief under section 20 of the Finance Act 1953 (which related to subvention payments and was superseded by group relief).
- (6) As respects any period before the coming into force of paragraph 15 of Schedule 15 to the Finance Act 1965, paragraph D(3) of section 461 and the proviso to section 467(3) of this Act (which re-enact part of the said paragraph 15) shall not apply, and the

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relevant provisions of the Finance Act 1960 as originally enacted which were replaced by the said paragraph 15 shall be applied instead.

## CHAPTER II

### OTHER PROVISIONS ABOUT SECURITIES

#### 469 Sale and repurchase of securities

- (1) Where the owner of any securities (in this subsection and subsection (3) below referred to as "the owner") agrees to sell or transfer those securities and by the same or any collateral agreement—
- (a) agrees to buy back or re-acquire the securities, or
  - (b) acquires an option, which he subsequently exercises, to buy back or re-acquire the securities, then, if the result of the transaction is that any interest becoming payable in respect of the securities is receivable otherwise than by the owner, the following provisions shall have effect—
    - (i) the interest payable as aforesaid shall, whether it would or would not have been chargeable to tax apart from the provisions of this section, be deemed for all the purposes of the Tax Acts to be the income of the owner and not to be the income of any other person; and
    - (ii) if the securities are of such a character that the interest payable in respect thereof may be paid without deduction of tax, the owner shall be chargeable to tax at the standard rate under Case VI of Schedule D in respect of the interest which is deemed to be his income as aforesaid, unless he shows that it has borne tax at the standard rate.
- (2) In relation to corporation tax—
- (a) subject to the provisions of the Tax Acts about distributions, interest deemed under subsection (1)(i) above to be the income of the owner shall be chargeable under Case VI of Schedule D, and
  - (b) subsection (1)(ii) above shall not apply.
- (3) The references in subsection (1) above to buying back or reacquiring the securities shall be deemed to include references to buying or acquiring similar securities, so, however, that where similar securities are bought or acquired, the owner shall be under no greater liability to tax than he would have been under if the original securities had been bought back or re-acquired.
- (4) Where any person carrying on a trade which consists wholly or partly in dealing in securities agrees to buy or acquire any securities, and by the same or any collateral agreement—
- (a) agrees to sell back or re-transfer the securities, or
  - (b) acquires an option, which he subsequently exercises, to sell back or re-transfer the securities,
- then, if the result of the transaction is that any interest becoming payable in respect of the securities is receivable by him, no account shall be taken of the transaction in computing for any of the purposes of the Tax Acts the profits arising from or loss sustained in the trade.



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- (5) Subsection (4) above shall have effect, subject to any necessary modifications, as if references to selling back or re-transferring the securities included references to selling or transferring similar securities.
- (6) This section shall not apply to any income to which section 496(3) of this Act (transactions associated with loans or credit) applies.
- (7) For the purposes of this section—
  - (a) " interest " includes a dividend,
  - (b) " securities " includes stocks and shares,
  - (c) securities shall be deemed to be similar if they entitle their holders to the same rights against the same persons as to capital and interest and the same remedies for the enforcement of those rights, notwithstanding 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.
- (8) The Board may by notice in writing require any person to furnish them within such time as they may direct (not being less than twenty-eight days), in respect of all securities of which he was the owner at any time during the period specified in the notice, such particulars as they consider necessary for the purposes of this section and for the purpose of discovering whether tax has been borne in respect of the interest on all those securities.

#### **470 Transfers of income arising from securities**

- (1) Where in any chargeable period the owner of any securities (in this section referred to as " the owner ") sells or transfers the right to receive any interest payable (whether before or after the sale or transfer) in respect of the securities without selling or transferring the securities, then, for all the purposes of the Tax Acts, that interest, whether it would or would not be chargeable to tax apart from the provisions of this section—
  - (a) shall be deemed to be the income of the owner or, in a case where the owner is not the beneficial owner of the securities and some other person (hereafter in this section referred to as " a beneficiary ") is beneficially entitled to the income arising from the securities, the income of the beneficiary, and
  - (b) shall be deemed to be the income of the owner or beneficiary for that chargeable period, and
  - (c) shall not be deemed to be the income of any other person:

Provided that, in the case of a sale or other realisation the proceeds whereof are chargeable to tax under Schedule C or under section 159(3) of this Act (foreign dividends, etc.), the interest so deemed to be the income of the owner or beneficiary shall be deemed to be equal in amount to the amount of those proceeds.

- (2) Nothing in subsection (1) of this section shall affect any provision of this Act authorising or requiring the deduction of income tax from any interest which is deemed to be the income of the owner or beneficiary as aforesaid or from the proceeds of any subsequent sale or other realisation of the right to receive that interest:

Provided that the proceeds of any such subsequent sale or other realisation shall not, for any of the purposes of the Tax Acts, be deemed to be the income of the seller or the person on whose behalf the right is otherwise realised.

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- (3) Where the securities are of such a character that the interest payable in respect thereof may be paid without deduction of income tax, the owner or beneficiary shall be chargeable to tax at the standard rate under Case VI of Schedule D in respect of any interest which is deemed to be his income by virtue of this section, unless he shows that it has borne tax at the standard rate or that the proceeds of any sale or other realisation of the right to receive that interest have been charged to tax under Schedule C or under section 159(3) of this Act:

Provided that, in any case where if the interest had been chargeable under Case IV or Case V of Schedule D, the computation of tax would have been made by reference to the amount received in the United Kingdom, the tax under Case VI shall be computed on the full amount of the sums which have been or will be received in the United Kingdom in the year of assessment or any subsequent year in which the owner remains the owner of the securities.

- (4) In relation to corporation tax subsection (3) above shall not apply and the following provisions of this subsection shall have effect.

Subject to the provisions of the Tax Acts about distributions, the owner or beneficiary shall, in respect of any interest which is deemed to be his income by virtue of this section, be chargeable to corporation tax under Case VI of Schedule D unless he shows that the proceeds of any sale or other realisation of the right to receive that interest have been charged to tax under Schedule C or under section 159(3) of this Act.

- (5) In this section—

" interest " includes dividends, annuities and shares of annuities, and  
 " securities " includes stocks and shares.

- (6) The Board may by notice in writing require any person to furnish them within such time as they may direct (not being less than twenty-eight days), in respect of all securities of which he was the owner at any time during the period specified in the notice, with such particulars as they consider necessary for the purposes of this section and for the purpose of discovering whether—
- (a) tax has been borne in respect of the interest on all those securities; or
  - (b) the proceeds of any sale or other realisation of the right to receive the interest on the securities have been charged to tax under Schedule C or section 159(3) of this Act.

#### *Purchase and sale of securities*

### **471 Application of following sections**

- (1) Subject as hereinafter provided sections 472, 473 and 474 below relate to cases of a purchase by a person (in those sections referred to as " the first buyer ") of any securities and their subsequent sale by him, the result of the transaction being that interest becoming payable in respect of the securities (in those sections referred to as " the interest ") is receivable by the first buyer.
- (2) The said sections do not relate to cases where—
- (a) the time elapsing between the purchase by the first buyer and his taking steps to dispose of the securities exceeded six months, or

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- (b) that time exceeded one month and it is shown to the satisfaction of the Board that the purchase and sale were each effected at the current market price, and that the sale was not effected in pursuance of an agreement or arrangement made before or at the time of the purchase.

The jurisdiction of the General Commissioners or Special Commissioners on any appeal shall include jurisdiction to review any relevant decision taken by the Board in the exercise of then-functions under this subsection.

- (3) The reference in subsection (2) above to the first buyer taking steps to dispose of the securities shall be construed—
  - (a) if he sold them in the exercise of an option he had acquired, as a reference to his acquisition of the option,
  - (b) in any other case, as a reference to his selling them.
- (4) For the purposes of this and the said three sections a sale of securities similar to, and of the like nominal amount as, securities previously bought (hereinafter referred to as " the original securities ") shall be equivalent to a sale of the original securities, and subsection (3) above shall apply accordingly; and where the first buyer bought parcels of similar securities at different times a subsequent sale of any of the securities shall so far as may be be related to the last to be bought of the parcels, and then to the last but one, and so on:

Provided that a person shall be under no greater liability to tax by virtue of this subsection than he would have been under if instead of selling the similar securities he had sold the original securities.

- (5) Where at the time when a trade is, or is deemed to be, set up and commenced any securities form part of the trading stock belonging to the trade, those securities shall be treated for the purposes of this section as having been sold at that time in the open market by the person to whom they belonged immediately before that time and as having been purchased at that time in the open market by the person thereafter engaged in carrying on the trade ; and, subject to the preceding provisions of this subsection, where there is a change in the persons engaged in carrying on a trade which is not a change on which the trade is deemed to be discontinued the provisions of this section shall apply in relation to the person so engaged after the change as if anything done to or by his predecessor had been done to or by him.
- (6) For the purposes of this and the said three sections—
  - (a) " interest" includes a dividend ;
  - (b) " person " includes any body of persons, and references to a person entitled to any exemption from tax include, in a case of an exemption expressed to apply to income of a trust or fund, references to the persons entitled to make claims for the granting of that exemption ;
  - (c) " securities " includes stocks and shares ;
  - (d) securities shall be deemed to be similar if they entitle their holders to the same rights against the same persons as to capital and interest and the same remedies for the enforcement of those rights, notwithstanding 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, and for the purposes of this paragraph rights guaranteed by the Treasury shall be treated as rights against the Treasury.

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## **472 Dealers in securities**

- (1) Subject to the provisions of this section, if the first buyer is engaged in carrying on a trade which consists of or comprises dealings in securities, then in computing for any of the purposes of the Tax Acts the profits arising from or loss sustained in the trade the price paid by him for the securities shall be reduced by the appropriate amount in respect of the interest, as determined in accordance with section 475 below.
- (2) Subsection (1) of this section shall not apply if the first buyer—
  - (a) is in the opinion of the Board bona fide carrying on the business of a discount house in the United Kingdom, or
  - (b) is a member of the London Stock Exchange who is recognised by the committee thereof as carrying on the business of a jobber, or
  - (c) is a member of any other stock exchange in the United Kingdom who is recognised by the committee thereof as carrying on the business of a dealer, and the securities were bought in the ordinary course of his said business and, in the case of a dealer such as is mentioned in paragraph (c) of this subsection, were securities in which he was authorised by the said committee to deal.
- (3) Subsection (1) of this section shall not apply if the purchase of the securities by the first buyer and their resale, or as the case may be the subsequent sale of similar securities, constitute a transaction which is to be left out of account in computing profits or losses by virtue of section 469(4) above.
- (4) Subsection (1) of this section shall not apply if the securities are overseas securities bought by the first buyer on a stock exchange outside the United Kingdom in the ordinary course of his trade as a dealer in securities and the following conditions are satisfied, namely—
  - (a) the interest is brought into account in computing for the purposes of the Tax Acts the profits arising from or loss sustained in the trade, and
  - (b) where credit against tax would fall to be allowed in respect of the interest under section 497 or section 498 of this Act (double taxation relief), the first buyer elects that credit shall not be so allowed.

In this subsection " overseas securities " means securities of the government of, or of a body of persons resident in, any country or territory outside the United Kingdom and the Republic of Iceland.

## **473 Persons entitled to exemptions**

- (1) If the first buyer is entitled under any enactment to an exemption from tax which, apart from this subsection, would extend to the interest, then the exemption shall not extend to an amount equal to the appropriate amount in respect of the interest, as determined in accordance with section 475 below:

Provided that if the first buyer is entitled as aforesaid and any annual payment is payable by him out of the interest, the annual payment shall be deemed as to the whole thereof to be paid out of profits or gains not brought into charge to income tax, and section 53 of this Act shall apply accordingly.

- (2) This section shall not apply where the exemption arises from the residence of the first buyer in the Republic of Ireland.

#### **474 Persons other than dealers in securities**

- (1) If the first buyer carries on a trade not falling within section 472 above, then in ascertaining whether any or what repayment of income tax is to be made to him under section 168 of this Act by reference to any loss sustained in the trade and the amount of his income for the year of assessment his income for which includes the interest, there shall be left out of account—
  - (a) the appropriate amount in respect of the interest, as determined in accordance with section 475 below, and
  - (b) any tax paid on that amount.
- (2) Where the first buyer is a company which does not carry on a trade falling within section 472 above, the appropriate amount in respect of the interest, as determined in accordance with section 475 below, and any tax paid in respect of or deducted from that amount shall be disregarded except that, for the purposes of corporation tax on chargeable gains—
  - (a) where that appropriate amount is determined in accordance with section 475(2) below, the appropriate proportion of the net interest receivable by the first buyer as mentioned in that subsection, and
  - (b) where that appropriate amount is determined in accordance with section 475(6) below, the net amount of interest corresponding to the gross interest referred to in that subsection,shall be treated as if it were a capital distribution within the meaning of Part III of the Finance Act 1965 received in respect of the holding of the securities concerned. This subsection applies to any interest received after 29th April 1969.

#### **475 Meaning of " appropriate amount in respect of" interest**

- (1) For the purposes of section 472 above the appropriate amount in respect of the interest is the appropriate proportion of the net interest receivable by the first buyer.
- (2) For the purposes of sections 473 and 474 above the appropriate amount in respect of the interest is the gross amount corresponding with the appropriate proportion of the net interest receivable by the first buyer.
- (3) For the purposes of this section the appropriate proportion is the proportion which—
  - (a) the period beginning with the date on which the securities were first quoted in the official list of the London Stock Exchange at a price excluding the value of the interest payment last payable before the interest receivable by the first buyer, and ending with the day before the day on which the first buyer bought the securities,bears to—
  - (b) the period beginning with the said date and ending with the day before the first date after the purchase by the first buyer on which the securities are quoted in the said list at a price excluding the value of the interest receivable by the first buyer.
- (4) Where the interest receivable by the first buyer was the first interest payment payable in respect of the securities, paragraphs (a) and (b) of subsection (3) above shall have effect with the substitution, for references to the date on which the securities were first quoted as mentioned in the said paragraph (a), of the beginning of the period for which the interest was payable:

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Provided that where the capital amount of the securities was not fully paid at the beginning of the said period and one or more instalments of capital were paid during that period—

- (a) the interest shall be treated as divided into parts, calculated by reference to the amount of the interest attributable to the capital paid at or before the beginning of the said period and the amount thereof attributable to each such instalment, and
  - (b) treating each of the said parts as interest payable for the said period or, where the part was calculated by reference to any such instalment, as interest payable for the part of the said period beginning with the payment of the instalment, there shall be calculated, in accordance with the preceding provisions of this section, the amount constituting the appropriate proportion of each part, and
  - (c) the appropriate proportion of the interest for the purposes of this section shall be the proportion thereof constituted by the sum of the said amounts.
- (5) In relation to securities not quoted in the official list of the London Stock Exchange, subsection (3) above shall have effect with the substitution for the periods therein mentioned of such periods as in the opinion of the Commissioners having jurisdiction in the matter, correspond therewith in the case of the securities in question.
- (6) Where the securities are of a description such that under the rules of the London Stock Exchange the bargain price is increased, where interest is receivable by the buyer, by reference to gross interest accruing before the bargain date, the preceding subsections shall not apply but for the purposes of sections 472, 473 and 474 above the appropriate amount in respect of the interest shall be the amount of the increase in the bargain price.

#### *Miscellaneous*

#### **476 Company dealing in securities: distribution materially reducing value of holding**

- (1) Subsection (2) below applies where a company has, as a dealing company, a holding in another company resident in the United Kingdom (being a body corporate), and—
- (a) the holding amounts to, or is an ingredient in a holding amounting to, 10 per cent. of all holdings of the same class in that company, and
  - (b) after 29th April 1969 a distribution is, or two or more distributions are, made in respect of the holding, and
  - (c) the value (at any accounting date or immediately before realisation or appropriation) of any security comprised in the holding is materially reduced below the value of the security at the time when it was acquired, and the whole or any part of this reduction is attributable to any distribution falling within paragraph (b) above,
- and in relation to any security comprised in the holding, the company having the holding is in subsection (2) below referred to as "the dealing company" and so much of any reduction in title value of the security as is attributable to any distribution falling within paragraph (b) above is in that subsection referred to as "the relevant reduction".
- (2) Where this subsection applies, an amount equal to the relevant reduction in the value of a security comprised in the holding—
- (a) shall, if and so long as the security is not realised or appropriated as mentioned below, be added to the value of the security for the purposes of any valuation,

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- (b) shall be treated, on any realisation of the security in the course of trade, as a trading receipt of the dealing company or, in the event of a partial realisation, shall be so treated to an appropriate extent, and
  - (c) shall be treated as a trading receipt of the dealing company if the security is appropriated in such circumstances that a profit on the sale of the security would no longer form part of the dealing company's trading profits.
- (3) References in this section to a holding in a company refer to a holding of securities by virtue of which the holder may receive distributions made by the company, but so that—
  - (a) a company's holdings of different classes in another company shall be treated as separate holdings, and
  - (b) holdings of securities which differ in the entitlements or obligations they confer or impose shall be regarded as holdings of different classes.
- (4) For the purposes of subsection (2) above—
  - (a) all a company's holdings of the same class in another company are to be treated as ingredients constituting a single holding, and
  - (b) a company's holding of a particular class shall be treated as an ingredient in a holding amounting to 10 per cent. of all holdings of that class if the aggregate of that holding and other holdings of that class held by connected persons amounts to 10 per cent. of all holdings of that class,and section 533 of this Act (definition of connected persons) shall have effect in relation to paragraph (b) above as if, in subsection (7) of that section, after the words " or exercise control of " in each place where they occur there were inserted the words " or to acquire a holding in
- (5) Where this section applies in relation to a distribution which consists of or includes interest to which section 472 above applies, any reduction under that section in the price paid for the securities in respect of which the distribution is made shall be adjusted in such manner as seems appropriate to the Board to take account of subsection (2) above.
- (6) For the purposes of this section " security " includes a share or other right and a company is a " dealing company " in relation to a holding if a profit on a sale of the holding would be taken into account in computing the company's trading profits.

#### **477 Manufactured dividends: treatment of tax deducted**

- (1) Subject to the provisions of this section, where—
  - (a) under a contract for the sale of securities the seller is required to pay to the purchaser the amount of a periodical payment of interest on the securities, and
  - (b) the seller does not satisfy the following condition, that is to say that he is entitled to that payment of interest either as the registered holder of the securities or from a person from whom the seller purchased them,section 53(2) of this Act and Schedule 9 to this Act (which both impose a liability to account for income tax deducted) shall apply as if the payment by the seller were an annual payment made, after due deduction of tax, wholly out of a source other than profits or gains brought into charge to income tax.
- (2) Subsection (1) of this section shall not apply where the interest in question is payable without deduction of tax or where, under the rules of the stock exchange governing

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the transaction, the payment required to be made in respect of the interest is of the amount of the interest before deduction of tax.

- (3) If for any chargeable period the liability to tax of a jobber or dealing broker is determined on the footing that any excess of his payments in respect of interest on securities over his receipts in respect thereof, being payments made or receipts accrued in pursuance of a contract for the sale or purchase of the securities, is to be treated for all the purposes of the Tax Acts as an annual payment made by him, then as respects that chargeable period subsection (1) of this section shall not apply to him if he sold the securities in the ordinary course of his business as a jobber or dealing broker.
- (4) Where the seller is resident in the United Kingdom and purchased the securities (otherwise than through a broker) from a person not so resident, then paragraph (b) of subsection (1) of this section shall have effect as if after the word " say " there were inserted the word " either " and as if for the words from " either as " to the end of the paragraph there were inserted the words " as the registered holder of the securities or that he shows that he acquired the securities, directly or indirectly, from a person who was so entitled to the payment ".
- (5) Where the seller under such a contract as is mentioned in paragraph (a) of subsection (1) of this section is not resident in the United Kingdom, and the sale is effected through a broker, that subsection shall not apply but unless the broker shows either that the seller was entitled to the payment of interest as the registered holder of the securities or that the seller acquired the securities, directly or indirectly, from a person who was so entitled to the payment, the said section 53(2) of this Act shall apply as if the payment through the broker of the amount of the payment of interest were an annual payment by the broker made, after due deduction of tax, wholly out of such a source as is mentioned in subsection (1) of this section.
- (6) In this section—
  - " broker " means a member of a stock exchange in the United Kingdom other than a jobber,
  - " dealing broker ", in relation to any sale of securities, means a member of a stock exchange in the United Kingdom, other than the London Stock Exchange, who is recognised by the committee of his exchange as carrying on the business of a dealer and authorised by them to deal in those securities,
  - " jobber " means a member of the London Stock Exchange who is recognised by the committee thereof as carrying on the business of a jobber,
  - " securities " includes shares and stock,and references to a periodical payment of interest include references to a dividend.
- (7) Where it appears to the Board that by reason of any transaction or transactions a person may by virtue of this section have incurred any liability to tax, the Board may by notice in writing served on him require him, within such time not less than twenty-eight days as may be specified in the notice, to furnish information in his possession with respect to the transaction or any of the transactions, being information as to matters, specified in the notice, which are relevant to the question whether he has incurred such a liability as aforesaid.



## CHAPTER III

### TRANSFER OF ASSETS ABROAD

#### **478 Provisions for preventing avoidance of income tax by transactions resulting in the transfer of income to persons abroad**

For the purpose of preventing the avoiding by individuals ordinarily resident in the United Kingdom of liability to income tax by means of transfers of assets by virtue or in consequence whereof, either alone or in conjunction with associated operations, income becomes payable to persons resident or domiciled out of the United Kingdom, it is hereby enacted as follows:—

- (1) Where by virtue or in consequence of any such transfer, either alone or in conjunction with associated operations, such an individual has, within the meaning of this section, power to enjoy, whether forthwith or in the future, any income of a person resident or domiciled out of the United Kingdom which, if it were income of that individual received by him in the United Kingdom, would be chargeable to income tax by deduction or otherwise, that income shall, whether it would or would not have been chargeable to income tax apart from the provisions of this section, be deemed to be income of that individual for all the purposes of the Income Tax Acts .
- (2) Where, whether before or after any such transfer, such an individual receives or is entitled to receive any capital sum the payment whereof is in any way connected with the transfer or any associated operation, any income which, by virtue or in consequence of the transfer, either alone or in conjunction with associated operations, has become the income of a person resident or domiciled out of the United Kingdom shall, whether it would or would not have been chargeable to income tax apart from the provisions of this section, be deemed to be the income of that individual for all the purposes of the Income Tax Acts.

In this subsection, " capital sum " means—

- (a) any sum paid or payable by way of loan or repayment of a loan, and
  - (b) any other sum paid or payable otherwise than as income, being a sum which is not paid or payable for full consideration in money or money's worth.
- (3) Subsections (1) and (2) of this section shall not apply if the individual shows in writing or otherwise to the satisfaction of the Board either—
    - (a) that the purpose of avoiding liability to taxation was not the purpose or one of the purposes for which the transfer or associated operations or any of them were effected; or
    - (b) that the transfer and any associated operations were bona fide commercial transactions and were not designed for the purpose of avoiding liability to taxation.

The jurisdiction of the Special Commissioners on any appeal shall include jurisdiction to review any relevant decision taken by the Board in exercise of their functions under this subsection.

- (4) For the purposes of this section, " an associated operation " means, in relation to any transfer, an operation of any kind effected by any person in relation to any of the assets transferred or any assets representing, whether directly or indirectly, any of the assets transferred, or to the income arising from any such assets, or to any assets

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representing, whether directly or indirectly, the accumulations of income arising from any such assets.

- (5) An individual shall, for the purposes of this section, be deemed to have power to enjoy income of a person resident or domiciled out of the United Kingdom if—
- (a) the income is in fact so dealt with by any person as to be calculated, at some point of time, and whether in the form of income or not, to enure for the benefit of the individual, or
  - (b) the receipt or accrual of the income operates to increase the value to the individual of any assets held by him or for his benefit, or
  - (c) the individual receives or is entitled to receive, at any time, any benefit provided or to be provided out of that income or out of moneys which are or will be available for the purpose by reason of the effect or successive effects of the associated operations on that income and on any assets which directly or indirectly represent that income, or
  - (d) the individual has power, by means of the exercise of any power of appointment or power of revocation or otherwise, to obtain for himself, whether with or without the consent of any other person, the beneficial enjoyment of the income, or may, in the event of the exercise of any power vested in any other person, become entitled to the beneficial enjoyment of the income, or
  - (e) the individual is able in any manner whatsoever, and whether directly or indirectly, to control the application of the income.
- (6) In determining whether an individual has power to enjoy income within the meaning of this section, regard shall be had to the substantial result and effect of the transfer and any associated operations, and all benefits which may at any time accrue to the individual (whether or not he has rights at law or in equity in or to those benefits) as a result of the transfer and any associated operations shall be taken into account irrespective of the nature or form of the benefits.
- (7) For the purposes of this section, any body corporate incorporated outside the United Kingdom shall be treated as if it were resident out of the United Kingdom whether it is so resident or not.
- (8) For the purposes of this section—
- (a) a reference to an individual shall be deemed to include the wife or husband of the individual,
  - (b) " assets" includes property or rights of any kind and " transfer", in relation to rights, includes the creation of those rights,
  - (c) " benefit " includes a payment of any kind,
  - (d) references to income of a person resident or domiciled out of the United Kingdom shall, where the amount of the income of a company for any year or period has been apportioned under section 296 of this Act, include references to so much of the income of the company for that year or period as is equal to the amount so apportioned to that person,
  - (e) references to assets representing any assets, income or accumulations of income include references to shares in or obligations of any company to which, or obligations of any other person to whom, those assets, that income or those accumulations are or have been transferred,

and for the purpose of applying this Chapter in relation to Case VII of Schedule D references to income in this Chapter shall apply in the case of gains accruing from the

acquisition and disposal of chargeable assets as they would apply if the gains were profits from a trade of dealing in the assets, and any such gains shall be treated as payable in the first instance to the person to whom they accrue.

**479 Persons resident in Republic of Ireland: application of Chapter III to premiums on leases, etc.**

In relation to amounts which by virtue of any provision of section 80, 81 or 82 of this Act (taxation as income of premiums on leases, etc.) would, in the case of a person resident in the Republic of Ireland and not resident in the United Kingdom, be included in his income if he were not resident in the Republic of Ireland, this Chapter shall apply—

- (a) as if his income included those amounts, and
- (b) as if references to an individual included references to any person (and so that in accordance with section 250 of this Act this Chapter then applies for corporation tax as well as for income tax),

but shall so apply as if subsection (3) of section 478 above were omitted.

**480 Supplemental provisions**

- (1) Income tax at the standard rate shall not be charged by virtue of the preceding provisions of this Chapter in respect of income which has borne tax at the standard rate by deduction or otherwise but, save as aforesaid, income tax chargeable at the standard rate by virtue of those provisions shall be charged under Case VI of Schedule D.
- (2) In computing the liability to income tax of an individual chargeable by virtue of the said provisions of this Chapter, the same deductions and reliefs shall be allowed as would have been allowed if the income deemed to be his by virtue of those provisions had actually been received by him.
- (3) Where an individual has been charged to income tax on any income deemed to be his by virtue of the said provisions of this Chapter and that income is subsequently received by him, it shall be deemed not to form part of his income again for the purposes of the Income Tax Acts.
- (4) In any case where an individual has for the purposes of the said provisions of this Chapter power to enjoy income of a person abroad by reason of his receiving any such benefit as is referred to in section 478(5)(c) above, then notwithstanding anything in subsection (1) of this section, the individual shall be chargeable to income tax by virtue of the said provisions of this Chapter for the year of assessment in which the benefit is received on the whole of the amount or value of that benefit except in so far as it is shown that the benefit derives directly or indirectly from income on which he has already been charged to tax for that or a previous year of assessment.

**481 Power to obtain information**

- (1) The Board or, for the purpose of charging tax at the standard rate, an inspector may by notice in writing require any person to furnish them within such time as they may direct (not being less than twenty-eight days) with such particulars as they think necessary for the purposes of this Chapter.
- (2) The particulars which a person must furnish under this section, if he is required by such a notice so to do, include particulars—

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- (a) as to transactions with respect to which he is or was acting on behalf of others, and
  - (b) as to transactions which in the opinion of the Board or, for the purpose of charging tax at the standard rate, an inspector it is proper that they should investigate for the purposes of this Chapter notwithstanding that, in the opinion of the person to whom the notice is given, no liability to tax arises under this Chapter, and
  - (c) as to whether the person to whom the notice is given has taken or is taking any, and if so what, part in any, and if so what, transactions of a description specified in the notice.
- (3) Notwithstanding anything in subsection (2) of this section, a solicitor shall not be deemed for the purposes of paragraph (c) thereof to have taken part in a transaction by reason only that he has given professional advice to a client in connection with that transaction, and shall not, in relation to anything done by him on behalf of a client, be compellable under this section, except with the consent of his client, to do more than state that he is or was acting on behalf of a client, and give the name and address of his client and also—
- (a) in the case of anything done by the solicitor in connection with the transfer of any asset by or to an individual ordinarily resident in the United Kingdom to or by any such body corporate as is hereinafter mentioned, or in connection with any associated operation in relation to any such transfer, the names and addresses of the transferor and the transferee or of the persons concerned in the associated operations, as the case may be;
  - (b) in the case of anything done by the solicitor in connection with the formation or management of any such body corporate as is hereinafter mentioned, the name and address of the body corporate ;
  - (c) in the case of anything done by the solicitor in connection with the creation, or with the execution of the trusts, of any settlement by virtue or in consequence whereof income becomes payable to a person resident or domiciled out of the United Kingdom, the names and addresses of the settlor and of that person.
- The bodies corporate mentioned in the preceding provisions of this section are bodies corporate resident or incorporated outside the United Kingdom which are, or if resident in the United Kingdom would be, close companies, but not trading companies (as defined in section 292(1) of this Act).
- (4) Nothing in this section shall impose on any bank the obligation to furnish any particulars of any ordinary banking transactions between the bank and a customer carried out in the ordinary course of banking business, unless the bank has acted or is acting on behalf of the customer in connection with the formation or management of any such body corporate as is mentioned in paragraph (b) of subsection (3) of this section or in connection with the creation, or with the execution of the trusts, of any such settlement as is mentioned in paragraph (c) thereof.
- (5) In this section " settlement" and " settlor" have the meanings assigned thereto by section 454(3) of this Act.

## CHAPTER IV

### MISCELLANEOUS

#### *Companies*

#### **482 Migration, etc., of companies**

- (1) Subject to the provisions of this section, all transactions of the following classes shall be unlawful unless carried out with the consent of the Treasury, that is to say—
  - (a) for a body corporate resident in the United Kingdom to cease to be so resident; or
  - (b) for the trade or business or any part of the trade or business of a body corporate so resident to be transferred from that body corporate to a person not so resident; or
  - (c) for a body corporate so resident to cause or permit a body corporate not so resident over which it has control to create or issue any shares or debentures; or
  - (d) except for the purpose of enabling a person to be qualified to act as a director, for a body corporate so resident to transfer to any person, or cause or permit to be transferred to any person, any shares or debentures of a body corporate not so resident over which it has control, being shares or debentures which it owns or in which it has an interest.
- (2) Nothing in paragraph (c) of subsection (1) of this section shall apply to the giving to the bankers of the body corporate not resident in the United Kingdom of any security for the payment of any sum due or to become due from it to them by reason of any transaction entered into with it by them in the ordinary course of their business as bankers.
- (3) Nothing in the said paragraph (c) shall apply to the giving by the body corporate not resident in the United Kingdom to an insurance company of any security for the payment of any sum due or to become due from that body corporate to that company by reason of any transaction entered into with that body corporate by that company in the ordinary course of that company's business by way of investment of its funds.
- (4) Any consent granted by the Treasury under this section—
  - (a) may be given either specially (that is to say, so as to apply only to specified transactions of or relating to a specified body corporate) or generally (that is to say, so as not only to apply as aforesaid); and
  - (b) may, if given generally, be revoked by the Treasury; and
  - (c) may in any case be absolute or conditional; and
  - (d) shall be published in such a way as to give any person entitled to the benefit of it an adequate opportunity of getting to know of it, unless in the opinion of the Treasury publication is not necessary for that purpose.
- (5) Any person who, whether within or outside the United Kingdom, does or is a party to the doing of any act which to his knowledge amounts to or results in, or forms part of a series of acts which together amount to or result in, or will amount to or result in, something which is unlawful under subsection (1) of this section shall be guilty of an offence under this section, and in any proceedings in respect of such an offence against a director of the body corporate in question (that is to say, the body corporate which

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is or was resident in the United Kingdom) or against any person who was purporting to act in that capacity—

- (a) it shall be presumed that he was a party to every act of that body corporate unless he proves that it was done without his consent or connivance; and
- (b) it shall, unless the contrary is proved, be presumed that any act which in fact amounted to or resulted in, or formed part of a series of acts which together amounted to or resulted in or would amount to or result in, something which is unlawful under subsection (1) of this section was to his knowledge such an act.

- (6) Any person who is guilty of an offence under this section shall be liable on conviction on indictment to imprisonment for not more than two years or to a fine not exceeding £10,000 or to both, and proceedings in respect of such an offence alleged to have been committed by a person may be taken before the appropriate court in the United Kingdom having jurisdiction in the place where that person is for the time being:

Provided that where the person in question is a body corporate which is or was resident in the United Kingdom, the maximum amount of the fine shall be three times the corporation tax, profits tax, capital gains tax and income tax paid or payable which is attributable to the income, profits or gains (including chargeable gains) arising in the thirty-six months immediately preceding the commission of the offence, or £10,000, whichever is the greater.

- (7) A body corporate shall be deemed for the purposes of this section to be resident or not to be resident in the United Kingdom according as the central management and control of its trade or business is or is not exercised in the United Kingdom:

Provided that if it is shown that it has been established as between the Crown and a body corporate for any income tax, corporation tax or profits tax purpose that the body corporate was resident or ordinarily resident in the United Kingdom for any year of assessment or other period, it shall be presumed, except so far as the contrary is proved, that that body corporate was resident in the United Kingdom for the purposes of this section at the beginning of that year of assessment or other period and that it continued to be so resident at all times thereafter.

- (8) Where the functions of a body corporate consist wholly or mainly in the holding of investments or other property, the holding of the investments or property shall be deemed for the purposes of this section to be a business carried on by the body corporate.
- (9) Notwithstanding anything in the preceding provisions of this section, in no event shall a mere transfer of assets by a body corporate not resulting in a substantial change in the character or extent of the trade or business of that body corporate be treated for the purpose of this section as a transfer of part of the trade or business thereof.

- (10) In this section—

" share ", " debenture " and " director " have, in relation to any body corporate, the meanings respectively assigned to them by section 455 of the Companies Act 1948 in relation to a company ;

" control " (except in the expression " central management and control") has, in relation to a body corporate, the meaning given by section 534 of this Act;

" transfer ", in relation to shares or debentures, includes a transfer of any beneficial interest therein;

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" insurance company " means a body corporate lawfully carrying on business as an insurer, whether in the United Kingdom or elsewhere, and " funds " in relation to an insurance company means the funds held by it in connection with that business,

and a body corporate shall not be deemed for the purposes of this section to cease to be resident in the United Kingdom by reason only that it ceases to exist.

- (11) No proceedings for an offence under this section shall be instituted, in England or Wales, except by or with the consent of the Attorney General or, in Northern Ireland, except by or with the consent of the Attorney General for Northern Ireland:

Provided that this subsection shall not prevent the issue or execution of a warrant for the arrest of any person in respect of such an offence, or the remanding in custody or on bail of any person charged with such an offence.

- (12) This section shall come into force for all purposes on 6th April 1970 to the exclusion of the provisions thereby-re-enacted :

Provided that any offence committed before 6th April 1970 shall not be punishable under this section, and neither this subsection nor any other provision of this Act shall prevent any such offence from being punishable as if this Act had not been passed.

#### **483 Change in ownership of company: disallowance of trading losses**

- (1) If—

- (a) within any period of three years there is both a change in the ownership of a company and (either earlier or later in that period, or at the same time) a major change in the nature or conduct of a trade carried on by the company, or
- (b) at any time after the scale of the activities in a trade carried on by a company has become small or negligible, and before any considerable revival of the trade, there is a change in the ownership of the company,

no relief shall be given under section 177 of this Act (relief for trading losses against future trading profits or total profits) by setting a loss incurred by the company in an accounting period beginning before the change of ownership against any income or other profits of an accounting period ending after the change of ownership.

- (2) In applying this section to the accounting period in which the change of ownership occurs, the part ending with the change of ownership, and the part after, shall be treated as two separate accounting periods, and the profits or losses of the accounting period shall be apportioned to the two parts.

The apportionment shall be on a time basis according to the respective lengths of those parts except that if it appears that that method would work unreasonably or unjustly such other method shall be used as appears just and reasonable.

- (3) In subsection (1) above " major change in the nature or conduct of a trade " includes—

- (a) a major change in the type of property dealt in, or services or facilities provided, in the trade, or
- (b) a major change in customers, outlets or markets of the trade,

and this section applies even if the change is the result of a gradual process which began outside the period of three years mentioned in subsection (1)(a) above.

- (4) In relation to any relief available under section 252 of this Act (company reconstructions) to a successor company, subsection (1) above shall apply as if any

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loss sustained by a predecessor company had been sustained by a successor company and as if the references to a trade included references to the trade as carried on by a predecessor company.

- (5) Where relief in respect of a company's losses has been restricted under this section then, notwithstanding section 87(3) of the Capital Allowances Act 1968, in applying the provisions of that Act about balancing charges to the company by reference to any event after the change of ownership of the company, any allowance or deduction falling to be made in taxing the company's trade for any chargeable period before the change of ownership shall be disregarded unless the profits or gains of that chargeable period or of any subsequent chargeable period before the change of ownership were sufficient to give effect to the allowance or deduction.

In applying this subsection it shall be assumed that any profits or gains are applied in giving effect to any such allowance or deduction in preference to being set off against any loss which is not attributable to such an allowance or deduction.

- (6) Where the operation of this section depends on circumstances or events at a time after the change of ownership (but not more than three years after), an assessment to give effect to the provisions of this section shall not be out of time if made within six years from that time, or the latest of those times.
- (7) Any person in whose name any shares, stock or securities of a company are registered shall, if required by notice in writing by an inspector given for the purposes of this section, state whether or not he is the beneficial owner of those shares or securities and, if not the beneficial owner of those shares or securities or any of them, shall furnish the name and address of the person or persons on whose behalf those shares, stock or securities are registered in his name.
- (8) This section shall not apply if the change of ownership took place before 15th April 1969, and subsection (1)(a) above shall not apply if the major change in the nature or conduct of the trade was completed before that date.

In other respects this section has effect by reference to circumstances and events before that date, as well as by reference to later circumstances and events.

#### **484 Rules for ascertaining change in ownership of company**

- (1) For the purposes of section 483 above (in this section called " the principal section ") there is a change in the ownership of a company—
- (a) if a single person acquires more than half the ordinary share capital of the company, or
  - (b) if two or more persons each acquire a holding of 5 per cent, or more of the ordinary share capital of the company, and those holdings together amount to more than half the ordinary share capital of the company, or
  - (c) if two or more persons each acquire a holding of the ordinary share capital of the company, and the holdings together amount to more than half the ordinary share capital of the company, but disregarding a holding of less than 5 per cent. unless it is an addition to an existing holding and the two holdings together amount to 5 per cent. or more of the ordinary share capital of the company.
- (2) In applying subsection (1) above—
- (a) the circumstances at any two points of time with not more than three years between may be compared, and a holder at the later time may be regarded as



- having acquired whatever he did not hold at the earlier time, irrespective of what he has acquired or disposed of in between,
- (b) to allow for any issue of shares or other reorganisation of capital, the comparison may be made in terms of percentage holdings of the total ordinary share capital at the respective times, so that a person whose percentage holding is greater at the later time may be regarded as having acquired a percentage holding equal to the increase,
  - (c) to decide for the purposes of subsection (1)(b) or (c) above if any person has acquired a holding of at least 5 per cent., or a holding which makes at least 5 per cent. when added to an existing holding, acquisitions by, and holdings of, two or more persons who are connected persons within the meaning of section 533 of this Act shall be aggregated as if they were acquisitions by, and holdings of, one and the same person,
  - (d) any acquisition of shares under the will or on the intestacy of a deceased person and, if it is shown that the gift is unsolicited and made without regard to the provisions of the principal section, any gift of shares, shall be left out of account.
- (3) Where, because persons, whether company members or not, possess extraordinary rights or powers under the articles of association or under any other document regulating the company, ownership of ordinary share capital may not be an appropriate test of whether there has been a major change in the persons for whose benefit the losses may ultimately enure, then in considering whether there has been a change of ownership of the company for the purposes of the principal section, holdings of all kinds of share capital, including preference shares, or of any particular category of share capital, or voting power or any other special kind of power, may be taken into account instead of ordinary share capital.
- (4) Where the principal section has operated to restrict relief by reference to a change of ownership taking place at any time, no transaction or circumstances before that time shall be taken into account in determining whether there is any subsequent change of ownership.
- (5) A change in the ownership of a company shall be disregarded for the purposes of the principal section if—
- (a) immediately before the change the company is the 75 per cent. subsidiary of another company, and
  - (b) (although there is a change in the direct ownership of the company) that other company continues after the change to own the first-mentioned company as a 75 per cent. subsidiary.
- (6) If there is a change in the ownership of a company which has a 75 per cent. subsidiary (whether owned directly or indirectly) then, unless under subsection (5) above that change in ownership is to be disregarded, the principal section shall apply as if there had also been a change in the ownership of that 75 per cent. subsidiary.
- (7) For the purposes of this section—
- (a) references to ownership shall be construed as references to beneficial ownership, and references to acquisition shall be construed accordingly,
  - (b) a company shall be deemed to be a 75 per cent. subsidiary of another company if and so long as not less than three quarters of its ordinary share capital is owned by that other company, whether directly or through another company

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- or other companies, or partly directly and partly through another company or other companies,
- (c) the amount of ordinary share capital of one company owned by a second company through another company or other companies, or partly directly and partly through another company or other companies, shall be determined in accordance with subsections (5) to (10) of section 532 of this Act,
  - (d) " share " includes stock.
- (8) If any acquisition of ordinary share capital or other property or rights taken into account in determining that there has been a change of ownership of a company was made in pursuance of a contract of sale or option or other contract, or the acquisition was made by a person holding such a contract, and the contract was made on or after 15th April 1969, the time when the change in the ownership of the company took place shall be determined as if the acquisition had been made when the contract was made with the holder or when the benefit of it was assigned to him so that, in the case of a person exercising an option to purchase shares, he shall be regarded as having purchased the shares when he acquired the option.

*Transactions between associated persons*

**485 Sales, etc., at undervalue or overvalue**

- (1) Subject to the provisions of this section, where any property is sold and—
- (a) the buyer is a body of persons over whom the seller has control or the seller is a body of persons over whom the buyer has control or both the seller and the buyer are bodies of persons and some other person has control over both of them ; and
  - (b) the property is sold at a price less than the price which it might have been expected to fetch if the parties to the transaction had been independent persons dealing at arm's length,

then, in computing the income, profits or losses of the seller for tax purposes, the like consequences shall ensue as would have ensued if the property had been sold for the price which it would have fetched if the transaction had been a transaction between independent persons dealing as aforesaid:

Provided that this subsection shall not apply where the buyer is resident in the United Kingdom and is carrying on a trade therein, and the price of the property falls to be taken into account as a deduction in computing the profits or gains or losses of that trade for tax purposes.

- (2) Subject to the provisions of this section, where any property is sold and—
- (a) the buyer is a body of persons over whom the seller has control or the seller is a body of persons over whom the buyer has control or both the seller and the buyer are bodies of persons and some other person has control over both of them ; and
  - (b) the property is sold at a price greater than the price which it might have been expected to fetch if the parties to the transaction had been independent persons dealing at arm's length,

then, in computing the income, profits or losses of the buyer for tax purposes, the like consequences shall ensue as would have ensued if the property had been sold for the price which it would have fetched if the transaction had been a transaction between independent persons dealing as aforesaid:

Provided that this subsection shall not apply where the seller is resident in the United Kingdom and is carrying on a trade therein, and the price of the property falls to be taken into account as a trading receipt in computing the profits or gains or losses of that trade for tax purposes.

- (3) The preceding provisions of this section shall not apply in relation to any sale unless the Board so direct, and where such a direction is given all such adjustments shall be made, whether by assessment, repayment of tax or otherwise, as are necessary to give effect to the direction.
- (4) Nothing in this section shall be construed as affecting the operation of any of the provisions of the Capital Allowances Act 1968.
- (5) In this section, "body of persons" includes a partnership and "control" has the meaning ascribed to it by section 534 of this Act, and, for the purposes of this section, a sale shall be deemed to take place at the time of completion or at the time when possession is given, whichever is the earlier.
- (6) The preceding provisions of this section shall, with the necessary adaptations, have effect in relation to lettings and hirings of property, grants and transfers of rights, interests or licences and the giving of business facilities of whatever kind as they have effect in relation to sales, and the references in the said preceding provisions to sales, sellers, buyers and prices shall be deemed to be extended accordingly.

#### **486 Transactions between dealing company and associated company**

- (1) Subject to the provisions of this section, where—
  - (a) a dealing company becomes entitled to a deduction, in computing the profits or gains of the company for tax purposes for any period, in respect of the depreciation in the value of any right subsisting against an associated company, not being a dealing company, or
  - (b) a dealing company makes any payment to such an associated company, being a payment in respect of which the dealing company is entitled to a deduction in computing its profits or gains for tax purposes for any period,and the depreciation or payment is not brought into account in computing the profits or gains of the company not being a dealing company, that company shall be deemed to have received on the last day of the period income of an amount equal to the amount of the deduction and shall be chargeable in respect thereof under Case VI of Schedule D.
- (2) Where the company not being a dealing company is carrying on a trade, the said income shall, if the company so elects, not be so chargeable but shall be deemed to have been a receipt of the trade, or, if the company is carrying on more than one trade, to have been a receipt of such one of the trades as the company may choose.
- (3) Where the said company is carrying on, or was formed to carry on, a trade, then if the said right subsisting against the company was a right to the repayment of moneys lent for meeting expenditure which has proved (in whole or in part) abortive, or the payment to the company was made for meeting such expenditure, and the expenditure is such that the company is not entitled in respect thereof to any allowance or deduction in computing losses or gains, subsection (1) above shall not apply in so far as the expenditure proved abortive.
- (4) For the purposes of this section—
  - (a) "company" includes any body corporate,

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- (b) " dealing company" means a company dealing in securities, land or buildings and includes any company whose profits on the sale of securities, land or buildings are part of its trading profits,
  - (c) two or more companies shall be treated as associated companies if one has control of the other or others, or any person has control of both or all of them,
  - (d) references to a company having control of another company shall be construed as references to its having control thereof either by itself or in conjunction with any person having control over the first-mentioned company, and " control " has the meaning given by section 534 of this Act,
  - (e) " securities " includes shares and stock.
- (5) Where it appears to the Board that by reason of any transaction or transactions a person may by virtue of this section have incurred any liability to tax, the Board may by notice in writing served on him require him, within such time not less than twenty-eight days as may be specified in the notice, to furnish information in his possession with respect to the transaction or any of the transactions, being information as to matters, specified in the notice, which are relevant to the question whether he has incurred such a liability as aforesaid.

#### *Other provisions*

#### **487 Sale by individual of income derived from his personal activities**

- (1) Subject to subsection (5) below, this section has effect where—
- (a) transactions or arrangements are effected or made to exploit the earning capacity of an individual in any occupation by putting some other person in a position to enjoy all or any part of the profits or gains or other income, or of the receipts, derived from the individual's activities in that occupation, or anything derived directly or indirectly from any such income or receipts, and
  - (b) as part of, or in connection with, or in consequence of, the transactions or arrangements any capital amount is obtained by the individual for himself or for any other person, and
  - (c) the main object, or one of the main objects, of the transactions or arrangements was the avoidance or reduction of liability to income tax.
- (2) Any such capital amount shall for all the purposes of the Income Tax Acts be treated as being earned income of the individual which arises when the capital amount is receivable, and which is chargeable to tax under Case VI of Schedule D.
- (3) In this section—
- (a) references to any occupation are references to any activities of any of the kinds pursued in any profession or vocation, irrespective of whether the individual is engaged in a profession or vocation, or is employed by or holds office under some other person, and
  - (b) references in subsection (1) above to income or receipts include references to payments for any description of copyright or licence or franchise or other right deriving its value from the activities, including past activities, of the individual.
- (4) This section shall not apply to a capital amount obtained from the disposal—
- (a) of assets (including any goodwill) of a profession or vocation, or of a share in a partnership which is carrying on a profession or vocation, or

(b) of shares in a company,

so far as the value of what is disposed of, at the time of disposal, is attributable to the value of the profession or vocation as a going concern, or as the case may be to the value of the company's business, as a going concern:

Provided that if the value of the profession, vocation or business as a going concern is derived to a material extent from prospective income or receipts derived directly or indirectly from the individual's activities in the occupation, and for which, when all capital amounts are disregarded, the individual will not have received full consideration, whether as a partner in a partnership or as an employee or otherwise, this subsection shall not exempt the part of the capital amount so derived.

In this subsection references to the company's business include references to the business of any other company in which it holds shares directly or indirectly.

- (5) This subsection has effect where on any occasion an individual obtains a capital amount consisting of any property or right which derives substantially the whole of its value from the activities of the individual, or (as in the case where the individual acquires a stock option and subsequently exercises the stock option) there are two or more occasions on which an individual obtains a capital amount consisting of any such property or right.

Tax under this section shall not be charged on any such occasion, but, without prejudice to the generality of the provisions of this section or section 489 below, tax under this section shall be charged on the occasion when the capital amount, or any such capital amount, is sold or otherwise realised, and shall be so charged by reference to the proceeds of sale or the realised value.

- (6) For the purposes of subsection (1)(b) above the cases where an individual obtains any capital amount for some other person include cases where the individual has put some other person in a position to receive the capital amount by providing that other person with something of value derived, directly or indirectly, from the individual's activities in the occupation.
- (7) This section shall apply to all persons, whether resident in the United Kingdom or not, if the occupation of the individual is carried on wholly or partly in the United Kingdom.
- (8) This section shall not apply as respects a capital amount receivable before 15th April 1969.

#### **488 Artificial transactions in land**

- (1) This section is enacted to prevent the avoidance of tax by persons concerned with land or the development of land.
- (2) This section applies wherever—
- (a) land, or any property deriving its value from land, is acquired with the sole or main object of realising a gain from disposing of the land, or
  - (b) land is held as trading stock, or
  - (c) land is developed with the sole or main object of realising a gain from disposing of the land when developed,
- and any gain of a capital nature is obtained from the disposal of the land—

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- (i) by the person acquiring, holding or developing the land, or by any connected person, or
- (ii) where any arrangement or scheme is effected as respects the land which enables a gain to be realised by any indirect method, or by any series of transactions, by any person who is a party to, or concerned in, the arrangement or scheme;

and this subsection applies whether any such person obtains the gain for himself or for any other person.

- (3) Where this section applies, the whole of any such gain shall for all the purposes of the Tax Acts be treated—
  - (a) as being income which arises when the gain is realised, and which constitutes profits or gains chargeable to tax under Case VI of Schedule D for the chargeable period in which the gain is realised, and
  - (b) subject to the following provisions of this section, as being income of the person by whom the gain is realised.
- (4) For the purposes of this section land is disposed of if, by any one or more transactions, or by any arrangement or scheme, whether concerning the land or property deriving its value from the land, the property in the land, or control over the land, is effectually disposed of, and references in subsection (2) above to the acquisition or development of property with the sole or main object of realising the gain from disposing of the land shall be construed accordingly.
- (5) For the said purposes—
  - (a) where, whether by a premature sale or otherwise, a person directly or indirectly transmits the opportunity of making a gain to another person, that other person's gain is obtained for him by the first-mentioned person, and
  - (b) any number of transactions may be regarded as constituting a single arrangement or scheme if a common purpose can be discerned in them, or if there is other sufficient evidence of a common purpose.
- (6) For the purposes of this section such method of computing a gain shall be adopted as is just and reasonable in the circumstances, taking into account the value of what is obtained for disposing of the land, and allowing only such expenses as are attributable to the land disposed of, and in applying this subsection—
  - (a) where a freehold is acquired and the reversion is retained on disposal, account may be taken of the way in which the profits or gains under Case I of Schedule D of a person dealing in land are computed in such a case, and
  - (b) account may be taken of the adjustments to be made in computing such profits or gains under subsections (2), (3) and (4) of section 142 of this Act (allowance for tax on premiums on leases).

In the application of this subsection to Scotland, " freehold " means the estate or interest of the proprietor of the *dominium utile* or, in the case of property other than feudal property, of the owner, and " reversion " means the interest of the landlord in property subject to a lease.

- (7) Subsection (2)(c) of this section shall not apply to so much of any gain as is fairly attributable to the period, if any, before the intention to develop the land was formed, and which would not fall under paragraph (a) or paragraph (b) of that subsection; and in applying this subsection account shall be taken of the treatment under Case I of Schedule D of a person who appropriates land as trading stock.

- (8) If all or any part of the gain accruing to any person is derived from value, or an opportunity of realising a gain, provided directly or indirectly by some other person, whether or not put at the disposal of the first-mentioned person, subsection (3)(b) of this section shall apply to the gain, or that part of it, with the substitution of that other person for the person by whom the gain was realised.
- (9) This section shall not apply to a gain accruing to an individual which by virtue of section 29 of the Finance Act 1965 (private residences) is exempt from capital gains tax, or which would be so exempt but for the provisions of paragraph 2 of Schedule 12 to the Finance Act 1968 (residence acquired partly with a view to making a gain).
- (10) Where there is a disposal of shares in—
- (a) a company which holds land as trading stock, or
  - (b) a company which owns directly or indirectly 90 per cent. or more of the ordinary share capital of another company which holds land as trading stock,
- and all the land so held is disposed of in the normal course of its trade by the company which held it, and so as to procure that all opportunity of profit in respect of the land arises to that company, then this section shall not by virtue of subsection (2)(i) apply to any gain to the holder of shares as being a gain on property deriving value from that land (but without prejudice to any liability under paragraph (ii) of the said subsection (2)).
- (11) Where a person who considers that paragraph (a) or paragraph (c) of subsection (2) of this section may apply as respects a gain of a capital nature which that person has obtained from the disposal of land, or which he would obtain from a proposed disposal of land, supplies to the inspector to whom he makes his return of income written particulars showing how the gain has arisen or would arise—
- (a) the inspector shall, within thirty days from his receipt of the particulars, notify that person whether or not he is satisfied that, in the circumstances as described in the particulars, the gain will not, or would not, be chargeable to tax on that person under this section, and
  - (b) if the inspector notifies that person that he is so satisfied the gain shall not be chargeable on that person under this section:

Provided that if the particulars given under this section with respect to the gain are not such as to make full and accurate disclosure of all facts and considerations relating thereto which are material to be known to the inspector, any notification given by the inspector under this subsection shall be void.

- (12) In this section—
- (a) references to the land include references to all or any part of the land, and "land" includes buildings, and any estate or interest in land or buildings;
  - (b) references to property deriving its value from land include—
    - (i) any shareholding in a company, or any partnership interest, or any interest in settled property, deriving its value directly or indirectly from land, and
    - (ii) any option, consent or embargo affecting the disposition of land,and for the purposes of this section any question whether a person is connected with another shall be determined in accordance with section 533 of this Act.
- (13) This section shall apply to all persons, whether resident in the United Kingdom or not, if all or any part of the land in question is situated in the United Kingdom.

(14) This section shall not apply to any gain realised before 15th April 1969.

**489 Sale of income and land transactions (sections 487 and 488): supplemental**

- (1) This section has effect to supplement sections 487 and 488 above (in this section called " the principal sections ").
- (2) In applying the principal sections and this section account shall be taken of any method, however indirect, by which—
  - (a) any property or right is transferred or transmitted, or
  - (b) the value of any property or right is enhanced or diminished,
 and accordingly the occasion of the transfer or transmission of any property or right, however indirect, and the occasion when the value of any property or right is enhanced, may be an occasion when, under the principal sections, tax becomes chargeable.
- (3) Subsection (2) above applies in particular—
  - (a) to sales, contracts and other transactions made otherwise than for full consideration or for more than full consideration, and
  - (b) to any method by which any property or right, or the control of any property or right, is transferred or transmitted by assigning share capital or other rights in a company or any partnership or interest in settled property, and
  - (c) to the creation of any option or consent or embargo affecting the disposition of any property or right, and to the consideration given for the option, or for the giving of the consent or the release of the embargo, and
  - (d) to the disposal of any property or right on the winding up, dissolution or termination of any company, partnership or trust.
- (4) In ascertaining for the said purposes the intentions of any person, the objects and powers of any company, partners or trustees, as set out in any memorandum, articles of association or other document, shall not be conclusive.
- (5) In order to ascertain whether and to what extent the value of any property or right is derived from any other property or right, value may be traced through any number of companies, partnerships and trusts, and the property held by any company, partnership or trust shall be attributed to the shareholders, partners or beneficiaries at each stage in such manner as is appropriate in the circumstances.
- (6) In applying the principal sections and this section—
  - (a) any expenditure or receipt or consideration or other amount may be apportioned by such method as is just and reasonable in the circumstances,
  - (b) all such valuations shall be made as are appropriate to give effect to the principal sections.
- (7) For the purposes of the principal sections and this section (and in particular for the purpose of the reference in section 487 above to an individual putting some other person in a position to enjoy income or receipts) partners, or the trustees of settled property, or personal representatives, may be regarded as persons distinct from the individuals or other persons who are for the time being partners or trustees or personal representatives
- (8) Where a person is assessed to tax under either of the principal sections, with this section, in respect of consideration receivable by another person—



- (a) he shall be entitled to recover from that other person any part of that tax which he has paid, and
- (b) if any part of that tax remains unpaid at the expiration of six months from the date when it became due and payable, it shall be recoverable from that other person as though he were the person assessed, but without prejudice to the right to recover it from the person actually assessed,

and for the purposes of paragraph (a) above the Board or an inspector shall on request furnish a certificate specifying the amount of income in respect of which tax has been paid, and the amount of tax so paid; and the certificate shall be conclusive evidence of any facts stated therein.

For the purposes of this subsection any income which a person is treated as having by virtue of the principal sections shall, subject to section 529 of this Act, be treated as the highest part of his income.

- (9) If it appears to the Board that any person entitled to any consideration or other amount taxable under the principal sections is not resident in the United Kingdom, the Board may direct that section 53 of this Act (payments not out of profits or gains brought into charge to income tax) shall apply to any payment forming part of that amount as if it were an annual payment charged with tax under Case III of Schedule D, but without prejudice to the final determination of the liability of that person, including any liability under subsection (8)(b) above.
- (10) The principal sections have effect subject to Part XVI of this Act and to any other provision of the Tax Acts deeming income to belong to a particular person.
- (11) Where under section 488(2)(c) above any person is charged to tax on the realisation of a gain, and the computation of the gain proceeded on the footing that the land or some other property was appropriated at any time as trading stock, that land or other property shall be treated on that footing also for the purposes of paragraph 1 of Schedule 7 to the Finance Act 1965 and paragraph 12 of Schedule 14 to the Finance Act 1967 (capital gains: property becoming or ceasing to be stock in trade.)
- (12) Where under section 487(1)(b) or 488(8) above the person charged to tax is a person other than the person for whom the capital amount was obtained or the person by whom the gain was realised, and the tax has been paid, then, for the purposes of paragraphs 2 and 5 of Schedule 6 to the Finance Act 1965 (profits taxable as income to be excluded from tax on capital gains), the person for whom the capital amount was obtained or the person by whom the gain was realised shall be regarded as having been charged to that tax.
- (13) For the purposes of the principal sections and this section—
  - " capital amount " means any amount, in money or money's worth, which, apart from the principal sections, does not fall to be included in any computation of income for purposes of the Tax Acts, and other expressions including the word " capital " shall be construed accordingly,
  - " company " includes any body corporate,
  - " share " includes stock,

and for the said purposes any amount in money or money's worth shall not be regarded as having become receivable by some person until that person can effectively enjoy or dispose of it.

**490 Sale of income and land transactions (sections 487 and 488): power to obtain information**

- (1) The Board or an inspector may by notice in writing require any person to furnish them within such time as the Board or the inspector may direct (not being less than thirty days) with such particulars as the Board or the inspector think necessary for the purposes of sections 487 and 488 above.
- (2) The particulars which a person must furnish under this section, if he is required by a notice from the Board or the inspector so to do, include particulars—
  - (a) as to transactions or arrangements with respect to which he is or was acting on behalf of others, and
  - (b) as to transactions or arrangements which in the opinion of the Board or the inspector should properly be investigated for the purposes of the said sections notwithstanding that, in the opinion of the person to whom the notice is given, no liability to tax arises under those sections, and
  - (c) as to whether the person to whom the notice is given has taken or is taking any, and if so what, part in any, and if so what, transactions or arrangements of a description specified in the notice.
- (3) Notwithstanding anything in subsection (2) above, a solicitor shall not be deemed for the purposes of subsection (2)(c) above to have taken part in any transaction or arrangements by reason only that he has given professional advice to a client in connection with the transaction or arrangements, and shall not, in relation to anything done by him on behalf of a client, be compellable under this section, except with the consent of his client, to do more than state that he is or was acting on behalf of a client, and give the name and address of his client.

**491 Land sold and leased back: limitation on tax reliefs**

- (1) If land or any estate or interest in land is transferred from one person to another and—
  - (a) as a result of a lease of the land or any part of the land granted at that time or subsequently by the transferee to the transferor, or
  - (b) as a result of any other transaction or series of transactions affecting the land or any estate or interest in the land,the transferor, or any person who is associated with the transferor, becomes liable at the time of the transfer or subsequently to pay any rent under a lease of the land or any part of the land, this section shall apply to all rent due under the lease from the transferor, or from any person who is associated with the transferor.
- (2) If land or any estate or interest in land is transferred from one person to another, and, as a result of any transaction or series of transactions affecting the land or any estate or interest in the land, the transferor, or any person who is associated with the transferor, becomes liable at the time of the transfer or subsequently to make any payment (other than rent under a lease) for which tax relief of any of the kinds listed in subsection (13) below is available, being a payment by way of rentcharge on the land or any part of the land or a payment in any other way connected with the land, this section shall apply to all such payments under the rentcharge or other transaction due from the transferor, or from any person who is associated with the transferor.
- (3) The references in subsections (1) and (2) of this section to the transfer of an estate or interest in land include references to—

- (a) the granting of a lease or any other transaction involving the creation of a new estate or interest in the land,
  - (b) the transfer of the lessee's interest under a lease by surrender or forfeiture of the lease, and
  - (c) any transaction or series of transactions affecting land, or an estate or interest in land, such that some person is the owner, or one of the owners, before and after the carrying out of the transaction or transactions, but another person becomes or ceases to become one of the owners,
- and in relation to any such transaction or series of transactions any person who is an owner before the carrying out of the transaction or transactions, and is not the sole owner thereafter, shall be regarded for the purposes of this section as a transferor.
- (4) A deduction by way of tax relief which is one of the kinds to which this section applies, being a deduction in respect of rent or of any other payment to which this section applies, shall not exceed the commercial rent for the period for which the rent or other payment is made of the land in respect of which that payment is made.
- (5) If under subsection (4) of this section part of a payment which would otherwise be allowable as a deduction by way of tax relief of one of the kinds to which this section applies is not so allowable, and one or more subsequent payments are made by the transferor, or a person who is associated with the transferor, under the lease or other transaction, that part of the first-mentioned payment may be carried forward and treated for the purposes of any such deduction by way of tax relief as if it were made at the time when the next of those subsequent payments was made, and so made for the period for which that subsequent payment was made.
- (6) For the purposes of subsection (4) of this section—
- (a) if more than one payment is made for the same period the payments shall be taken together,
  - (b) if payments are made for periods which overlap, the payments shall be apportioned, and the apportioned payments which belong to the common part of the overlapping periods shall be taken together,
  - (c) the preceding references to payments include references to parts of payments which under subsection (5) of this section are treated as if made at a time subsequent to that at which they were made, and to the extent that a part of a payment so carried forward under subsection (5) of this section is not so allowable as a deduction by way of tax relief, it may again be carried forward under subsection (5) of this section,
  - (d) so much of any payment as is in respect of services or the use of assets or rates usually borne by the tenant shall be excluded, and in determining the amount to be so excluded provisions in any lease or agreement fixing the payments or parts of payments which are in respect of services or the use of assets may be overridden.
- (7) A payment made for a period all of which falls more than one year after the payment is made shall be treated for the purposes of this section as made for that period of one year beginning with the date on which the payment was made, and a payment for a period part of which falls after the end of that year shall be treated for those purposes as if a corresponding part of the payment was made for that year (and no part for any later period).
- (8) For the purpose of making a comparison under subsection (4) of this section between a payment consisting of rent under a lease (in this subsection referred to as " the

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actual lease"), or such payments taken together, and the commercial rent of the land, "commercial rent" shall mean the rent which might be expected to be paid under a lease of the land negotiated in the open market at the time when the actual lease was created, being a lease which is of the same duration as the actual lease, which is, as respects liability for maintenance and repairs, subject to the terms and conditions of the actual lease and which provides for rent payable at uniform intervals and—

- (a) at a uniform rate, or
  - (b) if the rent payable under the actual lease is rent at a progressive rate (and such that the amount of rent payable for any year is never less than the amount payable for any previous year), a rent which progresses by gradations proportionate to those provided by the actual lease. ,
- (9) For the purpose of making a comparison under subsection (4) of this section between a payment which does not consist of rent under a lease (or such a payment taken together with other payments) and the commercial rent of the land, "commercial rent" shall mean the rent which might be expected to be paid under a tenant's repairing lease negotiated in the open market at the time when the transaction was effected under which the payment or payments became due, being—
- (a) where the period over which payments are to be made under that transaction is not less than 200 years, or the obligation to make such payments is perpetual, a lease for 200 years, and
  - (b) where that period is less than 200 years, a lease which is of the same duration as that period.
- (10) In this section references to rent under a lease include references to rent which the person entitled to the lease is under subsection (2) or (3) of section 83, or under section 134, of this Act (allowance to person paying a premium taxed as income) treated, for any purpose, as paying in respect of land comprised in the lease, and such rent shall be (treated for the purposes of this section as having been paid from day to day as it has become due.
- (11) For the purposes of this section the following persons shall be deemed to be associated with one another, that is—
- (a) the transferor in any such transaction as is described in subsection (1) or subsection (2) of this section, and the transferor in another such transaction, if those two persons are acting in concert, or if the two transactions are in any way reciprocal, and any person who is an associate of either of those associated transferors ;
  - (b) any two or more bodies corporate participating in, or incorporated for the purposes of, a scheme for the reconstruction of any body or bodies corporate or for the amalgamation of any two or more bodies corporate;
  - (c) any persons who are associates as defined in section 494(10) below.
- (12) In this section—
- (a) "asset" means any description of property or rights other than land or an interest in land,
  - (b) "lease" includes an underlease, sublease or any tenancy or licence, and any agreement for a lease, underlease, sublease or tenancy or licence and, in the case of land outside the United Kingdom, any interest corresponding to a lease as so defined ; and, in relation to such land, expressions in this section relating to interests in land and their disposition shall be construed accordingly,
  - (c) "rent" includes any payment made under a lease as so defined,

- (d) " tenant's repairing lease " means a lease where the lessee is under an obligation to maintain and repair the whole, or substantially the whole, of the premises comprised in the lease.
- (13) The kinds of deductions by way of tax relief to which this section applies are as follows—
- (a) a deduction in computing profits or gains chargeable under Schedule A allowable by virtue of sections 71 to 77 of, and Schedule 2 to, this Act,
  - (b) a deduction in computing profits or gains or losses of a trade, profession or vocation for the purposes of tax,
  - (c) a deduction in computing profits or gains chargeable under Case VI of Schedule D, or in computing any loss for which relief is allowable under section 176 or section 179 of this Act (Case VI losses),
  - (d) allowance of a payment under section 304 or 305 of this Act (management expenses),
  - (e) a deduction from emoluments to be assessed under Schedule E made in pursuance of section 189(1) of this Act (necessary expenses), or allowable in computing losses in an employment for tax purposes,
  - (f) a deduction allowable for tax purposes in computing profits or gains or losses arising from woodlands.
- (14) This section shall not apply if the transfer described in subsection (1) or subsection (2) above was on or before 14th April 1964.

#### **492 Assets leased to traders and others**

- (1) Subject to section 493 below, where—
- (a) a deduction by way of tax relief which is of one of the kinds listed in subsection (3) below is allowable in respect of a payment made under a lease of an asset of any description, and
  - (b) before, at or after the time when the payment is made, either—
    - (i) the person who made the payment has obtained or obtains a capital sum in respect of the lessee's interest in the lease, or
    - (ii) the lessor's interest in the lease, or any other interest in the asset, has belonged to an associate of the person who made the payment, and that associate has obtained a capital sum in respect of that interest,

the person obtaining that sum shall be charged under Case VI of Schedule D for the chargeable period in which the sum is obtained with tax on an amount equal to the amount of the payment in respect of which tax relief is so allowed:

Provided that the total amount on which he is assessed by reference to the capital sum shall not exceed the amount of the capital sum.
- (2) Subsection (1) above shall not apply to payments under a lease created on or before 14th April 1964.
- (3) The kinds of deductions by way of tax relief to which subsection (1) above applies are as follows—
- (a) a deduction in computing profits or gains or losses of a trade, profession or vocation for the purposes of tax,

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- (b) a deduction in computing profits of gains chargeable under Case VI of Schedule D, or in computing any loss for which relief is allowable under section 176 or section 179 of this Act (Case VI losses),
  - (c) allowance of a payment under section 304 or 305 of this Act (management expenses),
  - (d) a deduction from emoluments to be assessed under Schedule E made in pursuance of section 189(1) of this Act (necessary expenses), or allowable in computing losses in an employment for tax purposes,
  - (e) a deduction allowable for tax purposes in computing profits or gains or losses arising from woodlands.
- (4) Where the deduction by way of tax relief mentioned in subsection (1)(a) of this section is a deduction in computing, for income tax purposes, profits or gains or losses of a trade, profession or vocation, or arising from woodlands, and any part of the payments made under the lease by the person obtaining the capital sum is a payment in respect of which a deduction is not allowed for the reason that the whole or any part of the period in which the payment would fall to be allowed is not a period on the profits or gains of which income tax falls to be computed in respect of the trade, profession or vocation, for the reference in the proviso to the said subsection (1) to the amount of the capital sum there shall be substituted a reference to that amount after deducting the amount of the payment in respect of which a deduction is not allowed for that reason.
- (5) So far as in respect of a capital sum any part of a payment allowed as a deduction by way of tax relief of a kind to which this section applies is taken into account in making an assessment under subsection (1) of this section, that part of the payment shall be left out of account in determining whether any and if so what amount should be assessed by reference to any other capital sum ; and the order in which this subsection is applied shall be the order in which the capital sums are obtained.
- (6) In this section and sections 493, 494 and 495 below—
- " asset " means any description of property or rights other than land or an interest in land,
  - " capital sum " means any sum of money, or any money's worth, except so far as it or any part of it is to be treated for the purposes of tax as a receipt to be taken into account in computing the profits or gains or losses of a trade, profession or vocation, or profits or gains or losses arising from woodlands, or is, apart from this section, chargeable under Case VI of Schedule D, and
  - " lease ", in relation to an asset, means any kind of agreement or arrangement under which payments are made for the use of, or otherwise in respect of, an asset, and includes, in particular, any agreement or arrangement all or any of the payments under which represent instalments of, or payments towards, a purchase price.
- (7) There shall be made all such adjustments of tax, whether by way of making assessments or by repayment of tax, as are required after the making of any such payment as is described in subsection (1) of this section to give effect to the charge under that subsection in respect of a sum obtained before the making of the payment.
- (8) Notwithstanding anything in the Tax Acts limiting the time within which an assessment may be made or a claim for relief may be admitted any such adjustment may be made, by making an assessment or otherwise, at any time not more than six years from the end of the chargeable period in which the payment was made.

### **493 Leased assets: special cases**

- (1) This section shall apply, and section 492 above shall not apply, to payments—
  - (a) which are allowable by way of deductions in computing the profits or gains or losses of a trade, and
  - (b) which are made under a lease of an asset which at any time before the creation of the lease was used for the purposes—
    - (i) of that trade, or
    - (ii) of another trade carried on by the person who at that time or later was carrying on the first mentioned trade,and when so used, was owned by the person carrying on the trade in which it was being used.
- (2) Subject to this section, the deduction allowable in computing the profits or gains or losses of the trade for the purposes of tax as respects any such payment shall not exceed the commercial rent of the asset for the period for which the payment was made.
- (3) If under subsection (2) of this section part of a payment which would otherwise be allowable as a deduction is not so allowable, and one or more subsequent payments are made by the same person under the same lease, that part of the first-mentioned payment may be carried forward and treated for the purposes of computing the profits or gains or losses of the trade for the purposes of tax as if it were made at the time when the next of those subsequent payments was made, and so made for the period for which that subsequent payment was made.
- (4) For the purposes of subsection (2) of this section—
  - (a) if more than one payment is made for the same period the payments shall be taken together,
  - (b) if payments are made for periods which overlap, the payments shall be apportioned, and the apportioned payments which belong to the common part of the overlapping periods shall be taken together,
  - (c) the preceding references to payments include references to parts of payments which under subsection (3) of this section are treated as if made at a time subsequent to that at which they were made,and to the extent that a part of a payment carried forward under subsection (3) of this section is not allowable as a deduction it may again be carried forward under the said subsection (3).
- (5) A payment made for a period all of which falls more than one year after the payment is made shall be treated for the purposes of this section as made for that period of one year beginning with the date on which the payment is made, and a payment for a period part of which falls after the end of that year shall be treated for those purposes as if a corresponding part of the payment was made for that year (and no part for any later period).
- (6) For the purpose of making a comparison under subsection (2) of this section between a payment, or payments taken together, and the commercial rent of the asset, "commercial rent" shall mean the rent which might at the relevant time be expected to be paid under a lease of the asset for the remainder of the anticipated normal working life of the asset, being a rent payable at uniform intervals and at a uniform rate which would afford a reasonable return for its market value at the relevant time, having regard to the terms and conditions of the lease, and in this subsection—

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" anticipated normal working life " has, for any asset, the meaning given, for machinery and plant, by section 20(7) of the Capital Allowances Act 1968, and

" the relevant time " means the time when the lease was created under which the payment was made with which the commercial rent is to be compared:

Provided that if the asset is used at the same time partly for the purposes of the trade and partly for other purposes the commercial rent as denned in this subsection shall be determined by reference to what would be paid for such a partial use of the asset.

- (7) This section shall not apply in relation to payments made under a lease created on or before 14th April 1964.
- (8) In this section references to the person carrying on a trade are references to the person carrying on the trade for the time being, and where at any time a person succeeds to a trade which until that time was carried on by another person, and by virtue of section 154 or section 251(1) of this Act the trade is to be treated as discontinued, the trade shall, nonetheless, be treated as the same trade for the purposes of this section.
- (9) In this section references to a trade include references, to a profession or vocation.

#### **494 Leased assets: supplemental**

- (1) References in section 492 above (in this section called " the principal section ") to a sum obtained in respect of the lessee's interest in a lease of an asset, or in respect of any other interest in an asset include—
  - (a) in the case of a lessee's interest, references to sums representing the consideration in money or money's worth obtained on a surrender of the rights to the lessor, or on an assignment of the lease, or on creating a sublease or any other interest out of the lease, and
  - (b) references to any insurance moneys payable in respect of the asset, so far as payable to the owner of the interest in the asset.
- (2) Such references also include references to sums representing money or money's worth obtained by the person entitled to the interest by a transaction or series of transactions disposing of the asset, or of an interest in the asset, and in particular transactions which comprise arrangements under which the rights of the lessee under a lease of the asset are merged in any way with the rights of the lessor, or with any other rights as respects the asset, so far as the money or money's worth so obtained is attributable to the rights of the lessee under the lease.
- (3) References in the principal section to sums obtained in respect of any interest in an asset include references to money or money's worth so obtained in any transaction (including a transaction of the kind described in the preceding provisions of this section) by way of consideration received by a person who is an associate of the person entitled to the interest in the asset.
- (4) If an interest in the asset is disposed of by any person to a person who is his associate, the person disposing of the interest shall (unless in fact he obtains a greater sum) be treated for the purposes of the principal section as having obtained in respect of the interest—
  - (a) the value of the interest in the open market, or
  - (b) the value of the interest to the person to whom it is, in effect, transferred, whichever is the greater.



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- (5) For the purposes of subsections (3) and (4) above a disposition may be direct or indirect and may be effected by any such transaction as is described in subsection (2) above.
- (6) For the purposes of the principal section, this section and section 495 below, any sum obtained by persons carrying on a trade, profession or vocation in partnership in respect of an interest in an asset which is and continues to be used for the purposes of the trade, profession or vocation shall be regarded as apportionable between them in the shares in which they are then entitled to the profits of the trade, profession or vocation.
- (7) Subject to subsection (6) above, for those purposes a sum obtained by persons jointly entitled to an interest in an asset shall be apportionable according to their respective interests in the rights.
- (8) For the said purposes, any payment in respect of which a deduction is allowable by way of tax relief which is made by persons carrying on a trade, profession or vocation in partnership shall be apportioned in such manner as may be just.
- (9) Where under this section any sum or payment falls to be apportioned and, at the time of the apportionment, it appears that it is material as respects the liability to tax (for whatever period) of two or more persons, any question which arises as to the manner in which the sum or payment is to be apportioned shall be determined, for the purposes of the tax of all those persons—
- (a) in a case where the same body of General Commissioners have jurisdiction with respect to all those persons, by those Commissioners, unless all those persons agree that it shall be determined by the Special Commissioners,
  - (b) in a case where different bodies of Commissioners have jurisdiction with respect to those persons, by such of those bodies as the Board may direct, unless all those persons agree that it shall be determined by the Special Commissioners, and
  - (c) in any other case, by the Special Commissioners,
- and any such Commissioners shall determine the question in like manner as if it were an appeal :

Provided that all the said persons shall be entitled to appear and be heard by the Commissioners who are to make the determination or to make representations to them in writing.

- (10) For the purposes of this section and in construing the expressions " associate " and " associated " in the principal section and this section, the following persons shall be deemed to be associated with each other, that is to say.—
- (a) any individual and that individual's husband or wife, and any relative, or husband or wife of a relative, of that individual or of that individual's husband or wife ("relative" meaning for this purpose brother, sister, ancestor or lineal descendant);
  - (b) any person in his capacity of trustee of a settlement and any individual who in relation to the settlement is a settlor, and any person associated with that individual ("settlement" and "settlor" having for this purpose the meanings assigned to them by section 444(2) of this Act);
  - (c) any person and a body of persons of which that person, or persons associated with him, or that person and persons associated with him, has or have control;
  - (d) any two or more bodies of persons associated with the same person by virtue of paragraph (c) above;

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- (e) in relation to a disposal by joint owners, the joint owners and any person associated with any of them.

In this subsection " body of persons " includes a partnership and "control" has the meaning assigned to it by section 534 of this Act.

#### **495 Leased assets subject to hire-purchase agreements**

- (1) In the application of section 492 above (in this section called "the principal section") to a lease which constitutes a hire purchase agreement, for the reference in the proviso to subsection (1) of that section to the amount of the capital sum there shall, where that capital sum was obtained in respect of the lessee's interest in the lease constituting the hire-purchase agreement, be substituted references to the amount of the capital sum (adjusted, if necessary, under subsection (4) of the principal section) after deducting any capital expenditure which was incurred by the person obtaining the capital sum in providing the lessee's interest and which is, for capital allowance purposes, still unallowed at the time when the assignment or other transaction takes place in respect of which the capital sum is obtained.
- (2) In subsection (1) above " capital expenditure incurred by the person obtaining the capital sum in providing the lessee's interest" means—
- (a) so much of any payment made under the lease by the person obtaining the capital sum (or, where the capital sum was obtained by the personal representatives of a deceased person, so made by that deceased person) as is not a payment in respect of which a deduction is allowable by way of tax relief which is one of the kinds listed in subsection (3) of the principal section, plus
  - (b) where the lessee's interest was assigned to the person obtaining the capital sum, any capital payment made by that person as consideration for the assignment.
- (3) In subsection (1) above the reference to the amount of capital expenditure which is, for capital allowance purposes, still unallowed at the said time shall be construed as a reference to the amount of the capital expenditure after deducting any amount which, under section 41 of the Capital Allowances Act 1968 (definition of "expenditure unallowed " for purposes of capital allowances for machinery and plant), would be deductible in ascertaining as at that time the amount still unallowed of expenditure incurred by the said person in providing the leased asset.
- (4) If the amount to be deducted in pursuance of subsection (1) above exceeds the amount of the capital sum from which it is to be deducted, no charge shall arise under subsection (1) of the principal section in respect of the capital sum.
- (5) If the capital sum represents the consideration for part only of the lessee's interest in the lease which constitutes a hire-purchase agreement, the amount to be deducted under subsection (1) above shall be such proportion of the capital expenditure which is still unallowed as is reasonable having regard to the degree to which the capital expenditure has contributed to the value of what is disposed of in return for the capital sum.
- (6) If more than one capital sum is, or is to be regarded as, obtained by the same person in respect of the lessee's interest in the lease which constitutes a hire-purchase agreement, then, so far as in respect of one of those capital sums any deduction is made in respect of capital expenditure in pursuance of subsection (1) above that capital expenditure shall be left out of account in applying subsections (1) and (4) above to any other such

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capital sum; and the order in which this subsection is applied shall be the order in which the capital sums are obtained.

- (7) In this section " hire-purchase agreement" has the meaning given by section 1 of the Hire-Purchase Act 1965.

In Scotland for the preceding definition there shall be substituted the following definition—

“" hire-purchase agreement " means any contract, in whatsoever terms it may be expressed, whereby goods are taken on hire by one person from another person in consideration of periodical payments to be made by the first mentioned person to the other person, with an option to the first mentioned person to become the buyer of the goods.”

#### **496 Transactions associated with loans or credit**

- (1) This section applies as respects any transaction effected with reference to the lending of money or the giving of credit, or the varying of the terms on which money is lent or credit is given, or which is effected with a view to enabling or facilitating any such arrangement concerning the lending of money or the giving of credit.

This subsection has effect whether the transaction is effected between the lender or creditor and the borrower or debtor, or between either of them and a person connected with the other or between a person connected with one and a person connected with the other.

- (2) If the transaction provides for the payment of any annuity or other annual payment, not being interest, being a payment chargeable to tax under Case III of Schedule D, the payment shall be treated for all the purposes of the Tax Acts as if it were a payment of annual interest.
- (3) If the transaction is one by which the owner of any securities or other property carrying a right to income agrees to sell or transfer the property, and by the same or any collateral agreement—
- (a) the purchaser or transferee, or a person connected with him, agrees that at a later date he will sell or transfer the same or any other property to the first-mentioned person, or a person connected with him, or
  - (b) the first-mentioned person, or a person connected with him, acquires an option which he subsequently exercises, to buy or acquire the same or any other property from the said purchaser or transferee or a person connected with him,
- then, without prejudice to the liability of any other person, the first-mentioned person shall be chargeable to tax under Case VI of Schedule D on an amount equal to any income which arises from the first-mentioned property at any time before the repayment of the loan or the termination of the credit.
- (4) If under the transaction a person assigns, surrenders or otherwise agrees to waive or forgo income arising from any property (without a sale or transfer of the property) then, without prejudice to the liability of any other person, he shall be chargeable to tax under Case VI of Schedule D on a sum equal to the amount of income assigned, surrendered, waived or forgone.
- (5) If credit is given for the purchase price of any property, and the rights attaching to the property are such that, during the subsistence of the debt, the purchaser's rights to income from the property are suspended or restricted, he shall be treated for the

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purposes of subsection (4) above as if he had surrendered a right to income of an amount equivalent to the income which he has in effect forgone by obtaining the credit.

- (6) The amount of any income payable subject to deduction of income tax at the standard rate shall be taken for the purposes of subsection (4) above as the amount before deduction of that tax.
- (7) References in this section to connected persons shall be construed in accordance with section 533 of this Act.

## PART XVIII

### DOUBLE TAXATION RELIEF

## CHAPTER I

### THE PRINCIPAL RELIEFS

#### 497 Relief by agreement with other countries

- (1) If Her Majesty by Order in Council declares that arrangements specified in the Order have been made with the government of any territory outside the United Kingdom with a view to affording relief from double taxation in relation to income tax or corporation tax and any taxes of a similar character imposed by the laws of that territory, and that it is expedient that those arrangements should have effect, then, subject to the provisions of this Part of this Act, the arrangements shall, notwithstanding anything in any enactment, have effect in relation to income tax and corporation tax in so far as they provide—
- (a) for relief from income tax, or from corporation tax in respect of income, or
  - (b) for charging the income arising from sources in the United Kingdom to persons not resident in the United Kingdom, or
  - (c) for determining the income to be attributed—
    - (i) to persons not resident in the United Kingdom and their agencies, branches or establishments in the United Kingdom, or
    - (ii) to persons resident in the United Kingdom who have special relationships with persons not so resident.
- (2) The provisions of Chapter II below shall apply where arrangements which have effect by virtue of this section provide that tax payable under the laws of the territory concerned shall be allowed as a credit against tax payable in the United Kingdom.
- (3) For the purposes of this section and, subject to section 503(3) below, of the said Chapter II in its application to relief under this section, any amount of tax which would have been payable under the law of a territory outside the United Kingdom but for a relief to which this subsection applies given under the law of that territory shall be treated as having been payable; and references in this section and that Chapter to double taxation, to tax payable or chargeable, or to tax not chargeable directly or by deduction shall be construed accordingly.

This subsection applies to any relief given with a view to promoting industrial, commercial, scientific, educational or other development in a territory outside the

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United Kingdom, being a relief with respect to which provision is made in the arrangements in question for double taxation relief.

- (4) Except in the case of a claim for an allowance by way of credit in accordance with Chapter II below, a claim for relief under subsection (1)(a) above shall be made to the Board.
- (5) Where, under any arrangements which have effect by Kingdom or in the territory with the government of which the virtue of this section, relief may be given, either in the United arrangements are made, in respect of any income, and it appears that the assessment to income tax or corporation tax made in respect of the income is not made in respect of the full amount thereof, or is incorrect having regard to the credit, if any, which falls to be given under the arrangements, any such assessments may be made as are necessary to ensure that the total amount of the income is assessed, and the proper credit, if any, is given in respect thereof, and, where the income is entrusted to any person in the United Kingdom for payment, any such assessment may be made on the recipient of the income under Case VI of Schedule D.
- (6) Any arrangements to which effect is given under this section may include provision for relief from tax for periods before the passing of this Act, or before the making of the arrangements, and provisions as to income which is not itself subject to double taxation, and the preceding provisions of this section shall have effect accordingly.
- (7) Any Order in Council made under this section may be revoked by a subsequent Order in Council, and any such revoking Order may contain such transitional provisions as appear to Her Majesty to be necessary or expedient.
- (8) Before any Order proposed to be made under this section is submitted to Her Majesty in Council, a draft thereof shall be laid before the House of Commons, and the Order shall not be so submitted unless an Address is presented to Her Majesty by that House praying that the Order be made.
- (9) Notwithstanding section 501(2) below, any arrangements made in relation to the profits tax under section 347 of the Income Tax Act 1952 (which this section re-enacts) or any earlier enactment corresponding to the said section 347 shall, except in so far as arrangements made after the passing of the Finance Act 1965 provide otherwise, have effect in relation to corporation tax and income chargeable thereto as they are expressed to have effect in relation to the profits tax and profits chargeable thereto (with the substitution of accounting periods for chargeable accounting periods), and not as they have effect in relation to income tax.

#### **498 Unilateral relief**

- (1) To the extent appearing from the following provisions of this section, relief from income tax and corporation tax in respect of income shall be given in respect of tax payable under the law of any territory outside the United Kingdom by allowing the last-mentioned tax as a credit against income tax or corporation tax, notwithstanding that there are not for the time being in force any arrangements under section 497 above providing for such relief:

Provided that the said relief shall not be given in respect of tax payable under the law of the Republic of Ireland.

- (2) The said relief (hereafter referred to as " unilateral relief ") shall be such relief as would fall to be given under Chapter II below if arrangements with the government

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of the territory in question containing the provisions specified in subsections (3) and (4) below were in force by virtue of the said section 497, but subject to any particular provision made with respect to unilateral relief in that Chapter; and any expression in that Chapter which imports a reference to relief under arrangements for the time being having effect by virtue of the said section 497 shall be deemed to import also a reference to unilateral relief.

- (3) Credit for tax paid under the law of the territory outside the United Kingdom and computed by reference to income arising in that territory shall be allowed against any United Kingdom income tax or corporation tax computed by reference to that income (profits from, or remuneration for, personal or professional services performed in that territory being deemed for this purpose to be income arising in that territory):

Provided that—

- (a) where the territory is the Isle of Man or any of the Channel Islands, the limitation to income arising in the territory shall not apply,
  - (b) where arrangements with the government of the territory are for the time being in force by virtue of section 497 above, credit for tax paid under the law of the territory shall not be allowed by virtue of this subsection in the case of any income if any credit for that tax is allowable under those arrangements in respect of that income, and
  - (c) credit shall not be allowed by virtue of this subsection for overseas tax on a dividend paid by a company resident in the territory unless—
    - (i) the overseas tax is directly charged on the dividend, whether by charge to tax, deduction of tax at source or otherwise, and the whole of it represents tax which neither the company nor the recipient would have borne if the dividend had not been paid, or
    - (ii) the dividend is paid to a company within subsection (4) below, or
    - (iii) the dividend is paid to a company to which section 509(1) below applies, and is a dividend of the kind described in that subsection.
- (4) Where a dividend paid by a company resident in the territory is paid to a company resident in the United Kingdom which either—
- (a) controls directly or indirectly, or
  - (b) is a subsidiary of a company which controls directly or indirectly,
- not less than 25 per cent. of the voting power in the company paying the dividend, or not less than 10 per cent. of the voting power if the territory is one of the Commonwealth territories, any tax in respect of its profits paid under the law of the territory by the company paying the dividend shall be taken into account in considering whether any, and if so what, credit is to be allowed in respect of the dividend.

In this subsection references to the Commonwealth territories, and to one company being a subsidiary of another, are to be construed in accordance with section 500 below.

- (5) Where unilateral relief may be given in respect of any income, and it appears that the assessment to income tax or corporation tax made in respect of the income is not made in respect of the full amount thereof, or is incorrect having regard to the credit, if any, which falls to be given by way of unilateral relief, any such assessments may be made as are necessary to ensure that the total amount of the income is assessed, and the proper credit, if any, is given in respect thereof, and, where the income is entrusted to any person in the United Kingdom for payment, any such assessment may be made on the recipient of the income under Case VI of Schedule D.

- (6) In this section, and in Chapter II below in its application to unilateral relief, references to tax payable or paid under the law of a territory outside the United Kingdom include only references to taxes which are charged on income and correspond to income tax or corporation tax in the United Kingdom, but, for this purpose, tax under the law of any such territory shall not be treated as not corresponding to income tax or corporation tax by reason only that it is payable under the law of a province, state or other part of a country, or is levied by or on behalf of a municipality or other local body.

#### **499 Application to corporation tax on chargeable gains**

The provisions of this Chapter and of Chapter II below, so far as they are applicable to capital gains tax by virtue of section 39(1) of the Finance Act 1965, shall have effect in relation to corporation tax in respect of chargeable gains as they have effect in relation to capital gains tax.

## **CHAPTER II**

### **RULES GOVERNING RELIEF BY WAY OF CREDIT**

#### *General*

#### **500 Interpretation of credit code**

- (1) In this Chapter, except where the context otherwise requires—
- " arrangements " means any arrangements having effect by virtue of section 497 above,
  - " Commonwealth territory " means any of Her Majesty's dominions, any other country for the time being mentioned in section 1(3) of the British Nationality Act 1948, any British protectorate or protected state, and any trust territory administered by the government of any part of Her Majesty's dominions,
  - " foreign tax " means, in relation to any territory arrangements with the government of which have effect by virtue of section 497 above, any tax chargeable under the laws of that territory for which credit may be allowed under the arrangements,
  - " the United Kingdom taxes " means income tax and corporation tax,
  - " underlying tax " means, in relation to any dividend, tax which is not chargeable in respect thereof directly or by deduction, and
  - " unilateral relief " means relief under section 498 above.
- (2) For the purposes of this Chapter one company is a subsidiary of another if the other company controls, directly or indirectly, not less than 50 per cent. of the voting power in the first company.
- (3) Any reference in this Chapter to foreign tax shall be construed in relation to credit to be allowed under any arrangements as a reference only to tax chargeable under the laws of the territory with the government of which the arrangements were made.

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### **501 Relief to be given by reducing U.K. taxes by amount of credit due**

- (1) Subject to the provisions of this Chapter, where under any arrangements credit is to be allowed against any of the United Kingdom taxes chargeable in respect of any income, the amount of the United Kingdom taxes so chargeable shall be reduced by the amount of the credit.
- (2) Nothing in subsection (1) above authorises the allowance of credit against any United Kingdom tax against which credit is not allowable under the arrangements.

### **502 Requirement as to residence**

Credit shall not be allowed under any arrangements against any of the United Kingdom taxes for any chargeable period unless the person in respect of whose income the United Kingdom tax is chargeable is resident in the United Kingdom for that period:

Provided that credit may be allowed by way of unilateral relief—

- (a) for tax paid under the law of the Isle of Man or any of the Channel Islands, if the person in question is, for the chargeable period in question, resident either in the United Kingdom or in the Isle of Man or the Channel Islands, as the case may be, and
- (b) for tax paid under the law of any territory and computed by reference to income from an office or employment the duties of which are performed wholly or mainly in that territory, against income tax chargeable under Schedule E and computed by reference to that income, if the person in question is for the year of assessment in question resident either in the United Kingdom or in that territory.

### **503 Computation, for purposes of U.K. taxes, of income subject to foreign tax**

- (1) Where credit for foreign tax falls under any arrangements to be allowed in respect of any income, and income tax or corporation tax is payable by reference to the amount received in the United Kingdom, the amount received shall be treated for the purposes of income tax or corporation tax as increased by the amount of the foreign tax in respect of the income, including, in the case of a dividend, any underlying tax which, under the arrangements, is to be taken into account in considering whether any, and if so what, credit is to be allowed in respect of the dividend.
- (2) Where credit for foreign tax falls under any arrangements to be allowed in respect of any income, and subsection (1) above does not apply, then, in computing the amount of the income for the purposes of income tax or corporation tax—
  - (a) no deduction shall be made for foreign tax, whether in respect of the same or any other income, and
  - (b) the amount of the income shall, in the case of a dividend, be treated as increased by any underlying tax which, under the arrangements, is to be taken into account in considering whether any, and if so what, credit is to be allowed in respect of the dividend.
- (3) The amount of any income shall not be treated as increased under this section by reference to any foreign tax which, although not payable, falls to be taken into account for the purposes of credit by virtue of section 497(3) above.



#### **504 Limits on credit: income tax**

- (1) The amount of the credit for foreign tax which, under any arrangements, is to be allowed to a person against income tax for any year of assessment shall not exceed the difference between the amounts of income tax which would be borne by him for the year (no credit being allowed for foreign tax)—
  - (a) if he were charged to tax on his total income for the year, computed in accordance with section 503 above, and
  - (b) if he were charged to tax on the same income, computed in the same way, but excluding the income in respect of which the credit is to be allowed.
- (2) Where credit for foreign tax is to be allowed in respect of income from more than one source, subsection (1) above shall be applied successively to the income from each source, but so that, on each successive application, paragraph (a) shall apply to the total income exclusive of the income to which the subsection has already been applied.
- (3) Without prejudice to subsections (1) and (2) above, the total credit for foreign tax to be allowed to a person against income tax for any year of assessment under all arrangements having effect by virtue of section 497 above shall not exceed the total income tax payable by him for that year of assessment, less any income tax which he is entitled to charge against any other person.

#### **505 Limit on credit: corporation tax**

The amount of the credit for foreign tax which, under any arrangements, is to be allowed against corporation tax in respect of any income shall not exceed the corporation tax attributable to that income.

#### *Underlying tax on dividends*

#### **506 Computation of underlying tax**

- (1) Where, in the case of any dividend, arrangements provide for underlying tax to be taken into account in considering whether any, and if so what, credit is to be allowed against the United Kingdom taxes in respect of the dividend, the tax to be taken into account by virtue of that provision shall be so much of the foreign tax borne on the relevant profits by the body corporate paying the dividend as is properly attributable to the proportion of the relevant profits represented by the dividend.
- (2) For the purposes of subsection (1) above, the relevant profits are—
  - (a) if the dividend is paid for a specified period, the profits of that period,
  - (b) if the dividend is not paid for a specified period, but is paid out of specified profits, those profits, and
  - (c) if the dividend is paid neither for a specified period nor out of specified profits, the profits of the last period for which accounts of the body corporate were made up which ended before the dividend became payable:

Provided that if, in a case falling under paragraph (a) or (c) above, the total dividend exceeds the profits available for distribution of the period mentioned in the said paragraph (a) or (c), as the case may be, the relevant profits shall be the profits of that period plus so much of the profits available for distribution of preceding periods (other than profits previously distributed or previously treated as relevant for the purposes of this section) as is equal to the excess; and for the purposes of this proviso, the profits

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of the most recent preceding period shall first be taken into account, then the profits of the next most recent preceding period, and so on.

- (3) Profits treated as relevant for the purposes of paragraph 9 of Schedule 16 to the Income Tax Act 1952 (which this section re-enacts), and profits deemed by virtue of that paragraph to be profits previously so treated, shall be deemed for the purposes of this section to be profits previously treated as relevant for the purposes of this section.

**507 Extension of relief to certain dividends not covered by arrangements where paid between related companies**

- (1) Where—

- (a) arrangements provide, in relation to dividends of some classes but not in relation to dividends of other classes, that underlying tax is to be taken into account in considering whether any, and if so what, credit is to be allowed against the United Kingdom taxes in respect of the dividends, and
- (b) a dividend is paid which is not of a class in relation to which the arrangements so provide,

then, if the dividend is paid to a company which controls directly or indirectly, or is a subsidiary of a company which controls directly or indirectly, not less than 25 per cent. of the voting power in the company paying the dividend, credit shall be allowed as if the dividend were a dividend of a class in relation to which the arrangements so provide.

- (2) Where any arrangements contain a provision which.—

- (a) applies to any company which controls, directly or indirectly, not less than a stated fraction of the voting power of a company resident in a specified territory outside the United Kingdom, and
- (b) in allowing credit against United Kingdom tax on dividends paid to any such company by the company so resident, authorises account to be taken of tax payable by the company so resident in respect of the profits out of which the dividends were paid,

then, subject to subsection (3) below, credit shall be allowed under the arrangements as if the provision treated the subsidiary of a company which owns, directly or indirectly, the stated fraction of the voting power of a company resident in the specified territory as if that subsidiary also owned that fraction of the voting power of the company so resident.

- (3) Subsections (1) and (2) above have no application to unilateral relief; and credit shall not be allowable in the case of the same income both by virtue of the said subsection (2) and by way of unilateral relief.

**508 Extension of relief to U.K. and third country taxes where dividends paid between related companies**

- (1) Where a dividend is paid by a company resident in a territory outside the United Kingdom to a company resident in the United Kingdom which either—

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

not less than 25 per cent. of the voting power in the company paying the dividend, then, for the purpose of allowing credit under any arrangements against corporation tax in respect of the dividend, any United Kingdom income tax or corporation tax payable

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by the first-mentioned company in respect of its profits, and any tax so payable under the law of any territory outside the United Kingdom, shall be taken into account as if it were tax payable under the law of the first-mentioned territory.

- (2) In relation to dividends paid by a company resident in a Commonwealth territory, subsection (1) above shall have effect for the purposes of unilateral relief with the substitution of " 10 per cent. " for " 25 per cent. ".

### **509 U.K. insurance companies trading overseas**

- (1) Subject to subsection (2) below, where a company resident in the United Kingdom is charged to tax under Case I of Schedule D in respect of any insurance business carried on by it, and that business or any part of it is carried on through a branch or agency in a territory outside the United Kingdom, then, in respect of dividends referable to that business which are paid to the company by companies resident in that territory, any tax payable by those companies in respect of their profits under the law of that or any other territory outside the United Kingdom, and any United Kingdom income tax or corporation tax so payable, shall, in considering whether any, and if so what, credit is to be allowed under any arrangements, be taken into account as tax so payable under the law of the first-mentioned territory is taken into account in a case falling within section 506 above.
- (2) Credit shall not be allowed to a company by virtue of subsection (1) above for any financial year in respect of a greater amount of dividends paid by companies resident in any overseas territory than is equal to any excess of the relevant fraction of the company's total income in that year from investments (including franked investment income and group income) so far as referable to the said business over the amount of the dividends so referable which are paid to it in the year by companies resident in that territory and in respect of which credit may, apart from the said subsection (1), be allowed to it for underlying tax.
- (3) For the purposes of subsection (2) above "the relevant fraction " is, in relation to any overseas territory, the fraction of which the numerator is the company's local, and the denominator the company's total, premium income in the financial year so far as referable to the said business, and premium income shall be deemed to be local premium income in so far as it consists of premiums under contracts entered into at or through a branch or agency in that territory by persons not resident in the United Kingdom.

#### *Miscellaneous rules*

### **510 Relief against income tax in respect of income arising in years of commencement**

- (1) Subject to the provisions of this section, credit for overseas tax paid in respect of any income arising in the years of commencement shall be allowed under this Part of this Act against United Kingdom income tax chargeable for any year of assessment in respect of that income if it would have been so allowed but for the fact that credit for that overseas tax had been allowed against the United Kingdom income tax chargeable in respect of that income for a previous year of assessment.
- (2) The amount of credit to be allowed in respect of any income by virtue of this section for any year of assessment shall not exceed the difference between—

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- (a) the total credit allowable against income tax in respect of that income under this Part of this Act (including this section) for all years of assessment for which credit is so allowable, and
  - (b) the amount of credit which was in fact so allowed in respect of that income for any earlier year or years of assessment.
- (3) The total credit allowable as aforesaid in respect of any income for all those years of assessment shall be taken to be the amount of the overseas tax charged on that income, adjusted where the number of the United Kingdom periods of assessment exceeds the number of the foreign periods of assessment, in the proportion which the former number bears to the latter, a period for which part only of the income is charged to tax being counted not as one period but as a fraction equal to the proportion which that part of the income bears to the whole of the income.
- (4) Where the same income is charged to different overseas taxes for different foreign periods of assessment, subsection (3) above, so far as it relates to the adjustment of overseas tax, shall be applied separately to each of the overseas taxes, and the total credit allowable shall be the aggregate of those taxes after the making of any adjustments in accordance with that subsection as so applied.
- (5) Where credit against income tax for any year of assessment is allowed by virtue of subsection (1) above in respect of any income (hereafter referred to as "the original income"), and subsequently, by reason of the enactments relating to cessation, income arising in a non-basis period from the same source as the original income is not assessed to income tax, then, if the amount of credit allowed against income tax in respect of the original income under this Part of this Act (including this section) for all years of assessment for which credit is so allowable exceeds the aggregate of the following amounts—

- (a) the amount of the credit against income tax which would have been allowed apart from subsection (1) above for all those years in respect of the original income, and
- (b) the amount of the overseas tax for which, under this Part of this Act, credit would have been allowable against income tax in respect of income arising in the non-basis period from the same source as the original income,

the person chargeable in respect of income (if any) from the same source in the year of assessment following the non-basis period shall be treated as having received in that year a payment chargeable under Case VI of Schedule D of an amount such that income tax thereon at the standard rate is equal to the excess:

Provided that any payment which any person is treated by virtue of this subsection as having received shall not on that account constitute income of his for any of the purposes of the Income Tax Acts other than this subsection, and, in particular, no part thereof shall constitute profits or gains brought into charge to income tax for the purposes of section 52 of this Act.

- (6) Any claim for relief by way of credit under subsection (1) above against income tax for any year of assessment shall be made within six years of the end of that year, or, where there is more than one year of assessment in respect of which such relief may be given, within six years of the end of the later of them.
- (7) In this section—
- " overseas tax " means tax under the law of a territory outside the United Kingdom,

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" non-basis period " means a period the income arising in which is, by reason only of the operation of the enactments relating to cessations, not chargeable to United Kingdom income tax for any year of assessment,

" United Kingdom period of assessment " and " foreign period of assessment ", in relation to any income, mean respectively a year or other period for which under the relevant law the income falls to be charged to the relevant tax,

" years of commencement ", in relation to income from any source, means the first three years of assessment for which income from that source falls to be assessed to income tax, and also, in the case of profits or gains chargeable to tax under Case I or Case II of Schedule D, the whole of any period falling partly within those years such that the profits or gains arising in the period fall to be assessed to income tax for a year of assessment later than those years,

references to the enactments relating to cessations are references to sections 118, 121, 124 and 154 of this Act, and

references to income arising in any year include, in relation to income the income tax on which is to be computed by reference to the amount of income received in the United Kingdom, references to income received in that year.

#### **511 Elections against credit**

Credit shall not be allowed under any arrangements against the United Kingdom taxes chargeable in respect of any income of any person if he elects that credit shall not be allowed in respect of that income.

#### **512 Time limit for claims etc.**

- (1) Subject to subsection (2) below and section 510(6) above, any claim for an allowance under any arrangements by way of credit for foreign tax in respect of any income shall be made not later than six years from the end of the chargeable period for which the income falls to be charged to income tax or corporation tax, or would fall so to be charged if any income tax or corporation tax were chargeable in respect thereof.
- (2) Where the amount of any credit given under the arrangements is rendered excessive or insufficient by reason of any adjustment of the amount of any tax payable either in the United Kingdom or under the laws of any other territory, nothing in the Tax Acts limiting the time for the making of assessments or claims for relief shall apply to any assessment or claim to which the adjustment gives rise, being an assessment or claim made not later than six years from the time when all such assessments, adjustments and other determinations have been made, whether in the United Kingdom or elsewhere, as are material in determining whether any, and if so what, credit falls to be given.

### **CHAPTER III**

#### **OTHER PROVISIONS**

#### **513 Relief under agreements with Republic of Ireland**

- (1) The repeals effected by this Act shall not affect the confirmation by any enactment of any agreement in force at the passing of this Act between the United Kingdom and the Republic of Ireland, and accordingly, subject to subsection (2) below, the agreement

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of 14th April 1926 set out in Part I of Schedule 12 to this Act, as modified by the agreements of 25th April 1928, 4th April 1959 and 23rd June 1960 there set out, shall, for any year of assessment for which, under the law of the Republic of Ireland, it has effect with respect to exemption and relief from Republic of Ireland income tax, have effect with respect to exemption or relief to be granted from United Kingdom income tax.

- (2) In paragraph (1) of the Article substituted for Article 2 of the said agreement of 1926 by Article 2 of the said agreement of 1928, the references to section 27 of the Finance Act 1920 shall be taken to be references to that section as set out in Part II of the said Schedule 12 with amendments made therein by subsequent enactments and certain omissions and adaptations of provisions and phrases which have become inapt or unnecessary, or are unnecessary, inapplicable or unsuitable in the case of the Republic of Ireland.
- (3) For the purpose of giving effect to the agreements to which this section applies, the Income Tax Acts, in relation to—
  - (a) persons resident in the United Kingdom, whether or not also resident in the Republic of Ireland, and
  - (b) persons entrusted with payment to persons so resident, and
  - (c) claims by persons resident in the Republic of Ireland,shall, for any year for which the said agreements are in force, have effect subject to the provisions of Part III of the said Schedule 12.
- (4) The deduction to be given to an individual under section 22 of this Act (reduced rate relief) shall not, where relief is given under section 27 of the Finance Act 1920 as set out in Part II of the said Schedule 12, be less than it would have been if that relief had not been given.
- (5) The power to make regulations conferred by subsection (7) of the said section 27 as so set out shall be deemed for the purposes of section 1 of the Statutory Instruments Act 1946 to be a power conferred by an Act passed after the commencement of that Act, and shall be exercisable by statutory instrument.
- (6) For the purpose of carrying out any obligation of the Government of the United Kingdom under Article 2 of the said agreement of 1960, Her Majesty may by Order in Council direct that any provisions of the Income Tax Acts specified in the Order (being provisions affecting in any way exemptions from income tax of persons resident in the United Kingdom) shall not affect, and be deemed not to have affected, exemptions from income tax which persons enjoy as not resident in the United Kingdom but resident in the Republic of Ireland.
- (7) Nothing in this section or the said Schedule 12 applies for the purposes of corporation tax.

#### **514 Relief under agreements about shipping, air transport and agency profits**

- (1) If Her Majesty in Council is pleased to declare—
  - (a) that any profits or gains arising from the business of shipping or from the business of air transport which are chargeable to United Kingdom income tax are also chargeable to income tax payable under the law in force in any territory outside the United Kingdom, and
  - (b) that arrangements, as specified in the declaration, have been made with the government of that territory with a view to the granting of relief in cases where

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such profits and gains are chargeable both to United Kingdom income tax and to the income tax payable in that territory,

then, unless and until the declaration is revoked by Her Majesty in Council, the arrangements specified therein shall, so far as they relate to the relief to be granted from United Kingdom tax, have effect as if enacted in this Act, but only if and so long as the arrangements, so far as they relate to the relief to be granted from the income tax payable in the said territory, have the effect of law in that territory.

In this subsection " the business of shipping" means the business carried on by an owner of ships, and " the business of air transport" means the business carried on by an owner of aircraft, and for the purpose of these definitions " owner" includes any charterer.

(2) If Her Majesty in Council is pleased to declare—

- (a) that any profits or gains arising directly or indirectly to a person resident in any territory outside the United Kingdom through an agency in the United Kingdom, or to a person resident in the United Kingdom through an agency in any such territory, are chargeable both to United Kingdom income tax and to income tax payable under the law in force in that territory, and
- (b) that arrangements, as specified in the declaration, have been made with the government concerned with a view to the granting of relief from such double taxation,

then, unless and until the declaration is revoked by Her Majesty in Council, the arrangements specified therein shall, so far as they relate to the relief to be granted from United Kingdom tax, have effect as if enacted in this Act, but only if and so long as the arrangements, so far as they relate to the relief to be granted from the income tax payable in the said territory, have the effect of law in that territory:

Provided that no arrangements made under this subsection shall exempt from United Kingdom tax any profits or gains which either—

- (i) arise from the sale of goods from a stock in the United Kingdom, or
- (ii) accrue to a person resident in the United Kingdom, or
- (iii) accrue to a person not resident in the United Kingdom directly or indirectly through any branch or management in the United Kingdom, or through any agency in the United Kingdom where the agent has, and habitually exercises, a general authority to negotiate and conclude contracts.

(3) Any declaration made by Her Majesty in Council under this section shall be subject to annulment in pursuance of a resolution of the House of Commons.

(4) In this section, and in any arrangements made under any earlier enactment corresponding to this section, references to income tax include references to corporation tax; and any reference in any such arrangements to British income tax shall be deemed for the purposes of this section to be a reference to United Kingdom income tax.

## **515 Postponement of capital allowances to secure double taxation relief**

(1) Where a person chargeable to tax in respect of a trade under Case I of Schedule D is liable to overseas tax in respect of any income arising from the trade, being overseas tax for which relief may be given by way of credit, repayment or set-off under the preceding provisions of this Part of this Act, and the conditions specified in subsection (2) below are satisfied, he may, in claiming the relief in respect of that

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income, claim a postponement under this section of the relevant capital allowances operating to reduce that income for the purposes of tax for any chargeable period.

- (2) The said conditions are—
- (a) that the law under which the overseas tax is chargeable provides for deductions or allowances to be given corresponding to capital allowances, but on a different basis such that they operate to reduce the income in question (if at all) to a less extent than the capital allowances to which the claim relates, but are calculated to operate to a greater extent than the corresponding capital allowances to reduce income arising subsequently, and
  - (b) that the relief falling to be given as aforesaid in respect of the income in question is less than it would be if the capital allowances to which the claim relates operated to reduce the income to the same extent only as the deductions or allowances so provided for.
- (3) Where a person claims a postponement under this section of capital allowances for any chargeable period, then, for the purpose of making the assessment for that period, the amount of those allowances shall be reduced by such amount as may be necessary to secure that they operate to reduce the income only to the extent mentioned in subsection (2) (b) above (or such less amount as the claimant may require), and, for the purpose of making the assessment for the following period, that amount shall be added to the amount of the allowances for that period, and shall be deemed to be part of those allowances or, if there are no such allowances for that period, shall be deemed to be the allowances for that period.
- (4) For the purposes of any claim under this section there shall be taken into account such only of the relevant capital allowances, and the deductions or allowances operating to reduce the income in question for purposes of the overseas tax, as are calculated to give relief in respect of the same expenditure or the same assets.
- (5) In this section " overseas tax " means tax chargeable under the laws of any territory outside the United Kingdom, and " relevant capital allowances ", in relation to any trade, means capital allowances falling to be made in taxing the trade; and the reference in subsection (1) above to tax for a chargeable period shall be construed, in relation to corporation tax, as referring to the tax for any financial year which is chargeable in respect of that period.
- (6) This section applies (with any necessary adaptations) in relation to a profession, employment, vocation or office, and in relation to the occupation of woodlands the profits or gains of which are assessable under Schedule D, as it applies in relation to a trade.

## **516 Deduction for foreign tax where no credit allowable**

- (1) For the purposes of the Tax Acts, the amount of any income arising in any place outside the United Kingdom shall, subject to subsection (2) below, be treated as reduced by any sum which has been paid in respect of tax on that income in the place where the income has arisen (that is to say, tax payable under the law of a country outside the United Kingdom).
- (2) Subsection (1) above—
- (a) shall not apply to income the tax on which is to be computed by reference to the amount of income received in the United Kingdom, and



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(b) shall not affect the proviso to section 27(2) of this Act (computation of personal reliefs for non-residents by reference to total income, including income not taxed in United Kingdom),  
and this section has effect subject to section 503(2) above (no deduction for foreign tax if credit allowable therefor).

#### **517 Power to make regulations for carrying out s. 497**

- (1) The Board may from time to time make regulations generally for carrying out the provisions of section 497 above or any arrangements having effect thereunder, and may in particular by those regulations provide—
- (a) for securing that relief from taxation imposed by the laws of the territory to which any such arrangements relate does not enure to the benefit of persons not entitled thereto, and
  - (b) for authorising, in cases where tax deductible from any payment has, in order to comply with any such arrangements, not been deducted, and it is discovered that the arrangements did not apply to that payment, the recovery of the tax by assessment on the person entitled to the payment or by deduction from subsequent payments.

The power conferred by this subsection to make regulations shall be exercisable by statutory instrument.

- (2) The giving of relief under this Part of this Act in respect of income tax under Schedule F by authorising, pursuant to regulations under subsection (1) above, the making of distributions of amounts exceeding what would otherwise be distributed shall not affect the provisions of paragraph 2 of Schedule F (which determines the amount of income tax under that Schedule chargeable in respect of any distribution), and references in the said paragraph 2 to the amount of the distribution shall be taken as references to that amount apart from any increase made in pursuance of such regulations.

#### **518 Disclosure of information**

- (1) Where, under the law in force in any territory outside the United Kingdom, provision is made for the allowance, in respect of the payment of United Kingdom income tax or corporation tax, of relief from tax payable under that law, the obligation as to secrecy imposed by the Tax Acts upon persons employed in relation to Inland Revenue shall not prevent the disclosure to the authorised officer of the government of the territory in question of such facts as may be necessary to enable the proper relief to be given under the law thereof.

Section 498(6) above shall apply to the interpretation of this subsection as it applies to the interpretation of that section.

- (2) Where any arrangements have effect by virtue of section 497 above, the obligation as to secrecy imposed by any enactment shall not prevent the Board, or any authorised officer of the Board, from disclosing to any authorised officer of the government with which the arrangements are made such information as is required to be disclosed under the arrangements.
- (3) Where a person beneficially entitled to income from any securities as defined by section 24 of the Taxes Management Act 1970 (information as to income from

securities) is resident in a territory to which arrangements having effect under the said section 497 with respect to income tax or corporation tax relate, subsection (3) of the said section 24 shall not exempt any bank from the duty of disclosing to the Board particulars relating to the income of that person.

- (4) The obligation as to secrecy imposed by any enactments with regard to income tax or corporation tax shall not prevent the disclosure, to any authorised officer of any country to which a declaration under section 514 above relates, of such facts as may be necessary to enable relief to be duly given in accordance with the arrangements specified in the declaration.

## PART XIX

### SUPPLEMENTAL

#### **519 Deductions not to be allowed in computing profits or gains**

- (1) In arriving at the amount of profits or gains for tax purposes—
- (a) no other deductions shall be made than such as are expressly enumerated in the Tax Acts, and
  - (b) no deduction shall be made on account of any annuity or other annual payment (not being interest) to be paid out of such profits or gains in regard that a proportionate part of income tax is allowed to be deducted on making any such payment.
- (2) In arriving at the amount of profits or gains from any property described in the Tax Acts, or from any office or employment, no deduction shall be made on account of diminution of capital employed, or of loss sustained, in any trade, or in any profession, employment or vocation.
- (3) Interest payable to the Land Commission under section 51 of the Land Commission Act 1967 at the rate determined by the Betterment Levy (Rate of Interest) (No. 2) Order 1969 or by any subsequent order made under section 51(2) of that Act shall not be allowed as a deduction in computing any income, profits or losses for any tax purposes.

#### *Income tax provisions*

#### **520 Application of Income Tax Acts from year to year**

In order to ensure the collection in due time of income tax which may be granted for any year commencing on 6th April, all such provisions contained in the Income Tax Acts as were in force on the preceding day shall have full force and effect with respect to tax which may be so granted, in the same manner as if the said tax had been actually granted by Act of Parliament and the said provisions had been applied thereto by the Act.

#### **521 Under-deductions from payments made before passing of annual Act**

- (1) Where, in any year of assessment, any half-yearly or quarterly payments have been made on account of any interest, dividends or other annual profits or gains, previously

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to the passing of the Act imposing income tax for that year, and tax has not been charged thereon or deducted therefrom, or has not been charged thereon or deducted therefrom at the rate ultimately imposed for the said year, the amount not so charged or deducted shall be charged under Schedule D in respect of those payments, as profits or gains not charged by virtue of any other Schedule, under Case VI of Schedule D, and the agents entrusted with the payment of the interest, dividends or other annual profits or gains shall furnish to the Board a list containing the names and addresses of the persons to whom payments have been made and the amount of those payments, upon a requisition made by the Board in that behalf.

- (2) Any person liable to pay any rent, interest or annuity, or to make any other annual payment, shall be authorised to make any deduction on account of income tax for any year of assessment which he has failed to make previously to the passing of the Act imposing the tax for that year, or to make up any deficiency in any such deduction which has been so made, on the occasion of the next payment of the rent, interest or annuity or making of the other annual payment after the passing of the Act so imposing the tax, in addition to any other deduction which he may be by law authorised to make, and shall also be entitled, if there is no future payment from which the deduction may be made, to recover the sum which might have been deducted as if it were a debt due from the person as against whom the deduction could originally have been made if the Act imposing the tax for the year had been in force.
- (3) Subsection (2) above shall apply with respect to—
- (a) any preference dividend from which a deduction of tax may be made under section 232(3) of this Act (Schedule F), and
  - (b) any payment for or in respect of copyright to which section 391 of this Act (copyrights owned by persons whose usual place of abode is abroad) applies, and
  - (c) any royalty or other sum paid in respect of the user of a patent, and
  - (d) any rent, royalty or other payment which by section 156 or 157 of this Act (mining etc. rents and royalties) is declared to be subject to deduction of tax under Part II of this Act as if it were a royalty or other sum paid in respect of the user of a patent,
- as it applies with respect to any rent, interest, annuity or any other annual payment.

## **522 Over-deductions from interest on loan capital or preference dividends made before passing of annual Act**

If, in any year of assessment, a resolution having statutory effect under the Provisional Collection of Taxes Act 1968 provides for the charging of income tax at a standard rate lower than that charged for the previous year, the following provisions shall have effect with respect to deductions in respect of income tax by any body corporate, from payments of interest on any of its securities, or under section 232(3) of this Act from payments of preference dividends on any of its shares—

- (a) any deduction, which was made before the expiration of one month from the passing of the resolution and which would, if the tax had been renewed at the rate imposed for the previous year, have been a legal deduction, shall be deemed to be a deduction rendered legal by section 2 of the Provisional Collection of Taxes Act 1968, and the said section 2 shall, subject to the provisions of this section, apply accordingly;
- (b) any over-deduction to be made good under the said section 2 may be made good by a reduction of the amount of tax deducted from the next payment of

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like nature made on the security or share in question after the passing of the Act imposing the tax for the year:

Provided that the preceding provision shall not authorise the retention of any part of the amount over-deducted for more than one year from the passing of the Act so imposing the tax ;

- (c) any amount made good under the said section 2 shall—
- (i) in the case of an over-deduction which is made good under paragraph (b) of this section, enure to the benefit of the person entitled to the payment on the occasion of which the over-deduction is made good; and
  - (ii) in any other case, enure to the benefit of the person entitled to the security or share in question at the date when the amount is made good,

irrespective, in either case, of whether or not he is the person who was entitled to the payment, or to the security or share, at the date when the original deduction was made.

In this section " share " includes stock.

### **523 Adjustment of reliefs where reliefs not all given at the same time**

Where, under the provisions of the Income Tax Acts, an individual is entitled to claim relief from income tax (other than relief in respect of life insurance premiums), by repayment or otherwise, in respect of—

- (a) any amount which is paid or borne by him out of his income or which is allowable or may be deducted therefrom; or
- (b) any reduction of an assessment relating to his income or any part thereof; or
- (c) any adjustment or set-off with regard to a loss,

and claims that relief for any year of assessment, any relief granted shall not extend so as to make the total income tax paid or payable by him for that year less than it would have been if the amount in respect of which relief is claimed had been deducted in computing his total income for that year and the amount of any other deductions or reliefs to which he is entitled for that year had been determined accordingly.

### **524 Application of Income Tax Acts to public departments**

- (1) Subject to subsection (2) below, all the provisions of the Income Tax Acts relating to the assessment, charge, deduction and payment of income tax shall apply in relation to public offices and departments of the Crown:

Provided that nothing in those provisions shall require the payment by any such office or department of any tax which would be ultimately borne by the Crown.

- (2) Subsection (1) above shall not apply to public offices and departments of any country, state, province or colony within paragraph (b) or (c) of section 372(2) of this Act (Commonwealth Agents-General, and official agents, etc.), and nothing in subsection (1) above shall exempt any Government from taxation to which it is liable in connection with any office or department by virtue of section 25 of the Finance Act 1925 (liability of Governments of places within, and certain places outside, Her Majesty's dominions to taxation in respect of trading operations).

## **525 No exemption from tax under letters patent or statutes**

- (1) No letters patent granted or to be granted by the Crown to any person, city, borough or town corporate of any liberty, privilege, or exemption from subsidies, tolls, taxes, assessments or aids, and no statute which grants any salary, annuity or pension to any person free of any taxes, deductions or assessments, shall be construed or taken to exempt any person, city, borough or town corporate, or any inhabitant of the same, from income tax, and all non-obstacles in any such letters patent or statute made or to be made to the contrary effect shall be void.
- (2) This section shall apply in relation to tax chargeable in pursuance of Part III of the Finance Act 1965 (tax on chargeable gains) as it applies in relation to income tax.

### *Interpretation*

## **526 Definitions for income tax and corporation tax**

- (1) In this Act and in any other Act, except in so far as the context otherwise requires—
  - (a) " the Corporation Tax Acts " means—
    - (i) Parts X and XI of this Act (including provisions relating to income tax), and
    - (ii) all other provisions of this or any other Act relating to corporation tax or to any other matter dealt with in Part X or Part XI of this Act, and
    - (iii) all the provisions of Part IV of the Finance Act 1965 and of any other enactment which, at the passing of this Act, formed part of or was to be construed with the Corporation Tax Acts,
  - (b) " the Income Tax Acts " means all enactments relating to income tax, including any provisions of the Corporation Tax Acts which relate to income tax.
- (2) In this Act, and in any Act passed after this Act, " the Tax Acts ", except in so far as the context otherwise requires, means this Act and all other provisions of the Income Tax Acts and the Corporation Tax Acts.
- (3) Except in so far as the context otherwise requires, in this Act, and in any enactment passed after this Act which by any express provision is to be construed as one with the Tax Acts, " tax ", where neither income tax nor corporation tax is specified, means either of those taxes.
- (4) Subsection (3) above is without prejudice to the provisions of section 250 of this Act which apply income tax law for certain purposes of corporation tax, and accordingly the employment of " income tax " rather than " tax " in any provision of this Act is not a conclusive indication that that provision is not applied to corporation tax by the said section 250.
- (5) In the Tax Acts, except in so far as the context otherwise requires—
  - " Act " includes an Act of Parliament of Northern Ireland and " enactment " shall be construed accordingly,
  - " the Board " means the Commissioners of Inland Revenue,
  - " body of persons " means any body politic, corporate or collegiate, and any company, fraternity, fellowship and society of persons whether corporate or not corporate,

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" capital allowance " means any allowance under the Capital Allowances Act 1968, including, as being provisions to be construed as one with that Act, section 78, section 306 and Chapter I of Part XIV of this Act,

" chargeable gain " has the same meaning as in Part III of the Finance Act 1965,

" chargeable period " means an accounting period of a company or a year of assessment,

" close company " has the meaning given by sections 282 and 283 of this Act,

" collector " means any collector of taxes,

" company " means, subject to subsection (6) below, any body corporate or unincorporated association, but does not include a partnership, a local authority or a local authority association,

" farm land " means land in the United Kingdom wholly or mainly occupied for the purposes of husbandry, but excluding any dwelling or domestic offices, and excluding market garden land, and " farming " shall be construed accordingly,

" franked investment income " shall be construed in accordance with section 240 of this Act (but subject to section 256(1) of this Act), and any reference to a " surplus of franked investment income " is a reference to such a surplus as is referred to in section 240(1) of this Act,

" inspector " means any inspector of taxes, " interest " means both annual or yearly interest and interest other than annual or yearly interest,

" local authority " and " local authority association " have the meanings given by section 353 of this Act,

" market garden land " means land in the United Kingdom occupied as a nursery or garden for the sale of the produce (other than land used for the growth of hops), and " market gardening " shall be construed accordingly,

" ordinary share capital ", in relation to a company, means all the issued share capital (by whatever name called) of the company, other than capital the holders whereof have a right to a dividend at a fixed rate or a rate fluctuating in accordance with the standard rate of income tax, but have no other right to share in the profits of the company,

" preference dividend " means a dividend payable on a preferred share or preferred stock at a fixed gross rate per cent. or, where a dividend is payable on a preferred share or preferred stock partly at a fixed gross rate per cent. and partly at a variable rate, such part of that dividend as is payable at a fixed gross rate per cent., but it does not include any dividend or part of a dividend which is paid without deduction of income tax (and for this purpose a payment shall be treated as made without deduction of income tax unless either there is made from it the full deduction authorised by section 232(3) of this Act or the payment is, before the passing of an Act imposing income tax for the year of assessment, made subject to deduction of tax by reference to a standard rate less than that ultimately imposed),

" trade " includes every trade, manufacture, adventure or concern in the nature of trade,

" year of assessment " means, with reference to any income tax, the year for which such tax was granted by any Act granting income tax,

" the year 1970-71 " means the year of assessment beginning on 6th April 1970, and any corresponding expression in which two years are similarly

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mentioned means the year of assessment beginning on 6th April in the first mentioned of those two years.

- (6) The definition of " company " above is subject to section 354 of this Act (authorised unit trusts), and does not apply in the following provisions of this Act, that is—  
Chapter I of Part XVII;  
sections 486 to 489 ;  
section 533; and  
Schedule 12,  
(and also does not apply where the context otherwise requires because some other definition of " company " applies).

## **527 Interpretation of Corporation Tax Acts**

- (1) For the purposes of the Corporation Tax Acts, except in so far as the context otherwise requires—  
" accounting date " means the date to which a company makes up its accounts and " period of account " means the period for which it does so,  
" allowable loss " does not include, for the purposes of corporation tax in respect of chargeable gains, a loss accruing to a company in such circumstances that if a gain accrued the company would be exempt from corporation tax in respect of it,  
" branch or agency " means any factorship, agency, receivership, branch or management,  
" charges on income " has the meaning given by section 248 of this Act,  
" distribution " has the meaning given by Part X of this Act with sections 284 and 285,  
" the financial year 1970 " means the financial year beginning with April 1970, and similarly with references embodying other dates,  
" group income " shall be construed in accordance with section 256 of this Act,  
" group relief " has the meaning given by section 258 of this Act,  
a source of income is " within the charge to " corporation tax or income tax if that tax is chargeable on the income arising from it, or would be so chargeable if there were any such income, and references to a person, or to income, being within the charge to tax, shall be similarly construed.
- (2) Section 238(4) of this Act (definition of "profits" and " trade " for purposes of Part XI of this Act) shall also apply for the purposes of the following provisions of this Act, that is to say—  
Chapter II of Part VII,  
sections 304 and 305,  
section 346,  
sections 483 and 484,  
and sections 73 and 74 of the Capital Allowances Act 1968.
- (3) For all purposes of the Corporation Tax Acts dividends shall be treated as paid on the date when they become due and payable, except in so far as section 354(1) of this Act (authorised unit trusts) makes other provision as to amounts treated under that section as dividends.

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- (4) Except as otherwise provided by the Corporation Tax Acts, any apportionment to different periods which falls to be made under the Corporation Tax Acts shall be made on a time basis according to the respective lengths of those periods.

## **528 "Total income" in Income Tax Acts**

- (1) In the Income Tax Acts "total income", in relation to any person, means the total income of that person from all sources estimated, as the case may be, either in accordance with the provisions of the Income Tax Acts as they apply to income tax chargeable at the standard rate or in accordance with those provisions as they apply to surtax.
- (2) Any person who, on his own behalf or on behalf of another person, delivers a statement of the amount of his or that other person's total income shall observe the rules and directions contained in Schedule 13 to this Act.
- (3) In estimating the total income of any person—
- (a) any income which is chargeable with income tax by way of deduction at the standard rate in force for any year shall be deemed to be income of that year, and
  - (b) any deductions which are allowable on account of sums payable under deduction of income tax at the standard rate in force for any year out of the property or profits of that person shall be allowed as deductions in respect of that year,
- notwithstanding that the income or sums, as the case may be, accrued or will accrue in whole or in part before or after that year.
- (4) Where an assessment has become final and conclusive for the purposes of income tax at the standard rate for any year of assessment, that assessment shall also be final and conclusive in estimating total income, and no allowance or adjustment of liability, on the ground of diminution of income or loss, shall be taken into account in estimating total income unless that allowance or adjustment has previously been made on an application under the special provisions of the Income Tax Acts relating thereto.
- (5) The provisions of subsection (4) above shall, for the purpose of estimating total income for the purposes of surtax, apply in relation to—
- (a) any relief under any of sections 57 to 60 and 62 of this Act (interest set off against income subject to income tax),
  - (b) any relief by reason of the operation of an election for the herd basis under Schedule 6 to this Act (farm animals), and
  - (c) any allowance under Part I of the Capital Allowances Act 1968 to be given by way of discharge or repayment of tax and to be available or available primarily against a specified class of income (that is to say any capital allowance to which section 71 of the Capital Allowances Act 1968 applies or, as provided by section 387(1), any capital allowance to which section 385(2) of this Act applies),
- as they apply in relation to allowances or adjustments on the ground of diminution of income or loss.



## **529 "Highest part of income": effect of top-slicing relief**

For the purposes of any provision of the Income Tax Acts (other than section 400 of, or Schedule 3 to, this Act) requiring income of any description to be treated as the highest part of a person's income, his income shall be calculated without regard to—

- (a) any payment chargeable to tax by virtue of section 187 of this Act (payments on retirement or removal from office or employment), or
- (b) any amount included in his total income by virtue of section 399(1)(a) of this Act (gains from insurance policies), or
- (c) any chargeable sum as defined in paragraph 2 of Schedule 3 to this Act (premiums under leases, etc.).

## **530 "Earned income" in Income Tax Acts**

(1) Subject to subsections (2) and (3) below, in the Income Tax Acts, "earned income" means, in relation to any individual—

- (a) any income arising in respect of any remuneration from any office or employment held by the individual, or in respect of any pension, superannuation or other allowance, deferred pay or compensation for loss of office, given in respect of the past services of the individual or of the husband or parent of the individual in any office or employment or given to the individual in respect of the past services of any deceased person, whether the individual or husband or parent of the individual shall have contributed to such pension, superannuation allowance or deferred pay or not, and
- (b) any income from any property which is attached to or forms part of the emoluments of any office or employment held by the individual, and
- (c) any income which is charged under Schedule A, Schedule B or Schedule D and is immediately derived by the individual from the carrying on or exercise by him of his trade, profession or vocation, either as an individual or, in the case of a partnership, as a partner personally acting therein.

In cases where the income of a wife is deemed to be income of the husband, any reference in this subsection to the individual includes either the husband or the wife.

(2) Without prejudice to the generality of the provisions of subsection (1) above, in the Income Tax Acts, except so far as is otherwise expressly provided, "earned income" also includes, in relation to any individual—

- (a) any income arising in respect of Civil List pensions granted under the Civil List Act 1837 as amended by any subsequent enactment, and
- (b) any annuity, pension or annual payment to which section 113(2) or section 182 of this Act (voluntary pensions) applies, and
- (c) any payments chargeable to income tax under Schedule E by virtue of section 219(1) of this Act (family allowances and other social security benefits), and
- (d) any sum payable by way of annuity to an individual by virtue of a scheme under section 27 of the Agriculture Act 1967 (grants for relinquishing occupation of uncommercial agricultural units), unless the annuity was granted to the individual by reason of his having relinquished occupation before attaining the age of fifty-five.

(3) The provisions of this section are without prejudice to any other provision of the Income Tax Acts directing income to be treated as earned income.

**531 "Annual value" of land**

- (1) For the purposes of, and subject to, the provisions of the Tax Acts which apply this section, the annual value of land shall be taken to be the rent which might reasonably be expected to be obtained on a letting from year to year if the tenant undertook to pay all usual tenant's rates and taxes, and if the landlord undertook to bear the costs of the repairs and insurance, and the other expenses, if any, necessary for maintaining the subject of the valuation in a state to command that rent.
- (2) Section 23 of the General Rate Act 1967 (adjustment of gross value by reference to provision of or payment for services, etc.) shall apply for the purpose of subsection (1) above, and in relation to land in Scotland or Northern Ireland shall apply as if it extended to the whole of the United Kingdom.
- (3) Where any question arises as to the annual value of land it shall be determined by the General Commissioners, and those Commissioners shall hear and determine the question in like manner as an appeal.

**532 Subsidiaries**

- (1) For the purposes of the Tax Acts a body corporate shall be deemed to be—
  - (a) a "51 per cent. subsidiary" of another body corporate if and so long as more than 50 per cent. of its ordinary share capital is owned directly or indirectly by that other body corporate,
  - (b) a "75 per cent. subsidiary" of another body corporate if and so long as not less than 75 per cent. of its ordinary share capital is owned directly or indirectly by that other body corporate,
  - (c) a "90 per cent. subsidiary" of another body corporate if and so long as not less than 90 per cent. of its ordinary share capital is directly owned by that other body corporate.
- (2) In subsection (1)(a) and (b) above "owned directly or indirectly" by a body corporate means owned, whether directly or through another body corporate or other bodies corporate or partly directly and partly through another body corporate or other bodies corporate.
- (3) In this section references to ownership shall be construed as references to beneficial ownership.
- (4) For the purposes of this section the amount of ordinary share capital of one body corporate owned by a second body corporate through another body corporate or other bodies corporate, or partly directly and partly through another body corporate or other bodies corporate, shall be determined in accordance with the following provisions of this section.
- (5) Where, in the case of a number of bodies corporate, the first directly owns ordinary share capital of the second and the second directly owns ordinary share capital of the third, then, for the purposes of this section, the first shall be deemed to own ordinary share capital of the third through the second, and, if the third directly owns ordinary share capital of a fourth, the first shall be deemed to own ordinary share capital of the fourth through the second and third, and the second shall be deemed to own ordinary share capital of the fourth through the third, and so on.
- (6) In this section—

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- (a) any number of bodies corporate of which the first directly owns ordinary share capital of the next and the next directly owns ordinary share capital of the next but one and so on, and, if they are more than three, any three or more of them, are referred to as " a series " ;
  - (b) in any series—
    - (i) that body corporate which owns ordinary share capital of another through the remainder is referred to as " the first owner " ;
    - (ii) that other body corporate the ordinary share capital of which is so owned is referred to as " the last owned body corporate " ;
    - (iii) the remainder, if one only, is referred to as an " intermediary" and, if more than one, are referred to as "a chain of intermediaries";
  - (c) a body corporate in a series which directly owns ordinary share capital of another body corporate in the series is referred to as an " owner " ;
  - (d) any two bodies corporate in a series of which one owns ordinary share capital of the other directly, and not through one or more of the other bodies corporate in the series, are referred to as being directly related to one another.
- (7) Where every owner in a series owns the whole of the ordinary share capital of the body corporate to which it is directly related, the first owner shall be deemed to own through the intermediary or chain of intermediaries the whole of the ordinary share capital of the last owned body corporate.
- (8) Where one of the owners in a series owns a fraction of the ordinary share capital of the body corporate to which it is directly related, and every other owner in the series owns the whole of the ordinary share capital of the body corporate to which it is directly related, the first owner shall be deemed to own that fraction of the ordinary share capital of the last owned body corporate through the intermediary or chain of intermediaries.
- (9) Where—
- (a) each of two or more of the owners in a series owns a fraction, and every other owner in the series owns the whole, of the ordinary share capital of the body corporate to which it is directly related; or
  - (b) every owner in a series owns a fraction of the ordinary share capital of the body corporate to which it is directly related;
- the first owner shall be deemed to own through the intermediary or chain of intermediaries such fraction of the ordinary share capital of the last owned body corporate as results from the multiplication of those fractions.
- (10) Where the first owner in any series owns a fraction of the ordinary share capital of the last owned body corporate in that series through the intermediary or chain of intermediaries in that series, and also owns another fraction or other fractions of the ordinary share capital of the last owned body corporate, either—
- (a) directly, or
  - (b) through an intermediary or intermediaries which is not a member or are not members of that series, or
  - (c) through a chain or chains of intermediaries of which one or some or all are not members of that series, or
  - (d) in a case where the series consists of more than three bodies corporate, through an intermediary or intermediaries which is a member or are members of the series, or through a chain or chains of intermediaries consisting of some but

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not all of the bodies corporate of which the chain of intermediaries in the series consists,

then, for the purpose of ascertaining the amount of the ordinary share capital of the last owned body corporate owned by the first owner, all those fractions shall be aggregated and the first owner shall be deemed to own the sum of those fractions.

### **533 Connected persons**

- (1) For the purposes of, and subject to, the provisions of the Tax Acts which apply this section, any question whether a person is connected with another shall be determined in accordance with the following provisions of this section (any provision that one person is connected with another being taken to mean that they are connected with one another).
- (2) A person is connected with an individual if that person is the individual's husband or wife, or is a relative, or the husband or wife of a relative, of the individual or of the individual's husband or wife.
- (3) A person, in his capacity as trustee of a settlement, is connected with any individual who in relation to the settlement is a settlor, with any person who is connected with such an individual and with a body corporate which, under section 454 of this Act is deemed to be connected with that settlement ("settlement" and "settlor" having for the purposes of this subsection the meanings assigned to them by subsection (3) of that section).
- (4) Except in relation to acquisitions or disposals of partnership assets pursuant to bona fide commercial arrangements, a person is connected with any person with whom he is in partnership, and with the husband or wife or a relative of any individual with whom he is in partnership.
- (5) A company is connected with another company—
  - (a) if the same person has control of both, or a person has control of one and persons connected with him, or he and persons connected with him, have control of the other, or
  - (b) if a group of two or more persons has control of each company, and the groups either consist of the same persons or could be regarded as consisting of the same persons by treating (in one or more cases) a member of either group as replaced by a person with whom he is connected.
- (6) A company is connected with another person, if that person has control of it or if that person and persons connected with him together have control of it.
- (7) Any two or more persons acting together to secure or exercise control of a company shall be treated in relation to that company as connected with one another and with any person acting on the directions of any of them to secure or exercise control of the company.
- (8) In this section—
 

"company" includes any body corporate or unincorporated association, but does not include a partnership, and this section shall apply in relation to any unit trust scheme (as defined in section 26(1) of the Prevention of Fraud (Investments) Act 1958 or section 22 of the Prevention of Fraud (Investments) Act (Northern Ireland) 1940) as if the scheme were a company and as if the rights of the unit holders were shares in the company,

" control " shall be construed in accordance with section 302 of this Act,  
" relative " means brother, sister, ancestor or lineal descendant.

#### **534 Meaning of "control" in certain contexts**

For the purposes of, and subject to, the provisions of the Tax Acts which apply this section, " control", in relation to a body corporate, means the power of a person to secure—

- (a) by means of the holding of shares or the possession of voting power in or in relation to that or any other body corporate, or
- (b) by virtue of any powers conferred by the articles of association or other document regulating that or any other body corporate,

that the affairs of the first-mentioned body corporate are conducted in accordance with the wishes of that person, and, in relation to a partnership, means the right to a share of more than one-half of the assets, or of more than one-half of the income, of the partnership

#### **535 "Recognised stock exchange"**

- (1) In the Corporation Tax Acts "recognised stock exchange " has the same meaning as in the Prevention of Fraud (Investments) Act 1958, except that it includes—
  - (a) the Belfast Stock Exchange, and
  - (b) any such stock exchange outside the United Kingdom as is for the time being designated for the purposes of this section as a recognised stock exchange by order made by the Board.
- (2) An order made by the Board under this section—
  - (a) may designate a stock exchange by name, or by reference to any class or description of stock exchanges, including a class or description framed by reference to any authority or approval given in a country outside the United Kingdom,
  - (b) may contain such transitional and other supplemental provisions as appear to the Board to be necessary or expedient, and
  - (c) may be varied or revoked by a subsequent order so made.

## **PART XX**

### **GENERAL**

#### **536 Commencement**

- (1) Except as otherwise provided by the following provisions of this section, this Act shall come into force in relation to tax for the year 1970-71 and subsequent years of assessment, and for companies' accounting periods ending after 5th April 1970.
- (2) Except as otherwise provided by the following provisions of this section, such of the provisions of this Act as relate to capital gains tax (including the provisions of Part XVIII of this Act as applied to capital gains tax by section 39 of the Finance Act 1965) shall come into force in relation to that tax for the year 1970-71 and subsequent years of assessment.

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- (3) The following provisions of this Act, that is—
- (a) so much of any provision of this Act as authorises the making, variation or revocation of any Order in Council or regulation or other instrument,
  - (b) so much of any provision of this Act as relates to the making of a return, the furnishing of a certificate or the giving of any other information, including any such provision which imposes a duty on the Board or an officer of the Board as well as any such provision which imposes a duty on any other person,
  - (c) so much of any provision of this Act as imposes any penalty,
  - (d) except where the tax concerned is all tax for years of assessment before the year 1970-71 or accounting periods ending before 6th April 1970, so much of any other provision of this Act as confers any power or imposes any duty the exercise or performance of which operates or may operate in relation to tax for more than one chargeable period,

shall come into force for all purposes on 6th April 1970 to the exclusion of the corresponding enactments repealed by this Act.

- (4) This section has effect except as otherwise provided by any other provision of this Act.

### **537 Savings, transitory provisions and consequential amendments**

- (1) Schedule 14 to this Act, which contains savings and transitory provisions, shall have effect, and the repeals made by section 538 below have effect subject to that Schedule.
- (2) For the avoidance of doubt it is hereby declared that this Act and the Taxes Management Act 1970 have effect subject to those provisions of the Tax Acts and the enactments relating to chargeable gains which are not repealed by this Act, and, with a view to preserving the existing effect of such enactments and instruments as are mentioned in Schedule 15 to this Act, they shall be amended in accordance with that Schedule.
- (3) The provisions of the said Schedule 15, and the other provisions of this Part of this Act, are without prejudice to the provisions of the Interpretation Act 1889 as respects the effect of repeals; and section 38(1) of the Interpretation Act 1889 shall have effect as if the Taxes Management Act 1970 formed part of this Act.
- (4) This section and the said Schedules 14 and 15 shall come into force on the passing of this Act.

### **538 Repeals**

- (1) The enactments mentioned in Schedule 16 to this Act are hereby repealed to the extent specified in the third column of that Schedule.
- (2) Subject to the following provisions of this section, the said repeals shall come into force in accordance with subsections (1) and (2) of section 536 above.
- (3) Subsection (2) above has effect subject to section 119(1) of the Taxes Management Act 1970, to section 536(3) above and to any other provision of this Act by which any provision is brought into force to the exclusion of the corresponding enactments repealed by this Act.
- (4) No provision mentioned in subsection (3) above shall be taken as bringing a repeal into force except to the extent that the repealed enactment is being superseded, and

in particular where part of the effect of any repealed enactment is reproduced in this Act, or is not reproduced, nothing in section 119(1) of the Taxes Management Act 1970 shall be taken as bringing the repeal into force except so far as the enactment is reproduced in the Taxes Management Act 1970.

- (5) In this section " enactments" includes any statutory instrument mentioned in Schedule 16 to this Act, and references in this Act and the Taxes Management Act 1970 to the enactments repealed by this Act shall be construed accordingly.

### **539 Continuity and construction of references to old and new law**

- (1) The continuity of the operation of the Tax Acts and of the law relating to chargeable gains shall not be affected by the substitution of this Act and of the Taxes Management Act 1970 (in this section referred to as " the new Acts " ) for the repealed enactments.
- (2) Any reference, whether express or implied, in any enactment, instrument or document (including the new Acts and any enactment amended by Schedule 15 to this Act) to, or to things done or falling to be done under or for the purposes of, any provision of the new Acts shall, if and so far as the nature of the reference permits, be construed as including, in relation to the times, years or periods, circumstances or purposes in relation to which the corresponding provision in the repealed enactments has or had effect, a reference to, or as the case may be to things done or falling to be done under or for the purposes of, that corresponding provision,
- (3) Any reference, whether express or implied, in any enactment, instrument or document (including the repealed enactments and enactments, instruments and documents passed or made after the passing of this Act) to, or to things done or falling to be done under or for the purposes of, any of the repealed enactments shall, if and so far as the nature of the reference permits, be construed as including, in relation to the times, years or periods, circumstances or purposes in relation to which the corresponding provision of the new Acts has effect, a reference to, or as the case may be to things done or deemed to be done or falling to be done under or for the purposes of, that corresponding provision.
- (4) Any reference to Case VIII of Schedule D, whether a specific reference or one imported by more general words, in any enactment, instrument or document shall, in relation to the chargeable periods to which section 536(1) above applies, be construed as a reference to Schedule A, and for the purposes of subsection (2) above Schedule A in this Act shall be treated as corresponding to Case VIII of Schedule D in the repealed enactments, and any provision of the new Acts referring to Schedule A shall be construed accordingly.
- (5) The repeals made by this Act shall not affect any instrument made or other thing done under the repealed enactments and, if it was made or done under an enactment reproduced in the new Acts, the new Acts shall have effect as if it had also been made or done under the corresponding provision in the new Acts.
- (6) In this section " the repealed enactments" means the enactments repealed by this Act, and such of the enactments repealed by the Income Tax Act 1952 or the Capital Allowances Act 1968 as correspond to the provisions of those Acts of 1952 and 1968 so repealed.

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**540 Short title and construction**

- (1) This Act may be cited as the Income and Corporation Taxes Act 1970.
- (2) This Act, so far as it relates to capital gains tax, shall be construed as one with Part III of the Finance Act 1965.
- (3) Any reference in this Act to any other enactment shall, except so far as the context otherwise requires, be construed as a reference to that enactment as amended or applied by or under any other enactment, including this Act.



## SCHEDULES

### SCHEDULE 1

Sections 19, 394(2) and 404(1).

#### LIFE POLICIES : QUALIFICATION FOR RELIEF ON PREMIUMS

#### PART I

#### QUALIFYING CONDITIONS

##### *General rules applicable to whole life and term assurances*

- 1 (1) Subject to the following provisions of this Part of this Schedule, if a policy secures a capital sum which is payable only on death, or one payable either on death or on earlier disability, it is a qualifying policy if—
- (a) it satisfies the conditions appropriate to it under sub-paragraphs (2) to (4) below, and
  - (b) except to the extent permitted by sub-paragraph (5) below it does not secure any other benefits.
- (2) If the capital sum referred to in sub-paragraph (1) above is payable whenever the event in question happens, or if it happens at any time during the life of a specified person—
- (a) the premiums under the policy must be payable at yearly or shorter intervals, and either—
    - (i) until the happening of the event, or, as the case may require, until the happening of the event or the earlier death of the specified person, or
    - (ii) until the time referred to in sub-paragraph (i) above or the earlier expiry of a specified period ending not earlier than ten years after the making of the insurance, and
  - (b) the total premiums payable in any period of twelve months must not exceed—
    - (i) twice the amount of the total premiums payable in any other such period, or
    - (ii) one-eighth of the total premiums which would be payable if the policy were to continue in force for a period of ten years from the making of the insurance, or, in a case falling within paragraph (a) (ii) above, until the end of the period therein referred to.
- (3) If the capital sum referred to in sub-paragraph (1) above is payable only if the event in question happens before the expiry of a specified term ending more than ten years after the making of the insurance, or only if it happens both before the expiry of such a term and during the life of a specified person—
- (a) the premiums under the policy must be payable at yearly or shorter intervals, and either—

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- (i) until the happening of the event or the earlier expiry of the said term, or, as the case may require, until the happening of the event or, if earlier, the expiry of the term or the death of the specified person, or
- (ii) as in sub-paragraph (i) above, but with the substitution for references to the term of references to a specified shorter period, being one ending not earlier than ten years after the making of the insurance or, if sooner, the expiry of three-quarters of the said term, and
- (b) the total premiums payable in any period of twelve months must not exceed—
  - (i) twice the amount of the total premiums payable in any other such period, or
  - (ii) one-eighth of the total premiums which would be payable if the policy were to continue in force for the term referred to in paragraph (a)(i) above, or, as the case may require, for the shorter period referred to in paragraph (a)(ii) above.
- (4) If the capital sum referred to in sub-paragraph (1) above is payable only if the event in question happens before the expiry of a specified term ending not more than ten years after the making of the insurance, or only if it happens both before the expiry of such a term and during the life of a specified person, the policy must provide that any payment made by reason of its surrender during the period is not to exceed the total premiums previously paid thereunder.
- (5) Notwithstanding sub-paragraph (1)(6) above, if a policy secures a capital sum payable only on death, it may also secure benefits (including benefits of a capital nature) to be provided in the event of a person's disability; and no policy is to be regarded for the purposes of that provision as securing other benefits by reason only of the fact that it confers a right to participate in profits, that it carries a guaranteed surrender value, that it gives an option to receive payments by way of annuity, or that it makes provision for the waiver of premiums by reason of a person's disability, or for the effecting of a further insurance or insurances without the production of evidence of insurability.
- (6) In applying sub-paragraph (2) or (3) above to any policy—
  - (a) no account shall be taken of any provision for the waiver of premiums by reason of a person's disability, and
  - (b) if the term of the policy runs from a date earlier, but not more than three months earlier, than the making of the insurance, the insurance shall be treated as having been made on that date, and any premium paid in respect of the period before the making of the insurance, or in respect of that period and a subsequent period, as having been payable on that date.
- (7) References in this paragraph to a capital sum payable on any event include references to any capital sum, or series of capital sums, payable by reason of that event; and a policy secures a capital sum payable either on death or on disability notwithstanding that the amount payable may vary with the event

*General rules applicable to endowment assurances*

- 2 (1) Subject to the following provisions of this Part of this Schedule, a policy which secures a capital sum payable either on survival for a specified term or on earlier death, or earlier death or disability, including a policy securing the sum on death

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only if occurring after the attainment of a specified age not exceeding sixteen, is a qualifying policy if it satisfies the following conditions—

- (a) the term must be one ending not earlier than ten years after the making of the insurance,
- (b) premiums must be payable under the policy at yearly or shorter intervals, and—
  - (i) until the happening of the event in question, or
  - (ii) until the happening of that event, or the earlier expiry of a specified period shorter than the term but also ending not earlier than ten years after the making of the insurance, or
  - (iii) if the policy is to lapse on the death of a specified person, until one of those times or the policy's earlier lapse,
- (c) the total premiums payable under the policy in any period of twelve months must not exceed—
  - (i) twice the amount of the total premiums payable in any other such period, or
  - (ii) one-eighth of the total premiums which would be payable if the policy were to run for the specified term,
- (d) the policy—
  - (i) must guarantee that the capital sum payable on death, or on death occurring after the attainment of a specified age not exceeding sixteen, will, whenever that event may happen, be equal to three-quarters at least of the total premiums which would be payable if the policy were to run for that term, disregarding any amounts included in those premiums by reason of their being payable otherwise than annually, and
  - (ii) if it is a policy which does not secure a capital sum in the event of death before the attainment of a specified age not exceeding sixteen, must not provide for the payment in that event of an amount exceeding the total premiums previously paid thereunder, and
- (e) the policy must not secure the provision (except by surrender) at any time before the happening of the event in question of any benefit of a capital nature other than a payment falling within paragraph (d)(ii) above, or benefits attributable to a right to participate in profits or arising by reason of a person's disability.

(2) For the purposes of sub-paragraph (1)(d)(i) above, 10 per cent. of the premiums payable under any policy issued in the course of an industrial assurance business as defined in section 1(2) of the Industrial Assurance Act 1923 shall be treated as attributable to the fact that they are not paid annually.

(3) Sub-paragraphs (6) and (7) of paragraph 1 above shall, with any necessary modifications, have effect for the purposes of this paragraph as they have effect for the purposes of that paragraph.

#### *Special types of policy*

##### (i) Friendly Society policies

- 3 A policy issued by any friendly society, or branch of a friendly society, in the course of its tax exempt life or endowment business, as defined in section 337(3)

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of this Act, is a qualifying policy notwithstanding that it does not comply with the conditions specified in paragraph 1 or 2 above.

(ii) Industrial Assurance policies

4 (1) A policy issued in the course of an industrial assurance business, as defined in section 1(2) of the Industrial Assurance Act 1923, and not constituting a qualifying policy by virtue of paragraph 1 or 2 above, is nevertheless a qualifying policy if—

- (a) the sums guaranteed by the policy, together with those guaranteed at the time the assurance is made by all other policies issued in the course of such a business to the same person and not constituting qualifying policies apart from this paragraph, do not exceed £1,000,
- (b) it satisfies the conditions with respect to premiums specified in paragraph 1(2) above,
- (c) except by reason of death or surrender, no capital sum other than one falling within paragraph (d) below can become payable under the policy earlier than ten years after the making of the assurance, and
- (d) where the policy provides for the making of a series of payments during its term—
  - (i) the first such payment is due not earlier than five years after the making of the assurance, and the others, except the final payment, at intervals of not less than five years, and
  - (ii) the amount of any payment, other than the final payment, does not exceed four-fifths of the premiums paid in the interval before its payment, and
  - (iii) if the first such payment is due earlier than ten years after the making of the assurance, or any other such payment except the last is due earlier than ten years after the preceding one, the sums guaranteed by the policy, together with the other sums referred to in paragraph (a) above so far as guaranteed by policies the payments under which also fall within this sub-paragraph, do not exceed £500.

(2) For the purposes of this paragraph, the sums guaranteed by a policy do not include any bonuses, or, in the case of a policy providing for a series of payments during its term, any of those payments except the first, or any sum payable on death during the term by reference to one or more of those payments except so far as that sum is referable to the first such payment.

(iii) Family income policies and mortgage protection policies

5 (1) The following provisions apply to any policy which is not a qualifying policy apart from those provisions, and the benefits secured by which consist of or include the payment on or after a person's death of—

- (a) one capital sum which does not vary according to the date of death, plus a series of capital sums payable if the death occurs during a specified period, or
- (b) a capital sum, the amount of which is less if the death occurs in a later part of a specified period than if it occurs in an earlier part of that period.

(2) A policy falling within sub-paragraph (1)(a) above is a qualifying policy if—

- (a) it would be one if it did not secure the series of capital sums there referred to, and the premiums payable under the policy were such as would be chargeable if that were in fact the case, and
- (b) it would also be one if it secured only that series of sums, and the premiums thereunder were the balance of those actually so payable.

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- (3) A policy falling within sub-paragraph (1)(b) above is a qualifying policy if—
- (a) it would be one if the amount of the capital sum there referred to were equal throughout the period to its smallest amount, and the premiums payable under the policy were such as would be chargeable if that were in fact the case, and
  - (b) it would also be one if it secured only that capital sum so far as it from time to time exceeds its smallest amount, and the premiums payable thereunder were the balance of those actually so payable.

*Other special provisions*

(i) Exceptional mortality risk

- 6 For the purpose of determining whether any policy is a qualifying policy, there shall be disregarded—
- (a) so much of any premium thereunder as is charged on the grounds that an exceptional risk of death is involved, and
  - (b) any provision under which, on those grounds, any sum may become chargeable as a debt against the capital sum guaranteed by the policy on death.

(ii) Connected policies

- 7 Where the terms of any policy provide that it is to continue in force only so long as another policy does so, neither policy is a qualifying policy unless, if they had constituted together a single policy issued in respect of an insurance made at the time of the insurance in respect of which the first-mentioned policy was issued, that single policy would have been a qualifying policy.

(iii) Premiums paid out of sums due under previous policies

- 8 (1) Where, in the case of a policy under which a single premium only is payable, liability for the payment of that premium is discharged in accordance with sub-paragraph (2) below, the policy is a qualifying policy notwithstanding anything in paragraph 1(2) or 1(3) above, or in paragraph (b) or (c) of paragraph 2(1); and where, in the case of any other policy, liability for the payment of the first premium thereunder, or of any part of that premium, is so discharged, the premium or part shall be disregarded for the purposes of paragraph 1(2)(b) and 1(3)(b) above, and of paragraph (c) of paragraph 2(1).
- (2) Liability for the payment of a premium is discharged in accordance with this sub-paragraph if it is discharged by the retention by the company with whom the insurance is made of the whole or a part of any sum which has become payable on the maturity of, or on the surrender more than ten years after its issue of the rights conferred by, a policy—
- (a) previously issued by the company to the person making the insurance, or, if it is made by trustees, to them or any predecessors in office, or
  - (b) issued by the company when the person making the insurance was an infant, and securing a capital sum payable either on a specified date falling not more than one month after his attaining twenty-five, or on the anniversary of the policy immediately following his attainment of that age,
- being, unless it is a policy falling within paragraph (b) above and the premium in question is a first premium only, a policy which was itself a qualifying policy, or which would have been a qualifying policy had it been issued in respect of an insurance made after 19th March 1968.

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(iv) Substitutions and variations

- 9 (1) Where one policy (hereafter referred to as "the new policy ") is issued in substitution for, or on the maturity of and in consequence of an option conferred by, another policy (hereafter referred to as " the old policy " ), the question whether the new policy is a qualifying policy shall, to the extent provided by the rules in sub-paragraph (2) below, be determined by reference to both policies.
- (2) The said rules (for the purposes of which, the question whether the old policy was a qualifying policy shall be determined in accordance with this Part of this Schedule, whatever the date of the insurance in respect of which it was issued), are as follows—
- (a) if the new policy would apart from this paragraph be a qualifying policy, but the old policy was not, the new policy is not a qualifying policy unless the person making the insurance in respect of which it is issued was an infant when the old policy was issued, and the old policy was one securing a capital sum payable either on a specified date falling not later than one month after his attaining twenty-five or on the anniversary of the policy immediately following his attainment of that age ;
  - (b) if the new policy would apart from this paragraph be a qualifying policy, and the old policy was also a qualifying policy, the new policy is a qualifying policy unless—
    - (i) it takes effect before the expiry of ten years from the making of the insurance in respect of which the old policy was issued, and
    - (ii) the highest total of premiums payable thereunder for any period of twelve months expiring before that time is less than one half of the highest total paid for any period of twelve months under the old policy, or under any related policy issued less than ten years before the issue of the new policy ("related policy" meaning any policy in relation to which the old policy was a new policy within the meaning of this paragraph, any policy in relation to which that policy was such a policy, and so on);
  - (c) if the new policy would not apart from this paragraph be a qualifying policy, and would fail to be so by reason only of paragraph 1(2) or 1(3) above or of paragraph (a), (b) or (c) of paragraph 2(1), it is nevertheless a qualifying policy if the old policy was a qualifying policy and—
    - (i) the old policy was issued in respect of an insurance made more than ten years before the taking effect of the new policy, and the premiums payable for any period of twelve months under the new policy do not exceed the smallest total paid for any such period under the old policy, or
    - (ii) the old policy was issued outside the United Kingdom, and the circumstances are as specified in sub-paragraph (3) below.
- (3) The said circumstances are—
- (a) that the person in respect of whom the new insurance is made became resident in the United Kingdom during the twelve months ending with the date of its issue,
  - (b) that the issuing company certify that the new policy is in substitution for the old, and that the old was issued either by a branch or agency of theirs outside the United Kingdom or by a company outside the United Kingdom with whom they have arrangements for the issue of policies in substitution for ones held by persons coming to the United Kingdom, and

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- (c) that the new policy confers on the holder benefits which are substantially equivalent to those which he would have enjoyed if the old policy had continued in force.
- 10 (1) Subject to the provisions of this paragraph, where the terms of a policy are varied, the question whether the policy after the variation is a qualifying policy shall be determined in accordance with the rules in paragraph 9 above, with references in those rules to the new policy and the old policy construed for that purpose as references respectively to the policy after the variation and the policy before the variation, and with any other necessary modifications.
- (2) In applying any of those rules by virtue of this paragraph, the question whether a policy after a variation would be a qualifying policy apart from the rule shall be determined as if any reference in paragraphs 1 to 7 of this Schedule to the making of an insurance, or to a policy's term, were a reference to the taking effect of the variation or, as the case may be, to the term of the policy as from the variation.
- (3) This paragraph does not apply by reason of—
- (a) any variation which, whether or not of a purely formal character, does not affect the terms of a policy in any significant respect, or
  - (b) any variation effected before the end of the year 1968 for the sole purpose of converting into a qualifying policy any policy issued (but not one treated by virtue of section 19(5) of this Act as issued) in respect of an insurance made after 19th March 1968.

## PART II

### CERTIFICATION OF QUALIFYING POLICIES

- 11 (1) Subject to sub-paragraph (3) below, a body issuing any policy of life insurance which is in its opinion a qualifying policy within the meaning of Part I of this Schedule shall, within three months of the date of issue, give to the policy holder a duly authenticated certificate to that effect, specifying in the certificate the name of the policy holder, the name of the person whose life is assured, the reference number or other means of identification allocated to the policy, the capital sum or sums assured, and the amounts and dates for payment of the premiums.
- (2) Subject to the said sub-paragraph (3), where a policy of life insurance is varied, and is in the opinion of the body by whom it was issued a qualifying policy after the variation, that body shall, within three months of the making of the variation, give to the policy holder a like certificate with respect to the policy as varied.
- (3) Where, in the case of any policy, or any policy after a variation, the total premiums payable in any period of twelve months do not exceed £26, a certificate need be given under sub-paragraph (1) or (2) above only if requested in writing by the policy holder, and, if so requested, shall be given within three months of receipt of the request; and sub-paragraph (2) above shall not apply by reason of—
- (a) any variation which, whether or not of a purely formal character, does not affect the terms of a policy in any significant respect, or
  - (b) any variation of a policy issued in respect of an insurance made on or before 19th March 1968, other than a variation by virtue of which the policy falls, under section 19(5) of this Act, to be treated as issued in respect of an insurance made after that date.

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## SCHEDULE 2

Section 71.

## RESTRICTIONS ON SCHEDULE A DEDUCTIONS

*Expenditure before 1964-65: deductions from rents*

- 1 (1) Except as provided by sub-paragraphs (2) and (3) below, no payment shall be deductible under sections 72 and 73 of this Act if made before the beginning of the year 1964-65.
- (2) Where, by virtue of paragraph 11 of Schedule 4 to the Finance Act 1963 as amended by section 16(2) of the Finance Act 1965 (excess of maintenance etc. costs during five years ending 5th April 1964 over available reliefs), any amount fell to be treated as a payment in relation to premises made by a person in the year 1964-65 in respect of dilapidation attributable to that year, the amount shall be similarly treated for the purposes of the said sections 72 and 73.
- (3) If, in respect of any payment such as is mentioned in subsection (1) of the said section 72 made by a person in relation to any premises before the beginning of the year 1964-65, a loss was carried forward to that year by virtue of section 346 of the Income Tax Act 1952 (relief in respect of losses under Case VI of Schedule D) the amount of the loss shall be treated for the purposes of the said sections 72 and 73 as if it were a like payment made by that person in respect of the premises in, and in respect of, that year.
- (4) A deduction falling to be made by virtue of sub-paragraph (3) above shall be made notwithstanding anything in section 176(3) or 179(1) of this Act (Case VI losses for income tax and corporation tax respectively: relief to be given as far as possible from the first subsequent Case VI assessment); and relief shall not be given under either of those sections in respect of the loss insofar as a deduction in respect of it is made under this paragraph.

*Expenditure before 1964-65: deductions from other receipts*

- 2 (1) Subject to sub-paragraph (2) below, no payment shall be deductible under section 74 of this Act if made before the beginning of the year 1964-65.
- (2) Sub-paragraph (1) above shall not prevent the deduction of a payment in so far as a loss in respect thereof was carried forward to the year 1964-65 by virtue of section 346 of the Income Tax Act 1952 (relief in respect of losses under Case VI of Schedule D).
- (3) Paragraph 1(4) above shall apply in the case of a deduction falling to be made by virtue of sub-paragraph (2) above as it applies in the case of one falling to be made by virtue of sub-paragraph (3) of that paragraph.

*Expenditure before 1964-65: sea walk*

- 3 (1) Section 76 of this Act shall apply in relation to expenditure in respect of which an allowance under section 94(1)(c) of the Income Tax Act 1952 would, but for its repeal, have fallen to be made in respect of any premises for the year 1964-65 as if the expenditure had been incurred in the year of assessment following that in which it was actually incurred and, so far as it was incurred in repairing an embankment, had been incurred in making it:



Provided that if, by reason of a claim made under the proviso to paragraph 16(3) of Schedule 4 to the Finance Act 1963, any expenditure incurred before the beginning of the year 1964-65 in repairing an embankment fell to be treated for the purposes of that Schedule as if it had been an amount paid by the claimant, in and in respect of that year, in respect of the maintenance of the premises preserved or protected by the embankment, the expenditure shall be similarly treated for the purposes of sections 71 to 77 of this Act.

- (2) Subject as aforesaid, the said section 76 shall not apply to expenditure incurred before the beginning of the year 1964-65.

*Tithe redemption annuities*

- 4 No part of any payment made as an instalment, or part of an instalment, of an annuity within the meaning of the Tithe Acts 1936 and 1951 shall be included among the deductions allowable under sections 71 to 77 of this Act.

SCHEDULE 3

Section 85.

PREMIUMS ETC. TAXABLE UNDER SCHEDULES A AND D: SPECIAL RELIEF FOR INDIVIDUALS

- 1 A claim for relief under this Schedule shall be made to the Board if it relates to surtax, or if the claimant is not resident in the United Kingdom.
- 2 The relief shall be computed in accordance with paragraphs 3 to 6 below, and in those paragraphs—
- " chargeable sum " means an amount to which, under subsection (1), (2), (3) or (4) of section 80 of this Act, the claimant is treated as becoming entitled in the year of assessment, or in respect of which he is by virtue of subsection (5) of that section, or section 81 or 82 of this Act, chargeable to income tax for the year under Case VI of Schedule D ;
- " relevant period ", in relation to any chargeable sum, means the period treated in computing the amount of the sum as being the duration of the lease in respect of which it arises or, where it arises (by virtue of the said section 82) in connection with the sale of an estate or interest in land, means the period mentioned in subsection (1) of that section;
- " yearly equivalent ", in relation to any chargeable sum, means the amount which bears to that sum the same proportion as one bears to the number of years and fractions of years in the relevant period.
- 3 There shall be computed—
- (a) the amount of the tax which, in respect of the chargeable sum or the aggregate of the chargeable sums, as the case may be, would be chargeable if—
- (i) the relief were not given, and
- (ii) that sum or aggregate were treated as the highest part of the claimant's total income, and
- (iii) amounts deductible in computing the tax were so far as possible deducted from other sums from which they are deductible in the year rather than from that sum or aggregate, and

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- (b) the amount of the tax which, in respect of that sum or aggregate, would be chargeable if calculated, in accordance with paragraph 4 below, by reference to the yearly equivalent of that sum, or, as the case may be, of each sum comprised in that aggregate,
- and the relief shall consist of a reduction or repayment of tax equal to the difference between those amounts.
- 4 (1) Where the relief is to be given in respect of one chargeable sum only, the tax shall be calculated for the purposes of paragraph 3(b) above as follows—
- (a) from the yearly equivalent of that sum there shall be deducted such amounts as, following the principle set out in paragraph 3(a)(iii) above, are deductible from that sum,
- (b) if any balance of the yearly equivalent remains, the tax in respect of the chargeable sum shall be calculated at the rate which, apart from the relief, would apply if the amount of the sum were reduced to the amount of that balance and were then treated as the highest part of the claimant's total income or, if two or more rates would then apply, at those rates in corresponding proportions,
- (c) if no such balance remains, the tax shall be calculated at the rate applicable to the highest part of the remainder of the claimant's total income for the year of assessment,
- and, whether or not any such balance remains, the tax shall be arrived at by applying the said rate or rates to so much of the chargeable sum as remains after deducting such amounts as, following the principle set out in the said paragraph 3(a)(iii), are deductible from that sum.
- (2) Where the relief is to be given in respect of two or more chargeable sums, the tax for each shall be calculated for the said purposes as provided by sub-paragraph (1) above, but so that—
- (a) the rate of tax on a sum arising in respect of any relevant period shall be calculated before the rate of tax on any sum arising in respect of a shorter relevant period, and
- (b) in calculating the rate of tax on a sum arising in respect of any relevant period and the deductions from that sum, an amount deducted in respect of a sum tax for which has already been calculated shall not again be deducted, and, in calculating a rate of tax—
- (i) any chargeable sum tax for which has not already been calculated, or in respect of which no balance of the yearly equivalent remains, shall be disregarded, and
- (ii) as respects any other chargeable sum, the total income of the claimant shall be taken to include the sum, but on the assumption that the amount of it was only that of the balance remaining of the yearly equivalent.
- (3) Where two or more chargeable sums arise in respect of relevant periods of equal duration, they shall be treated for the purposes of this paragraph as a single chargeable sum of an amount equal to the aggregate of those sums and arising in respect of a relevant period of like duration.
- 5 A provision of paragraph 3 or 4 above requiring tax to be calculated as if an amount were treated as the highest part of the claimant's total income shall apply notwithstanding any provision of the Income Tax Acts directing other income to

be treated as the highest part of his total income, but for the purposes of those paragraphs his total income shall be deemed—

- (a) not to include any amount in respect of which he is chargeable to tax under section 187 of this Act (payments on retirement or removal from office or employment), and
- (b) to include, in respect of any amount which would otherwise be included therein by virtue of section 399 (1)(a) of this Act (gains arising in connection with life policies etc.), no greater amount than the appropriate fraction thereof within the meaning of section 400 of this Act.

- 6 A provision of paragraph 3 or 4 above shall apply in relation to any part of the claimant's total income (as computed for the purposes of that provision) as respects which he would be entitled under Chapter II of Part I of this Act (personal and other reliefs) to a deduction equal to tax at the standard rate on that part as if that part were subject to a nil rate of tax, and shall apply in relation to any part thereof as respects which he would be entitled under section 22 of this Act (reduced rate relief) to a deduction equal to tax at any other rate on that part as if that part were subject to a rate of tax equal to the difference between the standard rate and that other rate.

## SCHEDULE 4

Sections 88 and 158.

### SCHEDULES A AND D: ALLOWANCES FOR BETTERMENT LEVY

#### PART I

##### PREMIUMS ETC.

- 1 (1) Subject to paragraph 5 of this Schedule, for the purposes of section 80(1) of this Act (taxation of premium on grant of lease), the amount of any premium payable to the landlord shall be reduced by the amount of any betterment levy charged on the premium, and that reduction shall be made before the reduction under the said section 80(1) depending upon the length of the lease.
- (2) In applying subsection (6) of the said section 80 (premiums payable by instalments: claim for treatment as rent) to a premium which falls to be reduced under sub-paragraph (1) above (looking at the fraction by which it is reduced before any reduction depending on the length of the lease), a reduction by that fraction shall be made in the amount of each instalment.
- (3) For the purposes of sub-paragraph (1) above, the amount of betterment levy charged on a premium is the principal amount of the betterment levy under Case B charged in respect of the grant of the lease, reduced by applying the fraction

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

(if less than unity) where—

A is the capital value of the premium payable to the landlord as brought into account under paragraph 7 of Schedule 4 to the Land Commission Act 1967, and

B is the aggregate amount of consideration as computed for the purposes of charging betterment levy.

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- (4) Sub-paragraphs (1) and (3) above shall also apply as respects any amounts brought into section 80(1) of this Act as a premium by subsection (2) of that section (landlord's benefit from tenant's obligation to carry out work on premises) so far as the benefit to the landlord is brought into account under the said paragraph 7 of Schedule 4 to the Land Commission Act 1967 ; and references to premiums in this paragraph shall be construed accordingly.
- (5) For the purposes of sub-paragraph (1) above, the amount of betterment levy charged on any sum brought into the said section 80(1) as a premium by subsection (4) of that section (consideration for the variation or waiver of the terms of a lease) is the principal amount of the betterment levy under Case E or Case F charged in respect of the disposition for which that sum is consideration, but subject to a proportionate reduction as under sub-paragraph (3) above where the sum forms part only of the consideration brought into account in assessing the betterment levy in respect of the disposition, and where the levy is under Case F, subject to such adjustments of the consideration so brought into account as may be appropriate ; and references to a premium in this paragraph shall be construed accordingly.
- 2        Subject to paragraph 5 of this Schedule, any taxable amount under section 81 or 82 of this Act (assignment of lease at undervalue, and sale with right to reconveyance) shall be reduced by so much of the principal amount of any betterment levy under Case A charged on the assignment or sale on which the charge to tax arises as is attributable to the said taxable amount, and that reduction shall be made before any reduction under the said section 81 depending on the length of the lease, or any reduction under the said section 82 depending on the time between the sale and a subsequent reconveyance.
- 3        Any reduction to be effected under any of the provisions of paragraphs 1 and 2 above shall be disregarded in arriving at "the amount chargeable on the superior interest" in section 83 of this Act (premiums paid, etc: deduction from premiums and rents received) and " the amount chargeable " in section 134 of this Act (allowance of trading deduction where premium etc. paid).
- 4        (1) Where for the purposes of Part III of the Land Commission Act 1967 a notice of assessment of betterment levy results in an operative assessment of levy, it shall become final and conclusive for the purposes of this Part of this Schedule, but subject to any adjustment under section 54 or 55 of that Act (mistake of fact and further notice of assessment of levy), or under any other provision of that Act.
- (2) Where betterment levy is chargeable in respect of land part only of which is the relevant land for the purposes of the charge to tax under Schedule A or Case VI of Schedule D, or where part of the consideration for a disposition is payable to a person other than the grantor in the circumstances mentioned in section 36(3) of the Land Commission Act 1967, the levy shall be apportioned in such manner as may be appropriate in the circumstances.
- (3) Any question arising in any appeal against an assessment to tax as to the application of the preceding provisions of this Part of this Schedule shall be determined on a reference to the Lands Tribunal.
- (4) The Land Commission shall afford to the inspector and to the Lands Tribunal such information as they may require for the purpose of this Part of this Schedule.
- (5) In relation to land in Scotland, for any reference in this paragraph to the Lands Tribunal there shall be substituted a reference to the Lands Tribunal for Scotland:

Provided that until sections 1 to 3 of the Lands Tribunal Act 1949 come into force as regards Scotland, this sub-paragraph shall have effect as if for the reference to the Lands Tribunal for Scotland there were substituted a reference to a person selected from the panel of referees appointed under Part I of the Finance (1909-1910) Act 1910.

## PART II

### MINING LEASES

- 5 Part I of this Schedule shall not apply to betterment levy which is charged on any payment in accordance with regulations made in accordance with section 40(2) of the Finance Act 1968 (rents, royalties and other payments, including premiums, under mining leases).
- 6 Where betterment levy is charged as mentioned in paragraph 5 above on a payment which is charged to tax under Schedule A, the amount of betterment levy so charged shall for the purposes of Schedule A be treated as a payment made by the landlord in respect of management of the property in the chargeable period in which he becomes entitled to the payment:
- Provided that where the amount of the payment is reduced under section 80 of this Act (treatment of premiums etc. as rent), the amount of the betterment levy charged thereon shall be treated for the purposes of this paragraph as reduced in the same proportion.
- 7 Where betterment levy is charged as mentioned in paragraph 5 above on any payment which is charged to tax under Schedule D by virtue of section 156 of this Act (rent etc. payable in connection with mines, quarries and similar concerns), the amount of betterment levy so charged shall be treated—
- (a) for the purposes of section 158(1) of this Act (income tax: management expenses of owner of mineral rights), as a sum disbursed as an expense of management in the year of assessment for which the tax is charged, and
  - (b) for the purposes of subsection (2) of the said section 158 (corresponding provision for corporation tax), as a sum so disbursed in the accounting period in which the payment falls to be taken into account for corporation tax.
- 8 The Land Commission shall afford to any officer of the Board such information as he may require for the purposes of this Part of this Schedule.

## SCHEDULE 5

Sections 94 and 159.

### MACHINERY FOR ASSESSMENT, CHARGE AND PAYMENT OF INCOME TAX UNDER SCHEDULE C, AND, IN CERTAIN CASES, SCHEDULE D

#### PART I

#### PUBLIC REVENUE DIVIDENDS, ETC., PAYABLE TO THE BANK OF ENGLAND AND THE BANK OF IRELAND, OR ENTRUSTED FOR PAYMENT TO THE BANK OF ENGLAND, THE BANK OF IRELAND OR THE NATIONAL DEBT COMMISSIONERS

- 1 The Bank of England and the Bank of Ireland, as respects the dividends and the profits attached thereto payable to them out of the public revenue of the United Kingdom, or payable out of any public revenue and entrusted to them for payment and distribution, and the National Debt Commissioners, as respects the dividends payable by them or of which they have the distribution, shall, when any payment becomes due, deliver to the Board true accounts, in books provided for the purpose, of—
- (a) the amounts of the dividends and profits attached thereto payable to the Bank, and
  - (b) all dividends entrusted to the Bank or to the National Debt Commissioners for payment to the persons entitled thereto, and
  - (c) the amount of income tax chargeable thereon at the standard rate in force at the time of payment, without any other deduction than is allowed by the Income Tax Acts.
- 2 (1) In the case of dividends and profits attached thereto payable to the Bank of England out of the public revenue of the United Kingdom, the Bank of England shall set apart the income tax in respect of the amount payable to them.
- (2) In the case of dividends and profits attached thereto entrusted to the Bank of England for payment and distribution, dividends payable by the Bank of Ireland at its principal office in Belfast, and dividends payable by the National Debt Commissioners or of which the National Debt Commissioners have the distribution—
- (a) the Bank of England, the Bank of Ireland and the National Debt Commissioners respectively shall, before any payment is made by them, retain the amount of the income tax for the purposes of the Income Tax Acts, and
  - (b) the retaining of the amount shall be deemed to be a payment of the income tax by the persons entitled to the dividends, and shall be allowed by them on the receipt of the residue thereof, and
  - (c) the Bank of England, the Bank of Ireland and the National Debt Commissioners respectively shall be acquitted and discharged of a sum equal to the amount retained as though that sum had been actually paid.
- (3) In relation to dividends payable to the Bank of Ireland out of the public revenue of the United Kingdom, and public revenue dividends which are entrusted to the Bank of Ireland for payment and distribution and are not payable by that Bank at its principal office in Belfast, the following provisions shall have effect—
- (a) the money which, but for the provisions of this subparagraph, would be issuable to the Bank of Ireland under section 14 of the National Debt Act 1870, or otherwise payable to the Bank of Ireland for the purpose of

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- dividends on securities of the United Kingdom Government entered in the register of the Bank of Ireland in Dublin, shall be issued and paid to the Bank of England, and
- (b) the Bank of England shall set apart and retain out of moneys so issued and paid to them the amount of the income tax on the dividends payable to the Bank of Ireland, and on the dividends on the securities of the United Kingdom Government entered in the register of the Bank of Ireland in Dublin, and
  - (c) the Bank of England shall pay to the Bank of Ireland the residue of the moneys so issued and paid to them, to be applied by the Bank of Ireland to the payment of the dividends, and
  - (d) the retaining of the amount shall be deemed to be a payment of the income tax by the persons entitled to the dividends, and shall be allowed by them on the receipt of the residue thereof, and the Bank of England and the Bank of Ireland shall be acquitted and discharged of a sum equal to the amount retained as though that sum had been actually paid.
- 3 Money set apart or retained under paragraph 2 above, and the amount of any tax charged on the trading profits of the Bank of England or the Bank of Ireland, shall be paid into the general account of the Board at the Bank of England or the Bank of Ireland.
- 4 No deduction of income tax under this Part of this Schedule shall be made from any dividends payable in respect of stock, securities or annuities standing in the name of the official custodian for charities, nor from any dividends in respect of which there is given to the Bank of England a certificate from the Charity Commissioners that the dividends are subject only to charitable trusts and are exempt from tax.

## **PART II**

### **PUBLIC REVENUE DIVIDENDS PAYABLE BY PUBLIC OFFICES AND DEPARTMENTS**

- 5 Where any payment is made of public revenue dividends payable by any public office or department of the Crown, the appropriate officer shall retain the income tax charged and pay the same into the general account of the Board at the Bank of England or the Bank of Ireland.

## **PART III**

### **OTHER PUBLIC REVENUE DIVIDENDS, FOREIGN DIVIDENDS, AND PROCEEDS OF COUPONS**

- 6 The following persons are chargeable persons for the purposes of this Part of this Schedule—
- (a) every person (other than the National Debt Commissioners or the Bank of England or the Bank of Ireland) who is entrusted with the payment of any dividends which are payable out of the public revenue of Northern Ireland, or which are payable to any persons in the United Kingdom out of any public revenue other than that of the United Kingdom or Northern Ireland,
  - (b) every person in the United Kingdom who is entrusted with the payment of any foreign dividends within the meaning of section 159 of this Act,
  - (c) every banker or other person in the United Kingdom who obtains payment of any dividends in such circumstances that the dividends are chargeable to

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tax under Schedule C, or, in the case of foreign dividends as above defined, under Schedule D, and

- (d) every banker in the United Kingdom who sells or otherwise realises coupons, and every dealer in coupons in the United Kingdom who purchases coupons, in such manner that the proceeds of the sale or realisation are chargeable to tax under Schedule C, or, in the case of foreign dividends as above defined, under Schedule D ;

and every such person shall deliver to the Board—

- (i) on demand by the Board, true and perfect accounts of the amount of all such dividends or proceeds, and
- (ii) not later than twelve months after paying any dividends or effecting any other transaction in respect of which he is a chargeable person, and unless within that time he delivers an account with respect to the dividends or proceeds in question under paragraph (i) above, a written statement specifying his name and address and describing those dividends or proceeds.

7 The Board shall have all necessary powers in relation to the examining, auditing, checking and clearing of the books and accounts of dividends or proceeds delivered under paragraph 6 above, and shall assess and charge the dividends or proceeds at the standard rate of tax in force at the time of payment, but reduced by the amount of the exemptions (if any) allowed by them, and shall give notice of the amount so assessed and charged to the chargeable person.

8 The chargeable person shall out of moneys in his hands pay the income tax on the dividends or proceeds on behalf of the persons entitled thereto, and shall be acquitted in respect of all such payments, and the provisions of the Income Tax Acts shall apply as in the case of dividends payable out of the public revenue of the United Kingdom and entrusted to the Bank of England for payment and distribution.

9 The chargeable person shall pay the income tax into the general account of the Board at the Bank of England or the Bank of Ireland, and, in default of payment, it shall be recovered from him in the same manner as other tax assessed and charged upon him may be recovered.

10 A chargeable person who does all such things as are necessary to enable the tax to be assessed and paid shall receive as remuneration an allowance, to be calculated by reference to the amount of the dividends or proceeds paid from which tax has been deducted, and to be fixed by the Treasury at a rate not being less than thirteen shillings and sixpence for every £1,000 of that amount:

Provided that this paragraph shall not apply to any person entrusted with the payment of dividends payable out of the public revenue of Northern Ireland.

11 Nothing in the preceding provisions of this Part of this Schedule shall impose on any banker the obligation to disclose any particulars relating to the affairs of any person on whose behalf he may be acting.

12 Where income tax in respect of the proceeds of the sale or realisation of any coupon has been accounted for under this Part of this Schedule by any banker or dealer, and the coupon has been subsequently paid in such manner that income tax has been deducted from the payment under any of the provisions of this Schedule, the tax so deducted shall be repaid. A claim under this paragraph shall be made to the Board.

13 (1) Without prejudice to the generality of paragraph 7 above, the Board may, by notice in writing served on any chargeable person, require that person, within such time as may be specified in the notice, to make available at his premises for inspection by an



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officer authorised by the Board all such books and other documents in the possession or control of that person as the officer may reasonably require for the purpose of determining whether any accounts delivered by that person under paragraph 6 above are correct and complete.

- (2) The Board may grant a certificate exempting any chargeable person from the provisions of sub-paragraph (1) above, and while the certificate is in force the powers conferred by that sub-paragraph shall not be exercisable in relation to that person; and any such certificate may be revoked at any time by the Board, and may contain such terms and conditions as they think proper.

## PART IV

### INTERPRETATION OF PARTS I TO III ABOVE

- 14 Section 107 of this Act (which defines, amongst other expressions, "dividends", "public revenue", "public revenue dividends", "banker" and "coupons") shall apply for the interpretation of Parts I to III of this Schedule as it applies for the interpretation of Part V of this Act:

Provided that, in Part III of this Schedule, "dividends" shall include any such interest and other payments as are foreign dividends within the meaning of section 159 of this Act.

## SCHEDULE 6

Section 139.

### SCHEDULE D, CASE I: TREATMENT OF FARM ETC. ANIMALS

#### *Farming: the general rule*

- 1 (1) Subject to the provisions of this Schedule, in computing profits or gains under Case I of Schedule D, animals kept by a fanner for the purposes of his fanning shall be treated as trading stock.
- (2) Animals forming part of production herds with respect to which an election under paragraph 2 below has effect shall not be so treated, but shall be treated instead in accordance with the rules set out in paragraph 3 below.
- (3) An election under the said paragraph 2 is in this Schedule referred to as "an election for the herd basis".

#### *Farming: election for the herd basis*

- 2 (1) An election for the herd basis shall apply to all production herds of a particular class kept by the farmer making the election, including herds which he has ceased to keep before the making of the election, or first begins to keep after the making thereof.
- (2) An election for the herd basis must be made in writing to the inspector, and must specify the class of herds to which it relates.
- (3) Subject to paragraph 6 below, an election for the herd basis shall be valid only if it is made not later than two years after the end of the first chargeable period for which the

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farmer making the election is chargeable under Case I of Schedule D to tax in respect of the profits or gains of his farming, or is given relief under section 168 or 177(2) of this Act (set off of trading losses against general income) in respect of his farming, being profits or gains or relief the amount of which is computed by reference to the facts of a period during the whole or some part of which the farmer kept a production herd of the class in question.

- (4) An election for the herd basis shall be irrevocable and, subject to paragraph 6 below, shall have effect for the said first chargeable period and all subsequent chargeable periods.
- 3 (1) Where an election for the herd basis has effect, the consequences for the purpose of computing profits or gains under Case I of Schedule D shall be as provided by this paragraph.
- (2) The initial cost of the herd and, subject to the provisions of this paragraph as to replacements, the cost of any animal added to the herd shall not be deducted as an expense, and the value of the herd shall not be brought into account.
- (3) Where an animal which has theretofore been treated as part of the farmer's trading stock is added to the herd otherwise than by way of replacement, there shall be included as a trading receipt—
- (a) in the case of an animal bred by the farmer, a sum equal to the cost of breeding it and rearing it to maturity, and
  - (b) in any other case, a sum equal to the initial cost to the farmer of acquiring the animal, together with any cost incurred by him in rearing it to maturity.
- (4) Where an animal forming part of the herd dies, or ceases to form part thereof, and is replaced therein by another animal—
- (a) any proceeds of sale of the animal which dies or ceases to form part of the herd shall be included as a trading receipt, and
  - (b) the cost of the animal which replaces it, except in so far as that cost consists of such costs as are allowable apart from the provisions of this Schedule as deductions in computing profits or gains of farming under Case I of Schedule D, shall be deducted as an expense:
- Provided that—
- (i) where the second-mentioned animal is of better quality than the animal which it replaces, the amount deducted shall not exceed the amount which it would have been necessary to expend in order to acquire an animal of the same quality as the one replaced, and
  - (ii) where the animal which is replaced was slaughtered by the order of any Ministry, government department or local or public authority under the law relating to diseases of animals, and the animal which replaces it is of worse quality, the amount included as a trading receipt shall not exceed the amount allowable as a deduction.
- (5) Where the herd is sold as a whole, and another production herd of the same class is acquired, sub-paragraphs (1) to (4) above shall apply as though there had been sold from the original herd, and replaced therein, a number of animals equal to the number in the original herd or in the newly acquired herd, whichever is the less.
- (6) If (either all at once or over a period not exceeding twelve months) either—

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- (a) the whole of a herd is sold in circumstances in which subparagraph (5) above does not apply, or
- (b) a part of a herd is sold on a substantial reduction being made in the number of animals in the herd,

any profit or loss arising from the transaction shall not be taken into account:

Provided that where, within five years of the sale, the seller acquires or begins to acquire another production herd of the class in question or, as the case may be, acquires or begins to acquire animals to replace the part of the herd in question—

- (i) sub-paragraphs (4) and (5) above shall apply to the acquisition or replacement, except that, if the sale was one which the seller was compelled to effect by causes wholly beyond his control, the amount included as a trading receipt in respect of any animal sold which is replaced by an animal of worse quality shall not exceed the amount allowable as a deduction in respect of that animal of worse quality, and
  - (ii) for the purposes of the application of those sub-paragraphs, the proceeds of sale of the animals comprised in the original herd or part of a herd shall be brought into account as if they had been respectively received at the times of the corresponding acquisitions.
- (7) If an animal forming part of the herd is sold, and neither sub-paragraph (4) nor (5) nor (6) above applies, any profit or loss arising from the transaction shall be included or deducted, as the case may be ; and for the purposes of this sub-paragraph, the said profit or loss shall be computed by comparing with the proceeds of sale—
- (a) in the case of an animal bred by the farmer, the cost of breeding it and rearing it to maturity, and
  - (b) in any other case, a sum equal to the initial cost to the farmer of acquiring the animal (or, in the case of an animal acquired otherwise than for valuable consideration, its market value when the farmer acquired it) together, in both cases, with any cost incurred by him in rearing it to maturity.
- (8) Where the herd is sold as a whole, and another production herd of the same class is acquired, and the number of animals in the newly acquired herd is less than the number in the original herd, then, if the difference is not substantial, subparagraph (6) above shall not apply, and subparagraph (7) above shall apply to a number of animals in the original herd equal to the difference.
- (9) The preceding provisions of this paragraph shall apply in relation to the death or destruction of animals as they apply in relation to their sale, as if any insurance or compensation moneys received by reason of the death or destruction were proceeds of sale, and any reference in this paragraph to the proceeds of sale of an animal includes a reference to any proceeds of sale of its carcase or any part thereof.

*Farming : provisions applicable to special cases*

- 4 A farmer who, having kept a production herd of a particular class, ceases altogether to keep herds of that class for a period of at least five years shall, as respects production herds kept by him after the end of that period, be treated as if he had never kept any production herds of that class before the end of that period.
- 5 (1) Where a farmer transfers to another person all or any of the animals which form part of a production herd otherwise than by way of sale, or by way of sale but for a price other than that which they would have fetched if sold in the open market, and either—

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- (a) the transferor is a body of persons over whom the transferee has control, or the transferee is a body of persons over whom the transferor has control, or both the transferor and the transferee are bodies of persons and some other person has control over both of them, or
- (b) it appears with respect to the transfer, or with respect to transactions of which the transfer is one, that the sole or main benefit, or one of the main benefits, which (apart from the provisions of this paragraph) might have been expected to accrue to the parties or any of them was a benefit resulting from the obtaining of a right to make an election for the herd basis, or from such an election having effect or ceasing to have effect, or from such an election having a greater effect or a less effect,

the like consequences shall ensue, in relation to all persons concerned, for the purpose of computing profits or gains under Case I of Schedule D as would have ensued if the animals had been sold for the price which they would have fetched if sold in the open market.

- (2) In this paragraph " body of persons " includes a partnership, and " control" has the meaning given by section 534 of this Act.
- 6 (1) Where the whole or a substantial part of a production herd kept by a farmer for the purposes of his fanning is slaughtered by the order of any Ministry, government department or local or public authority under the law relating to diseases of animals in such circumstances that compensation is payable in respect of it, an election for the herd basis thereupon made by the farmer in relation to that herd and any other production herds of the same class so kept by him shall, subject to sub-paragraph (2) below, be valid notwithstanding that it is not made within the time required by paragraph 2(3) of this Schedule.
- (2) An election for the herd basis made by virtue of sub-paragraph (1) above shall only be valid if made not later than two years after the end of the first chargeable period for which the tax chargeable on the farmer in respect of the profits or gains of his farming finally falls to be computed by reference to the facts of a period in which the compensation is relevant:
 

Provided that, for income tax (but not corporation tax) purposes, if that chargeable period is the second year of assessment within the meaning of section 117 of this Act (basis of assessment for second and third years after commencement), and notice is given under subsection (2) of that section, the election shall be valid if made not later than the giving of that notice.
  - (3) An election for the herd basis made by virtue of sub-paragraph (1) above shall, notwithstanding paragraph 2(4) of this Schedule, have effect only for the chargeable period mentioned in sub-paragraph (2) above and subsequent chargeable periods:
 

Provided that, for income tax (but not corporation tax) purposes, the election shall have effect for earlier chargeable periods for the purposes of any claim under section 168 of this Act (set off of trading losses against general income) which is made by the farmer for relief in respect of his farming, if the relief falls to be computed wholly or partly by reference to the facts of a period in which the compensation is relevant.
  - (4) For the purposes of this paragraph, compensation shall be deemed to be relevant in any period if, but only if, it falls (or would but for an election under this paragraph fall) to be taken into account as a trading receipt in computing the profits or gains or losses of that or an earlier period.

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*Exclusion of working animals, and interpretation of preceding provisions*

7 Nothing in this Schedule applies to any animals kept wholly or mainly for the work they do in connection with the carrying on of the farming.

8 (1) In this Schedule "herd" includes a flock, and any other collection of animals, however named.

(2) For the purposes of this Schedule, immature animals kept in a herd shall not be treated as forming part of the herd unless—

- (a) the land on which the herd is kept is such that animals which die or cease to form part of the herd cannot be replaced except by animals bred and reared on that land, and
- (b) the immature animals in question are bred in the herd, are maintained therein for the purpose of replacement, and are necessarily maintained for that purpose,

and references in this Schedule to herds shall be construed accordingly, and references therein to an animal being added to a herd include references to an immature animal which is kept in the herd becoming a mature animal:

Provided that not more immature animals shall in any case be treated as forming part of a herd than are required to prevent a fall in the numbers of the herd.

Female animals shall be treated for the purposes of this Schedule as becoming mature when they produce their first young.

(3) In this Schedule "a production herd" means, in relation to a farmer, a herd of animals of the same species (irrespective of breed) kept by him wholly or mainly for the sake of the products which they produce for him to sell, being products obtainable from the living animal.

In this sub-paragraph "product obtainable from the living animal" means—

- (a) the young of the animal, or
- (b) any other product obtainable from the animal, not being a product obtainable only by slaughtering the animal itself.

(4) For the purposes of this Schedule, production herds kept by a fanner shall be deemed to be of the same class if, and only if, all the animals kept in the herds are of the same species (irrespective of breed) and the products produced for him to sell for the sake of which (either wholly or mainly) the herds are kept by him are of the same kinds in the case of all the herds; and elections for the herd basis shall be framed accordingly.

(5) Any reference in this Schedule to profits or gains chargeable to tax under Schedule D includes a reference to profits or gains which would be so chargeable if there were any such profits or gains for the chargeable period in question.

*Application of preceding provisions to trades other than farming, creatures other than animals, and animals and creatures kept singly*

9 (1) The preceding provisions of this Schedule shall, with the necessary adaptations, apply in relation to trades other than farming, and trades consisting only in part of farming, as they apply in relation to fanning, and references to fanners shall be construed accordingly.

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- (2) The said provisions (both in relation to farming and in relation to other trades) shall apply in relation to living creatures other than animals as they apply in relation to animals.

Laying birds shall be treated for the purposes of this Schedule as becoming mature when they first lay.

- (3) The provisions of this Schedule shall (both in relation to farming and in relation to other trades) apply, with the necessary adaptations, in relation to animals or other creatures kept singly as they apply in relation to herds.
- (4) Nothing in this Schedule shall apply in relation to any animal or other creature kept wholly or mainly for public exhibition, or for racing or other competitive purposes.

*Supplemental*

- 10       Where an election for the herd basis is made, every person carrying on any farming or other trade affected by the election shall, if required to do so by notice from the inspector, make and deliver to the inspector, within the time specified in the notice, such returns as to, and as to the products of, the animals or other creatures kept by him for the purposes of the trade as may be required by the notice.
- 11       Where an election for the herd basis has effect for any chargeable period after an assessment for that period has become final and conclusive, any such assessment or, on a claim therefor, repayment of tax shall be made as may be necessary to give effect to the election

SCHEDULE 7

Section 167(6).

SCHEDULE D, CASE VII: MISCELLANEOUS RULES

*Discharge and assignment of contracts; options and other conditional contracts, etc.*

- 1       (1) Save as provided by paragraph 2 below, a person's acquisition or disposal of an asset by a contract in that behalf shall be disregarded for the purposes of Case VII if—
- (a) the contract is discharged by mutual consent or by operation of law, or
  - (b) default is made in carrying out the contract and, by reason of that default, there is no conveyance or transfer to implement the contract, whether by or to the person originally making the contract or another, or
  - (c) the contract is conditional and the condition is not satisfied.
- (2) Where a person disposes of an asset, and the whole or part of the consideration is irrecoverable, the amount irrecoverable shall be disregarded in so far as it is not realised by the disposal in whole or in part of the right to the consideration ; and if the consideration is abated for any error in or default under the contract, Chapter VIII of Part VI of this Act shall apply as if the abated consideration had originally been contracted for.
- (3) If, in the case of a conditional contract to acquire or dispose of an asset, the condition is satisfied (and, in particular, if in the case of a contract conferring an option the option is exercised), then, subject to sub-paragraphs (4) to (6) below, the acquisition

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or disposal of the asset by the contract shall be treated as taking place at the time when the condition is satisfied.

- (4) If the disposal of an asset by a conditional contract is made for a consideration not depending wholly or mainly on the value of the asset at the time the condition is satisfied, the contract shall in relation to the disposal be treated (on the condition being satisfied) as if it had never been conditional.
  - (5) Where a contract for the disposal of an asset is discharged by mutual consent, but is replaced by a new contract for its disposal to the same person or to another in his place, the disposal by the new contract shall be treated as if it had taken place at the time when the disposal by the previous contract is to be treated as having taken place, and, if the previous contract was a conditional contract, the condition shall for that purpose be treated as satisfied by the making of the new contract.
  - (6) Nothing in sub-paragraphs (3) to (5) above shall apply in relation to a contract entered into before 10th April 1962.
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- (1) Subject to paragraph 21 of this Schedule, a person acquiring a right under a subsisting contract to acquire or dispose of an asset shall be treated as thereby acquiring or disposing of the asset to the like extent as if he had then entered into a new contract conferring that right (his undertaking the obligations under the subsisting contract not being treated as consideration given by him for the acquisition of the right, but any consideration so given being treated, in relation to his acquisition and disposal of the asset, as an expense of acquiring or disposing of it).
  - (2) Notwithstanding anything in section 162(1) of this Act, a person disposing of the right under a subsisting contract to acquire or dispose of an asset shall not be treated as thereby disposing of the asset nor, in a case not within sub-paragraph (3) below, as having acquired or disposed of it by that contract.
  - (3) Subject to paragraph 21 of this Schedule, where a person disposes of an asset to another subject to and with the benefit of any subsisting contract for its disposal to a third person, then, if the contract is not conditional or the condition is satisfied at the time of the later disposal—
    - (a) he shall not be treated as thereby making any new disposal of the asset except to the extent to which it was not disposed of by that contract, and so much of the consideration for the later disposal as is attributable to the right to receive the consideration under that contract shall be disregarded, and
    - (b) he shall be treated as thereby completing the disposal by that contract, and that disposal shall not under paragraph 1 above be treated as affected by any subsequent discharge of or default under the contract or abatement of the consideration.
  - (4) A person's right under a contract entered into by him to acquire or dispose of an asset shall, in relation to any disposal by him of that right, be treated as having been acquired by him on the making of the contract for any consideration given by him for having that right (other than his agreement to acquire or dispose of the asset); and where a person gives any consideration to be discharged from a contract to acquire or dispose of an asset, the person to whom it is given shall be treated as disposing for that consideration of his right under the contract to dispose of or acquire the asset.
  - (5) Where a person dies after entering into a conditional contract for the acquisition or disposal of an asset (the condition not being satisfied at the time of his death), then—

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- (a) in the case of a contract to acquire the asset, nothing in this paragraph shall apply so as to treat any other person as acquiring the asset by reason of that contract on the condition being satisfied, except that sub-paragraph (1) shall apply in relation to any person acquiring from the personal representatives or legatee the right under the contract to acquire the asset, and
- (b) in the case of a contract to dispose of the asset, nothing in this paragraph or paragraph 1 above shall apply so as to treat him as disposing of the asset under the contract on the condition being satisfied.

*Gifts, settled property and bargains not at arm's length*

- 3 (1) Where a person resident and ordinarily resident in the United Kingdom either—
- (a) disposes by way of gift of an asset previously acquired by him, but does so without there being, within the meaning of Case VII, an acquisition and disposal by him, or
  - (b) disposes by way of gift of an asset acquired by him only as legatee,
- then, so far as relates to the interest taken by the donee, the donee shall be treated as if the donor's acquisition of the asset had been his acquisition of it.
- (2) Where, in a case not falling within sub-paragraph (1)(a) or (1)(b) above, a person resident and ordinarily resident in the United Kingdom disposes by way of gift of an asset acquired or to be acquired by him, and the donee is also resident and ordinarily resident in the United Kingdom, then, on an election being made in that behalf—
- (a) the donor shall not be chargeable under Case VII in respect of any acquisition and disposal by reference to that disposal, and
  - (b) the donee shall be treated as if the donor's acquisition of the asset had been his acquisition of it, but so that the amount of the consideration for which he is treated as acquiring the asset shall not by virtue of this sub-paragraph be increased.
- (3) An election under sub-paragraph (2) above shall be made by the donor and donee jointly, except that it may be made by the donee alone if the donor would not, apart from that sub-paragraph, be chargeable to tax under Case VII in respect of the gain (if any) treated as accruing to him from his acquisition and disposal of the asset.
- (4) A person shall not be chargeable under Case VII in respect of any acquisition and disposal by reference to a disposal made to any charity if the disposal is by way of gift for the purposes of the charity.

In this sub-paragraph "charity" means any body of persons or trust established for charitable purposes only.

- 4 (1) Section 162(4) of this Act and paragraph 3 above shall apply in relation to a gift in settlement as a gift to the trustees of the settlement, and shall so apply notwithstanding that the settlor is one of the trustees, or the sole trustee, of the settlement; but if the settlor or the settlor's wife or husband has, or can by any means (whether or not requiring any consent or concurrence) obtain for the settlor or for the settlor's wife or husband any beneficial interest in the settled property or the income from it, no loss treated as accruing to the settlor by reason of the gift in settlement shall be allowable under Case VII.
- (2) Subject to sub-paragraph (3) below, where under a settlement a person becomes absolutely entitled as against the trustee to settled property (whether alone or jointly



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with another), he shall be chargeable by reference to any subsequent disposal of the property by him as if its acquisition by the trustees had been his acquisition of it.

- (3) Where for a consideration in money or money's worth a person becomes absolutely entitled as against the trustee to settled property, or two or more persons jointly become so entitled, either by the exercise of a power of appointment under the settlement or by acquiring the interests of persons who were together so entitled and acted in concert in disposing of their interests to him or them, then, notwithstanding anything in section 163(4) of this Act—
- (a) the person or persons becoming so entitled shall, on disposing of the property, be chargeable under Case VII by reference to that acquisition of it, if there is an acquisition and disposal by him or them, and
  - (b) the person exercising the power, or persons disposing of their interests under the settlement, shall be chargeable under that Case by reference to that disposal of the property, as if its acquisition by the trustees had been his or their acquisition of it.
- 5 (1) Subject to sub-paragraph (4) below, where a person resident and ordinarily resident in the United Kingdom disposes otherwise than by way of bargain at arm's length (but not by way of gift) of an asset acquired or to be acquired by him so that there is an acquisition and disposal of the asset by him, and the person acquiring the asset on that disposal is also resident and ordinarily resident in the United Kingdom, then, on an election being made in that behalf, the person disposing of the asset and the person acquiring it on that disposal shall be treated as doing so for a consideration equal to whichever is the higher of—
- (a) the actual consideration, and
  - (b) such amount as will secure that neither a gain nor a loss accrues to the person disposing of the asset from his acquisition and disposal of it:
- Provided that this sub-paragraph shall not apply so as to increase the amount of the consideration for which those persons are respectively treated as disposing of and acquiring the asset.
- (2) An election under this paragraph shall be made jointly by the person disposing of the asset and the person acquiring it, except that an election may be made by the person disposing of the asset alone if the person acquiring it would not, on disposing of it, be chargeable to tax under Case VII in respect of the gain (if any) accruing to him from his acquisition and disposal of it.
- (3) In a case falling within section 162(4)(b) of this Act, the amount referred to in paragraph (b) of sub-paragraph (1) above shall be taken to be higher than the actual consideration referred to in paragraph (a) of that sub-paragraph.
- (4) This paragraph shall not apply to a disposal of assets by a company by way of distribution in respect of shares in the company.
- 6 (1) Where, in the case of a man and his wife living with him, the man disposes of an asset acquired or to be acquired by him to the wife, or the wife disposes of an asset acquired or to be acquired by her to the man, then—
- (a) the one making the disposal shall not be chargeable under Case VII in respect of an acquisition and disposal by reference to that disposal, and
  - (b) the one to whom the disposal is made shall be treated as if the other's acquisition of the asset had been his or her acquisition of it:

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Provided that this sub-paragraph shall not apply in relation to a disposal of an asset if, until the disposal, the asset formed part of the trading stock of a trade carried on by the one making the disposal, or if the asset is acquired as trading stock for the purposes of a trade carried on by the one acquiring it.

- (2) Where a person disposes of an asset to a company of which he has control, no loss accruing to him from the acquisition and disposal of the asset shall be allowable under Case VII otherwise than by deduction from any gain accruing on the disposal of assets to the company while he has control of it; and, for the purposes of this sub-paragraph, an individual shall be treated as having control of a company if the individual's wife or husband has control of it, or if they together have control of it.

*Appropriations to and from stock in trade*

- 7 (1) Subject to sub-paragraph (3) below, where an asset acquired by a person otherwise than as trading stock of a trade carried on by him is appropriated by him for the purposes of the trade as trading stock (whether on the commencement of the trade or otherwise) and, if he had then sold the asset for its market value, a gain or loss chargeable or allowable under Case VII would have accrued to him, he shall be treated as having thereby disposed of the asset by selling it for its then market value.
- (2) Where an asset forming part of the trading stock of a person's trade is appropriated by him for any other purpose, or is retained by him on his ceasing to carry on the trade, he shall be treated as having acquired it for a consideration equal to the amount brought into the accounts of the trade in respect of it for tax purposes on the appropriation or on his ceasing to carry on the trade, as the case may be.
- (3) Sub-paragraph (1) above shall not apply in relation to a person's appropriation of an asset for the purposes of a trade if he is chargeable to tax in respect of the profits of the trade under Case I of Schedule D and elects that, instead, the market value of the asset at the time of the appropriation shall, in computing the profits of the trade for the purposes of tax, be treated as reduced by the amount of the gain, or increased by the amount of the loss, referred to in that sub-paragraph; and where that sub-paragraph does not apply by reason of such an election, the profits of the trade shall be computed accordingly:

Provided that if a person making an election under this sub-paragraph is at the time of the appropriation carrying on the trade in partnership with others, the election shall not have effect unless concurred in by the others.

*Identification of shares etc. disposed of*

- 8 (1) Subject to paragraph 9 below, where a person disposes of shares, the shares disposed of shall be identified in accordance with the rules contained in this paragraph with the shares acquired by him which could be comprised in that disposal, and shall be so identified notwithstanding that they are otherwise identified by the disposal, or by a transfer or delivery giving effect to the disposal (but so that, where a person disposes of shares in one capacity, they shall not be identified with shares which he holds or can dispose of only in some other capacity).
- (2) The identification under this paragraph of the shares disposed of on any occasion shall have effect not only for determining the gain or loss accruing by reason of that disposal, but for all the purposes of Case VII, including its operation in relation to other disposals by the same person and, in a case where that person's acquisition of

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the shares is or may be relevant to the person acquiring from him, its operation in relation to the last-mentioned person.

- (3) Shares disposed of on an earlier date shall be identified before shares disposed of on a later, and the identification of the shares first disposed of shall accordingly determine the shares which could be comprised in the later disposal.
- (4) Shares disposed of for transfer or delivery on a particular date, or in a particular period—
  - (a) shall not be identified with shares acquired for transfer or delivery on a later date, or in a later period, and
  - (b) shall be identified with shares acquired for transfer or delivery on or before that date, or in or before that period, but on or after the date of the disposal, rather than with shares not so acquired.
- (5) The shares disposed of shall be identified with shares not acquired as legatee rather than with shares acquired as legatee.
- (6) The shares disposed of shall be identified—
  - (a) with shares acquired within the twelve months preceding the disposal rather than with shares not so acquired, and with shares so acquired on an earlier date rather than with shares so acquired on a later, and
  - (b) subject to paragraph (a) above, with shares acquired on a later date rather than with shares acquired on an earlier, and
  - (c) with shares acquired at different times on any one day in as nearly as may be equal proportions.
- (7) The preceding rules shall have priority according to the order in which they are stated.
- (8) Notwithstanding anything in sub-paragraphs (3) to (6) above, where, under arrangements designed to postpone the transfer or delivery of shares disposed of, a person by a single bargain acquires shares for transfer or delivery on a particular date, or in a particular period, and disposes of them for transfer or delivery on a later date, or in a later period, then—
  - (a) the shares disposed of by that bargain shall be identified with the shares thereby acquired, and
  - (b) shares previously disposed of which, but for the operation of paragraph (a) above in relation to acquisitions for transfer or delivery on the earlier date or in the earlier period, would have been identified with the shares acquired by that bargain—
    - (i) shall, subject to sub-paragraph (3) above, be identified with any available shares acquired for such transfer or delivery (that is to say, any shares so acquired other than shares to which paragraph (a) above applies, and other than shares with which shares disposed of for such transfer or delivery would be identified apart from this sub-paragraph), and
    - (ii) in so far as they cannot be so identified, shall be treated as disposed of for transfer or delivery on the later date, or in the later period, above-mentioned.
- (9) This paragraph, and paragraph 9 below, shall apply in relation to a disposal of any assets as they apply in relation to a disposal of shares, where the assets are of a nature to be dealt in without identifying the particular assets disposed of or acquired.

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- 9 (1) Where, in the case of a man and his wife living with him, one of them—
- (a) disposes of shares to his wife or her husband after 10th April 1968, and
  - (b) disposes of other shares, of the same kind as those disposed of to the wife or husband, to another person (in this paragraph called " a third party "),
- the provisions of this paragraph shall have effect as respects any shares acquired by the person making those disposals which, but for the provisions of paragraph 8 above, could have been comprised in either of those disposals.
- (2) If, but for the provisions of this sub-paragraph, shares disposed of to a third party—
- (a) would not be taxable shares, and
  - (b) but for the disposal to the wife or husband would be taxable shares,
- the identification shall be reversed so that the shares disposed of to the third party (or, if the quantity disposed of to the third party was greater than the quantity disposed of to the wife or husband, a part of them equal to the quantity disposed of to the wife or husband) shall be taxable shares.
- (3) If there is more than one disposal to the wife or husband, or more than one disposal to a third party, the provisions of this paragraph shall be applied to shares disposed of on an earlier date before being applied to shares disposed of on a later date, and the re-identification of the shares first disposed of shall accordingly determine the way in which this paragraph applies to the shares comprised in the later disposal.
- (4) In this paragraph " taxable shares " are shares the disposal of which, together with their acquisition, constitutes an acquisition and disposal within the meaning of Case VII.

*Re-acquisition of shares etc. after sale at a loss*

- 10 (1) Subject to sub-paragraph (3) below, where a loss accrues to a person from his acquisition and disposal of any shares, and he re-acquires the same shares within one month after the disposal or, in the case of a re-acquisition otherwise than through a stock exchange, within six months after it, that loss shall not be allowable under Case VII otherwise than by deduction from any gain accruing to him from an acquisition and disposal of the shares beginning with the re-acquisition.

For the purposes of this sub-paragraph, shares acquired for transfer or delivery after the date of transfer or delivery of the shares sold shall be deemed to have been acquired after the disposal of the shares sold.

- (2) Subject to sub-paragraph (3) below, where a person disposes of shares and afterwards acquires the like shares within the period referred to in sub-paragraph (1) above, he is to be treated for the purposes of this paragraph as re-acquiring the shares disposed of (or, if the quantity disposed of was greater than the quantity acquired, a part of them equal to the quantity acquired), but so that—
- (a) there cannot be in relation to the same disposal more than one re-acquisition of the same share, nor be by the same acquisition of a share a re-acquisition in relation to more than one disposal, and
  - (b) an acquisition of shares shall, where there has been more than one relevant disposal, be treated as a re-acquisition of shares disposed of on an earlier date rather than of shares disposed of on a later, and as a re-acquisition of shares disposed of at different times on the same date in as nearly as may be equal proportions, and

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- (c) where there is more than one acquisition of shares relevant to a previous disposal, shares acquired on an earlier date shall be treated in relation to that disposal as the shares re-acquired rather than shares acquired on a later date, and, as between shares acquired on any one date, those subsequently disposed of on an earlier date shall be so treated rather than those subsequently disposed of on a later date, and those subsequently disposed of on any one day shall be so treated in as nearly as may be equal proportions, and
    - (d) where a person disposes of shares in one capacity, shares which he acquires in some other capacity shall be disregarded.
- (3) Where a person acquires shares and, under paragraph 8 above, shares previously disposed of by him are identified with those shares, then—
  - (a) this paragraph shall not apply in relation to any loss accruing from that acquisition and disposal, and
  - (b) that acquisition shall not be treated for the purposes of this paragraph as a re-acquisition of any shares.
- (4) Where, under paragraph 8(8) above, shares disposed of are identified with shares acquired by the same bargain, sub-paragraph (3) of this paragraph shall apply as if the disposal had preceded the acquisition.
- (5) Where—
  - (a) under arrangements designed to postpone the acceptance of shares acquired, a person by a single bargain disposes of shares for transfer or delivery on a particular date, or in a particular period, and acquires them for transfer or delivery on a later date, or in a later period, and
  - (b) under paragraph 8 above—
    - (i) the shares disposed of by that bargain are identified with shares previously acquired for transfer or delivery on the earlier date, or in the earlier period, and
    - (ii) shares disposed of afterwards, but within six months of the date of that bargain, are identified with the shares acquired by that bargain,then, subject to sub-paragraph (6) below, sub-paragraph (3) of this paragraph shall apply as if the disposal by that bargain had preceded the acquisition of the shares so identified with those disposed of.
- (6) Where an acquisition of shares is more than once continued by such a bargain as is referred to in paragraph (a) of sub-paragraph (5) above, that sub-paragraph shall apply in relation to each bargain continuing the acquisition, but so that, in relation to each such bargain, paragraph (b)(ii) of that sub-paragraph shall have effect as if the references to the date of the bargain and the shares thereby acquired were references to the date of the last of the bargains and the shares thereby acquired; and, for the purposes of this sub-paragraph, an acquisition continued by one bargain shall be treated as further continued by a later bargain in so far as the shares disposed of by the later bargain are identified under paragraph 8 above with the shares acquired by the earlier.
- (7) This paragraph, and paragraph 11 below, shall apply in relation to acquisitions or disposals of any assets as they apply in relation to acquisitions or disposals of shares, where the assets are of a nature to be dealt in without identifying the particular assets disposed of or acquired.

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- 11 (1) Where, in the case of a man and his wife living with him, a loss accrues to one of them from his or her acquisition and disposal of any shares, and the other of them is to be treated in accordance with this paragraph as acquiring the same shares within the prescribed period after the disposal, that loss shall be allowable under Case VII by deduction from any gain accruing to the other (that is to say, the wife or husband of the person to whom the loss accrued) from an acquisition and disposal of the shares beginning with that acquisition by the other, but shall not be so allowable by deduction from any other gain accruing to either of them.
- (2) Shares disposed of by the husband or wife shall not for the purposes of this paragraph be treated as the same as shares acquired by the other if, for the purposes of paragraph 10 above—
- (a) the person disposing of the shares is to be treated as having re-acquired the same shares, or
  - (b) the person acquiring the shares is to be treated as thereby re-acquiring shares disposed of,
- or if the person acquiring the shares acquires them from her husband or his wife.
- (3) Subject to sub-paragraph (2) above, where the husband or wife disposes of shares and the other afterwards acquires the like shares within the prescribed period from the disposal, the other is to be treated for the purposes of this paragraph as acquiring the same shares as those disposed of (or, if the quantity disposed of was greater than the quantity acquired, a part equal to the quantity acquired) and, so far as necessary, the rules in paragraphs (a) to (d) of paragraph 10(2) above shall apply for the purpose of determining which are the same shares, as if the husband and wife were one person, and disregarding all shares excluded by sub-paragraph (2) above.
- (4) For the purposes of this paragraph, shares acquired by the wife or husband for transfer or delivery after the date of transfer or delivery of the shares sold by the other shall be deemed to have been acquired after the disposal of the shares sold.
- (5) Where the husband or wife acquires shares and, under paragraph 8 above, shares previously disposed of by him or her are identified with those shares, then—
- (a) this paragraph shall not apply in relation to any loss accruing from that acquisition and disposal, and
  - (b) that acquisition shall not be treated for the purposes of this paragraph as an acquisition of the same shares as any shares disposed of by the other,
- and sub-paragraphs (4) to (6) of paragraph 10 above shall apply as if references in those sub-paragraphs to sub-paragraph (3) of the said paragraph 10 included references to this sub-paragraph.
- (6) In this paragraph " the prescribed period " means—
- (a) in the case of an acquisition of shares through a stock exchange, one month, and
  - (b) in the case of an acquisition of shares otherwise than through a stock exchange, or in the case of an acquisition of some other kind of asset, six months.

*Reorganisation or reduction of share capital*

- 12 (1) This paragraph shall apply in relation to any reorganisation or reduction of a company's share capital; and for the purposes of this paragraph—
- (a) references to a reorganisation of a company's share capital include—

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- (i) any case where persons are, whether for payment or not, allotted shares in or debentures of the company in respect of and in proportion to (or as nearly as may be in proportion (a) their holdings of shares in the company or of any class of shares in the company, and
    - (ii) any case where there are more than one class of share and the rights attached to shares of any class are altered, and
  - (b) " original shares " means shares held before and concerned in the reorganisation or reduction of capital, and " new holding " means, in relation to any original shares, the shares in and debentures of the company which, as a result of the reorganisation or reduction of capital, represent the original shares (including such, if any, of the original shares as remain).
- (2) Subject to the following sub-paragraphs, a reorganisation or reduction of a company's share capital shall not be treated as involving any disposal of the original shares, or any acquisition of the new holding or any part of it, but the original shares and the new holding shall be treated as the same asset acquired as the original shares were acquired.
- (3) Where, on a reorganisation or reduction of a company's share capital, a person gives or becomes liable to give any consideration for his new holding or any part of it, that consideration shall, in relation to any disposal of the new holding or any part of it, be treated as having been given for the original shares, and, if the new holding or part of it is disposed of with a liability attaching to it in respect of that consideration, the consideration given for the disposal shall be adjusted accordingly:

Provided that there shall not be treated as consideration given for the new holding or any part of it any surrender, cancellation or other alteration of the original shares or of the rights attached thereto, or any consideration consisting of any application in paying up the new holding or any part of it of assets of the company or of any dividend or other distribution declared out of those assets but not made.

Notwithstanding the above proviso, in applying this sub-paragraph in relation to the issue of share capital to which subsection (1) of section 236 of this Act (stock dividend options) applies (as involving a reorganisation of the company's share capital) there shall be allowed, as consideration given for the new holding which includes that share capital, the sum referred to in that subsection less income tax at the standard rate.

- (4) Where, on a reorganisation or reduction of a company's share capital, a person receives or becomes entitled to receive in respect of his original shares any capital distribution from the company not forming part of the new holding, he shall be treated as if the new holding resulted from his having, in consideration of that distribution, disposed of an interest in the original shares of a market value equal to that of the distribution (but without prejudice to the original shares and the new holding being treated in accordance with sub-paragraph (2) above as the same asset).

References in this sub-paragraph to any capital distribution from the company include references to any consideration given by any person other than the company in respect of the original shares.

- (5) Subject to paragraph 13 below, where, for the purpose of computing the gain or loss accruing to a person from the acquisition and disposal of any part of the new holding, it is necessary to apportion the cost of acquisition of any of the original shares between what is disposed of and what is retained, the apportionment shall be

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made by reference to market value at the date of the disposal (with such adjustment of the market value of any part of the new holding as may be required to offset any liability attaching thereto but forming part of the cost to be apportioned); and any corresponding apportionment for the purposes of sub-paragraph (4) above shall be made in like manner.

- (6) Where, on a reorganisation of a company's share capital, a person receives, or becomes entitled to receive, in respect of any shares a provisional allotment of shares in or debentures of the company, then, unless he neither accepts the allotment nor disposes of his rights before or after the making of the allotment, those rights shall be treated in relation to him and any person acquiring them directly or indirectly from him as if they were the shares or debentures to which they relate, and as if the consideration to be given for the shares or debentures were a liability attaching to the rights.
- (7) References in this paragraph to a reduction of share capital do not include the paying off of redeemable share capital, and where shares in a company are redeemed by a company otherwise than by the issue of shares or debentures (with or without other consideration) and otherwise than in a liquidation, the shareholder shall be treated as disposing of the shares at the time of the redemption.
- 13 (1) This paragraph applies to a new holding, as defined in paragraph 12(1)(b) above—
- (a) if it consists of more than one class of shares in or debentures of the company, and one or more of those classes is of shares or debentures which, at any time not later than the end of the period of three months beginning with the date on which the reorganisation or reduction of capital took effect, or of such longer period as the Board may by notice in writing allow, had quoted market values on a recognised stock exchange in the United Kingdom or elsewhere, or
  - (b) (in a case where the operation of that paragraph is extended by section 167(3) of this Act) if it consists of more than one class of rights of unit holders, and one or more of those classes is of rights the prices of which were published daily by the managers of the scheme at any time not later than the end of that period of three months (or longer if so allowed).
- (2) Where, for the purpose of computing the gain or loss accruing to a person from the acquisition and disposal of the whole or any part of any class of shares or securities or rights of unit holders forming part of a new holding to which this paragraph applies, it is necessary to apportion costs of acquisition between what is disposed of and what is retained, the cost of acquisition of the new holding shall first be apportioned between the entire classes of shares or debentures or rights of which it consists by reference to market value on the first day (whether that day fell before the reorganisation or reduction of capital took effect or later) on which market values or prices were quoted or published for the shares, debentures or rights as mentioned in sub-paragraph (1)(a) or (1)(b) above (with such adjustment of the market value of any class as may be required to offset any liability attaching thereto but forming part of the cost to be apportioned); and this sub-paragraph shall have effect notwithstanding sub-paragraph (5) of the said paragraph 12.
- (3) Sub-paragraphs (1) and (2) above shall have effect as if contained in the said paragraph 12.
- (4) For the purposes of this paragraph, the day on which a reorganisation of share capital involving the allotment of shares or debentures or unit holders' rights takes effect is the day following the day on which the right to renounce any allotment expires.



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### *Conversion of securities*

- 14 (1) Subject to sub-paragraph (2) below, paragraphs 12 and 13 of this Schedule shall apply with any necessary adaptations in relation to the conversion of securities as they apply in relation to the reorganisation or reduction of a company's share capital.
- (2) Where securities are converted on an exchange effected under any arrangement which is being carried out under section 2 of the National Loans Act 1939, or section 14 of the National Loans Act 1968, and any additional consideration is given to the holder of the securities, paragraph 12(4) above shall not apply to the additional consideration, but it shall, in relation to any disposal of the new holding or any part of it, be treated as reducing the consideration given for the original securities.
- (3) For the purposes of this paragraph—
- (a) "conversion of securities" includes—
- (i) a conversion of securities of a company into shares in the company, and
- (ii) a conversion at the option of the holder of the securities converted as an alternative to the redemption of those securities for cash, and
- (iii) any exchange of securities effected in pursuance of the Iron and Steel Act 1967, or any other enactment (whenever passed) which provides for the compulsory acquisition of any shares or securities and the issue of securities or other securities instead, and
- (b) "security" includes any loan stock or similar security, whether of the Government of the United Kingdom or of any other government, or of any public or local authority in the United Kingdom or elsewhere, or of any company, and whether secured or unsecured.

### *Company amalgamations*

- 15 (1) Subject to sub-paragraph (2) below, where a company issues shares or debentures to a person in exchange for shares in or debentures of another company, paragraphs 12 and 13 of this Schedule shall apply with any necessary adaptations as if the two companies were the same company and the exchange were a reorganisation of its share capital.
- (2) This paragraph shall apply only where the company issuing the shares or debentures has, or in consequence of the exchange will have, control of the other company, or where the first-mentioned company issues the shares or debentures in exchange for shares as the result of a general offer made to members of the other company or any class of them (with or without exceptions for persons who are, within the terms of section 533 of this Act, connected with the first-mentioned company), the offer being made in the first instance on a condition such that if it were satisfied the first-mentioned company would have control of the other company.
- 16 (1) Where under any arrangement between a company and the persons holding shares in or debentures of the company, or any class of such shares or debentures, being an arrangement entered into for the purposes of or in connection with a scheme of reconstruction or amalgamation—
- (a) another company issues shares or debentures to those persons in respect of and in proportion to (or as nearly as may be in proportion to) their holdings of the first-mentioned shares or debentures, but
- (b) the first-mentioned shares or debentures are either retained by those persons or cancelled,

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then those persons shall be treated as exchanging the first-mentioned shares or debentures for those held by them in consequence of the arrangement (any shares or debentures retained being for this purpose regarded as if they had been cancelled and replaced by a new issue):

Provided that paragraph 15(2) above shall not apply.

- (2) Sub-paragraph (1) above shall apply in relation to a company which has no share capital as if references to shares in or debentures of a company included references to any interests in the company possessed by members of the company, and paragraphs 12 and 15 of this Schedule shall apply accordingly.
- (3) Where any scheme of reconstruction or amalgamation involves the transfer of the whole or part of a company's business to another company, and the first-mentioned company receives no part of the consideration for the transfer (otherwise than by the other company taking over the whole or part of the liabilities of the business), then the first-mentioned company shall not be chargeable under Case VII by reference to the transfer in respect of its acquisition and disposal of any assets included in the transfer.
- (4) In this paragraph " scheme of reconstruction or amalgamation " means a scheme for the reconstruction of any company or companies, or for the amalgamation of any two or more companies, and references to shares or debentures being retained include then-being retained with altered rights, or in an altered form, whether as the result of reduction, consolidation, division or otherwise.

#### *Debts*

- 17 (1) Subject to paragraph 18 below, where a person incurs a debt to another, the creditor shall not be treated as thereby acquiring the debt, except in the case of the debt on a security as defined in paragraph 14 of this Schedule.
  - (2) In the case of the debt on a security as defined in paragraph 14 of this Schedule, or of a debt acquired by the creditor from a previous creditor, the satisfaction of the debt or part of it shall, subject to paragraphs 14 and 15 of this Schedule, be treated as a disposal of the debt or of that part by the creditor made at the time when the debt or that part is satisfied.
  - (3) Where property is acquired by a creditor in satisfaction of his debt or part of it, then, subject to the said paragraphs 14 and 15, the property shall not be treated as disposed of by the debtor or acquired by the creditor for a consideration greater than its market value at the time of the creditor's acquisition of it; but if (in a case not falling within either of those paragraphs) the satisfaction of the debt or that part of it is not to be treated as a disposal of it by the creditor, and he becomes chargeable under Case VII in respect of gains accruing from his acquisition and disposal of the property, the amount on which tax is chargeable shall (where necessary) be reduced so as not to exceed the amount on which tax would have been chargeable if he had acquired the property for a consideration equal to the amount of the debt or that part of it.
- 18 (1) Subject to sub-paragraph (2) below, paragraph 17(1) above shall not apply to a debt owed by a bank which is not in sterling and which is represented by a sum standing to the credit of a person in an account in the bank, and accordingly the satisfaction of the debt or part of it shall be treated as a disposal of the debt or of that part by the creditor (that is, the bank's customer) made at the time when the debt or that part is satisfied.

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- (2) Sub-paragraph (1) above shall not apply to a sum in an individual's bank account representing currency acquired by the holder for the personal expenditure outside the United Kingdom of himself or his family or dependants (including expenditure on the provision or maintenance of any residence outside the United Kingdom).

*Disposals of land to authorities with compulsory powers*

- 19 (1) A person shall not be chargeable under Case VII in respect of an acquisition and disposal of land by reference to a disposal to an authority exercising or having compulsory powers if that person had neither—
- (a) acquired the land at a time when he knew, or might reasonably have known, that it was likely to be acquired by the authority, nor
  - (b) taken any steps by advertisement or otherwise to dispose of the land, or to make his willingness to dispose of it known to the authority or others.
- (2) In this paragraph " authority exercising or having compulsory powers " means, in relation to any disposal of land, a person or body of persons acquiring the land compulsorily, or who has or have been or could be authorised to acquire it compulsorily for the purposes for which it is acquired, or for whom another person or body of persons has or have been or could be authorised so to acquire it.

*Additional provisions as to computation of gains*

- 20 (1) Where a single bargain comprises two or more transactions whereby assets are disposed of, those transactions shall be treated for the purposes of section 164 of this Act as a single disposal; and where separate considerations are agreed, or purport to be agreed, for any two or more transactions comprised in one bargain (whether transactions whereby assets are disposed of or not), those considerations shall be treated as together constituting an entire consideration for the transactions, and shall be apportion-able between them accordingly.
- (2) Where an individual and the wife or husband of that individual, or a body of persons and a person having control of it, or two bodies of persons under common control, enter into associated transactions, sub-paragraph (1) above shall apply as if the transactions were comprised in a single bargain (" body of persons " for this purpose including a partnership):

Provided that this sub-paragraph shall not apply so as to treat considerations given or received by different persons as an entire consideration unless they are given to or received from a single person or persons in relation to whom they can by virtue of this sub-paragraph be treated as an entire consideration.

- (3) In the case of an acquisition and disposal of land, no deduction shall be made in respect of maintenance expenditure incurred by any person—
- (a) in computing the gain accruing to that person from the acquisition and disposal for the purposes of paragraph 7(3) of this Schedule, or
  - (b) in computing for any purpose of this Schedule the amount which would secure that neither a gain nor a loss accrued to that person on his disposal of the land ;

and maintenance expenditure incurred by the person chargeable which falls to be taken into account for other purposes of Case VII shall not be taken into account in computing his profits or gains for the purposes of Schedule A, but, where it has been taken into account in computing those profits or gains, any necessary adjustment of

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that person's liability to tax may be made by means of an assessment or otherwise, and, for that purpose, the amount of any tax repaid by reason of its having been taken into account may be charged on him under Case VI of Schedule D and recovered accordingly.

In this sub-paragraph, references to maintenance expenditure incurred by any person are references to any payments made by him which are deductible in computing his profits or gains for the purposes of Schedule A.

- (4) Paragraph 11(1) of Schedule 19 to the Finance Act 1969 (capital gains tax: compensation paid on compulsory acquisition) shall apply with respect to the apportionments to be made under section 164(4) of this Act as it applies to apportionments to be made for the purposes of Schedule 6 to the Finance Act 1965.
- (5) Where, in the case of any asset, the person chargeable receives or is entitled to claim any capital allowances with reference to expenditure relating to the asset, the amount of the allowances shall be treated for the purpose of computing the gain as a trading receipt of the adventure in so far as it exceeds the amount or aggregate amount on which any balancing charges fall to be made on him in respect of the allowances (subject, however, to a just apportionment where the adventure does not relate to the whole of his interest in the asset).

In this sub-paragraph "capital allowance" does not include an allowance under Part II of the Capital Allowance Act 1968, or an investment allowance.

*Treatment of one person's acquisition as another's*

- 21 (1) Where under this Schedule a person acquiring an asset is to be treated as if another's acquisition of it had been his acquisition, that person shall be treated as having acquired the asset at the time when the other acquired it and for a consideration of such amount as would secure that, on the other's disposal to that person, neither a gain nor a loss would accrue to the other (that amount being calculated as it would be for the purpose of a charge under Case VII then falling on the other by reference to that acquisition); and where there have been more than one acquisition by the other of different interests in the asset, this provision shall apply in relation to each such acquisition:

Provided that—

- (a) a person shall be treated as if another's acquisition of an asset had been his acquisition of it only if and in so far as the interest taken by that person would be treated for the purpose of such a charge as aforesaid as deriving from that acquisition, and
- (b) that person shall be treated as acquiring the asset as legatee, and not for any consideration, in so far as the said interest would be so treated as deriving from an acquisition by the other as legatee.
- (2) Where a person acquires an asset subject to and with the benefit of any subsisting contract for its disposal to a third person and is under this Schedule to be treated as if another's acquisition of it had been his acquisition, sub-paragraphs (1) and (3) of paragraph 2 of this Schedule shall not apply in relation to the acquisition by or disposal to him of the asset (he being treated as if the other's acquisition of the right had been his acquisition).

*Supplementary*

- 22 (1) Where any sum falls to be apportioned for the purposes of Case VII and, at the time of the apportionment, it appears that it is material as respects the liability to tax of two or more persons, any question which arises as to the manner in which the sum is to be apportioned shall be determined for the purposes of the tax on all those persons—
- (a) in a case where the same body of General Commissioners have jurisdiction with respect to all those persons, by those Commissioners, unless all those persons agree that it shall be determined by the Special Commissioners,
  - (b) in a case where different bodies of Commissioners have jurisdiction with respect to those persons, by such of those bodies as the Board may direct, unless all those persons agree that it shall be determined by the Special Commissioners, and
  - (c) in any other case, by the Special Commissioners,
- and any such Commissioners shall determine the question in like manner as if it were an appeal:

Provided that all the said persons shall be entitled to appear and be heard by the Commissioners who are to make the determination, or to make representations to them in writing.

- (2) This paragraph applies in relation to any determination of market value for the purposes of Case VII as it applies in relation to apportionments.
- 23 (1) An election under this Schedule shall be made by notice in writing, signed by the person or persons making the election and the persons (if any) whose concurrence is required, and delivered to the inspector within the relevant period.
- (2) A notice so delivered with respect to property disposed of by way of gift shall be of no effect unless within the relevant period there is also delivered to the inspector a statement signed by the donor and giving such particulars as are necessary to establish the time at which, and the consideration for which, the donee is to be treated as having acquired the property, in so far as those particulars may be material in relation to any acquisition and disposal by the donee.
- (3) Any election which a person may make or concur in under this Schedule may be made or concurred in instead by his personal representatives if he has died, or by any person assessable on his behalf, and similarly with a statement required by subparagraph (2) above.
- (4) For the purposes of this paragraph, the relevant period—
- (a) in the case of a gift, is the period ending with the year of assessment following that in which the gift is made or, where an election may be made by the donee alone, the period ending with the year of assessment following that in which he first disposes of the property comprised in the gift or any part of it, and
  - (b) in the case of an election under paragraph 7 of this Schedule, is the period ending with the year of assessment following that in which is made the appropriation of the asset for the purposes of the trade;
- and in this paragraph, references to a gift include any disposal otherwise than by way of bargain at arm's length, and references to the donor and the donee shall be construed accordingly.

## SCHEDULE 8

Section 188.

### SCHEDULE E: RELIEF AS RESPECTS TAX ON PAYMENTS ON RETIREMENT OR REMOVAL FROM OFFICE OR EMPLOYMENT

#### *Preliminary*

1 Relief shall be allowed in accordance with the following provisions of this Schedule in respect of tax chargeable by virtue of section 187 of this Act, where a claim is made under section 188(4) of this Act.

2 A person shall not be entitled to relief under this Schedule in so far as such relief, together with any relief allowed under Chapter II of Part I of this Act (personal reliefs), would reduce the amount of income on which he is chargeable at the standard rate below the amount income tax on which he is entitled to charge against any other person, or to deduct, retain or satisfy out of any payment which he is liable to make to any other person.

#### *Relief by reduction of sums chargeable*

3 In computing the charge to tax in respect of a payment chargeable to tax under section 187 of this Act, not being a payment of compensation for loss of office, there shall be deducted from the payment a sum equal to the amount (if any) by which the standard capital superannuation benefit for the office or employment in respect of which the payment is made exceeds £5,000.

4 In this Schedule " the standard capital superannuation benefit", in relation to an office or employment, means a sum arrived at as follows, that is to say—

- (a) there shall be ascertained the average for one year of the holder's emoluments from the office or employment for the last three years of his service before the relevant date (or for the whole period of his service if less than three years);
- (b) one-twentieth of the amount ascertained at (a) shall be multiplied by the whole number of complete years of the service of the holder in the office or employment; and
- (c) there shall be deducted from the product at (b) a sum equal to the amount, or, as the case may be, to the value at the relevant date, of any lump sum (not chargeable to tax) received or receivable by the holder in respect of the office or employment in pursuance of any such scheme or fund as is described in subsections (1) and (2) of section 221 of this Act:

Provided that no account shall be taken for the purposes of this paragraph of the service of any person as an officer or employee of a body corporate at any time while he was a controlling director (as defined in section 224(1) of this Act) of that body.

5 Where tax is chargeable under section 187 of this Act in respect of two or more payments to which paragraph 3 above applies, being payments made to or in respect of the same person in respect of the same office or employment or in respect of different offices or employments held under the same employer or under associated employers, then—

- (a) the said paragraph 3 shall apply as if those payments were a single payment of an amount equal to their aggregate amount and, where they are made in respect of different offices or employments, as if the standard capital

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superannuation benefit were an amount equal to the sum of the standard capital superannuation benefits for those offices or employments, and

- (b) where the payments are treated as income of different chargeable periods, the relief to be granted under that paragraph in respect of a payment chargeable for any such period shall be the amount by which the relief computed in accordance with the preceding provision in respect of that payment and any payments chargeable for previous chargeable periods exceeds the relief in respect of the last-mentioned payments,

and where the standard capital superannuation benefit for an office or employment in respect of which two or more of the payments are made is not the same in relation to each of those payments, it shall be treated for the purposes of this paragraph as equal to the higher or highest of those benefits.

- 6 In computing the charge to tax in respect of a payment chargeable to tax under section 187 of this Act, being a payment made in respect of an office or employment in which the service of the holder includes foreign service and not being a payment of compensation for loss of office, there shall be deducted from the payment (in addition to any deduction allowed under the preceding provisions of this Schedule) a sum which bears to the amount which would be chargeable to tax apart from this paragraph the same proportion as the length of the foreign service bears to the length of the service before the relevant date.

*Relief by reduction of tax*

- 7 In the case of any payment in respect of which tax is chargeable under section 187 of this Act, the following relief shall be allowed by way of deduction from the tax chargeable by virtue of that section, that is to say, there shall be ascertained—

- (a) the amount of tax which would be chargeable apart from this paragraph in respect of the income of the holder or past holder of the office or employment for the chargeable period of which the payment is treated as income,
- (b) the amount of tax which would be so chargeable if the payment had not been made, and
- (c) the difference between the respective amounts of tax which would be so chargeable on the assumptions—
  - (i) that the appropriate fraction only of the payment (after deducting any relief applicable thereto under the preceding provisions of this Schedule) had been made, and
  - (ii) that no part of the payment had been made,

and disregarding, in each case, any other emoluments of the office or employment,

and the amount to be deducted shall be the difference between the amount ascertained at (a) and the sum of the amount ascertained at (b) and the appropriate multiple of the difference ascertained at (c).

- 8 (1) Where the income of the holder or past holder of the office or employment for the chargeable period of which the payment is treated as income includes income, income tax on which he is entitled to charge against any other person, or to deduct, retain or satisfy out of any payment which he is liable to make to any other person, the amounts referred to in sub-paragraphs (a) to (c) of paragraph 7 above shall be calculated as if that tax were not chargeable in respect of that income.

- (2) Where for any year of assessment an individual claims relief under paragraph 7 above, and also under section 400 of this Act (gains arising in connection with life policies etc.) or Schedule 3 thereto (premiums etc. taxable under sections 80 to 82), or under both that section and that Schedule, then, in computing the relief under paragraph 7 above, his income shall be deemed to include—
- (a) in respect of any amount which would otherwise be included therein by virtue of section 399(1)(a) of this Act, no greater amount than the appropriate fraction thereof within the meaning of the said section 400, and
  - (b) in respect of any chargeable sum within the meaning of the said Schedule 3 (including two or more sums treated for the purposes of paragraph 3 of that Schedule as one chargeable sum), no greater amount than the balance (if any) of the yearly equivalent thereof remaining after the making of any deduction required by the said paragraph 3.
- 9 In this Schedule " the appropriate fraction " (except in paragraph 8(2)(a) above) and " the appropriate multiple ", in relation to any payment, mean respectively—
- (a) where the payment is not a payment of compensation for loss of office, one-sixth and six, and
  - (b) where the payment is a payment of compensation for loss of office, one divided by the relevant number of years of unexpired service, and that number of years,
- and for the purposes of this paragraph " the relevant number of years of unexpired service " means the number of complete years taken into account in calculating the amount of the payment, being years for which the holder of the office or employment would have been entitled (otherwise than by virtue of arrangements made in contemplation of his retirement or removal or of any relevant change in the functions or emoluments of the office or employment) to retain the office or employment or its full emoluments, and where the period taken into account as aforesaid is less than one complete year or exceeds an exact number of years, it shall be treated for the purposes of this paragraph as one complete year or as the next higher number of complete years, as the case may be.
- 10 Where tax is chargeable under section 187 of this Act in respect of two or more payments to or in respect of the same person in respect of the same office or employment and is so chargeable for the same chargeable period, those payments shall be treated for the purposes of paragraph 7 above as a single payment of an amount equal to their aggregate amount:
- Provided that, where the appropriate fraction and the appropriate multiple are not the same for each of the payments, the calculations of relief under the said paragraph 7 shall be made separately in relation to each payment or payments having a different appropriate fraction and multiple, and in any such calculation—
- (a) any payment for which the appropriate multiple is lower shall be left out of account for all the purposes of the said paragraph 7, and
  - (b) in ascertaining the difference at (c) of that paragraph it shall be assumed that the appropriate fraction only of any payment for which the appropriate multiple is higher had been made,
- and the relief to be allowed shall be the sum of the reliefs so calculated in respect of the payments respectively.
- 11 Where tax is chargeable under section 187 of this Act in respect of two or more payments to or in respect of the same person in respect of different offices or



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employments, and is so chargeable for the same chargeable period, paragraphs 7 to 10 above shall apply as if those payments were made in respect of the same office or employment and as if any emoluments of any of those offices or employments were emoluments of the same office or employment.

*Supplemental*

- 12 Any reference in the preceding provisions of this Schedule to a payment in respect of which tax is chargeable under section 187 of this Act is a reference to so much of that payment as is chargeable to tax after deduction of the relief applicable thereto under section 188(3) of this Act.
- 13 In this Schedule—
- " payment of compensation for loss of office " means a payment made—
    - (a) in pursuance of an order of a court in proceedings for wrongful dismissal or otherwise for breach of a contract of employment, or by way of settlement of such proceedings or of a claim in respect of which such proceedings could have been brought, or
    - (b) by way of compensation for the extinguishment of any right the infringement of which would be actionable in such proceedings,
- and any question whether, and to what extent, a payment is or is not a payment of compensation for loss of office shall be determined according to all the circumstances and not (or not exclusively) by reference to the terms on which it is expressed to be made.
- 14 Any reference in this Schedule to the emoluments of an office or employment is a reference to those emoluments exclusive of any payment chargeable to tax under section 187 of this Act; and in calculating for any purpose of this Schedule the amount of such emoluments—
- (a) there shall be included any balancing charge to which the holder of the office or employment is liable under section 33 of the Capital Allowances Act 1968, and
  - (b) there shall be deducted any allowances under Chapter II of Part I of that Act, and any allowances for expenses under section 189 or 192 of this Act, to which he is entitled,
- and any such charges or allowances as aforesaid for a chargeable period shall, for the purpose of ascertaining the amount of the emoluments for any year of service, be treated as accruing from day to day, and shall be apportioned in respect of time accordingly.
- 15 In this Schedule "the relevant date" means, in relation to a payment not being a payment in commutation of annual or other periodical payments, the date of the termination or change in respect of which it is made and, in relation to a payment in commutation of annual or other periodical payments, the date of the termination or change in respect of which those payments would have been made.
- 16 In this Schedule "foreign service", in relation to an office or employment, means service such that tax was not chargeable in respect of the emoluments of the office or employment—
- (a) in the case of the year 1956-57 or any subsequent chargeable period, under Case I of Schedule E,
  - (b) in the case of any preceding year of assessment, under Schedule E.

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- 17 Any reference in this Schedule to the amount of tax to which a person is or would be chargeable is a reference to the amount of tax to which he is or would be chargeable either by assessment or by deduction.

## SCHEDULE 9

Sections 232(2), 240(6), 256(4).

### INCOME TAX PAYABLE BY COMPANIES ON DISTRIBUTIONS, ETC

#### *Liability of company for income tax on distributions and other payments made by it*

- 1 (1) Any income tax for which a company resident in the United Kingdom is liable to account in respect of distributions made by it in any year of assessment, or in respect of any payments made by it in any year other than distributions, shall in accordance with paragraph 2 below be accounted for and paid during or on the expiration of the year, subject to such set off as is available to the company under paragraph 3 below against income tax on franked investment income or on payments received subject to deduction of tax other than franked investment income.
- (2) If it appears after the end of any year of assessment either—(a) that in respect of distributions made by the company in the year the company is liable to account for income tax to an amount greater than the income tax (if any) borne by it on franked investment income received in the year and on any surplus of franked investment income carried forward to the year; or
- (b) that in respect of payments made by the company in the year other than distributions the company is liable to account for income tax to an amount greater than the income tax (if any) borne by it by deduction on payments received in the year other than franked investment income ;
- and the amount paid by and not repaid to the company in respect of the year in accordance with sub-paragraph (1) above is less than the amount of the excess referred to in paragraph (a) or (b) of this sub-paragraph, the company shall be liable to pay the difference between the two last-mentioned amounts.
- (3) The amount which a company is liable to pay for any year of assessment under sub-paragraph (2) above, if or in so far as it is not agreed between the company and the inspector, shall be recovered by means of an assessment made on the company.
- (4) Where the amount of any tax payable in accordance with sub-paragraph (2) above is agreed between the company and the inspector—
- (a) it shall be due within fourteen days after it is so agreed,
- (b) the making of an assessment charging that tax, or an appeal against the assessment, shall not affect the date given by paragraph (a) above,
- (c) the power of making an assessment under sub-paragraph (3) above shall include power to make an assessment of the tax on that company if that tax, or any part of it, is not paid within the said fourteen days (whether or not it has been paid when the assessment is made).
- (5) Nothing in this Schedule shall apply to income tax for which a company is liable to account under section 204 (pay as you earn) of this Act.

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*Payments made in course of year*

- 2 (1) A company shall from time to time make to the collector returns of all distributions and payments made by it to which paragraph 1 above applies, and shall in any such return specify any amount of dividends included therein which has been paid under deduction of tax notwithstanding that an election under section 256(1) of this Act was in force in relation thereto.
- (2) A return under this paragraph of distributions and payments made in any month shall be made within fourteen days from the end of the month; and any claim under paragraph 3 below shall be made at the like times.

In this sub-paragraph "month" means a month of a year of assessment, that is to say, a month beginning with the sixth day of a month of the calendar year.

- (3) Subject to sub-paragraph (7) below, income tax in respect of any payment required to be included in a return under this paragraph shall be due at the time by which the return is to be made, and income tax so due shall be payable by the company without the making of any assessment.
- (4) Income tax which has become due in accordance with sub-paragraph (3) above may be assessed on the company (whether or not it has been paid when the assessment is made) if that tax, or any part of it, is not paid on or before the due date.
- (5) Income tax in respect of distributions included in a return, not being payments, shall be assessed on the company; and if it appears to the inspector that there are distributions (of whatever description), or payments to which paragraph 1 above applies which are not distributions, which ought to have been and have not been included in a return, or if the inspector is dissatisfied with any return, he may make an assessment on the company to the best of his judgment.
- (6) Any tax assessable under any one or more of the provisions of this paragraph may be included in one assessment if the tax so included is all due on the same date.
- (7) Where a company is liable to pay income tax in respect of any payment if, but only if, it amounts to or involves a distribution, and it is not in the circumstances apparent whether or how far it does so, then—
- (a) particulars of the payment shall be included in the return under this paragraph ; but
  - (b) sub-paragraph (3) above shall not apply to the payment and income tax in respect of it shall be assessed as in the case of distributions other than payments.

*Set-off of income tax borne on company income against tax payable*

- 3 (1) Where in any year of assessment a company resident in the United Kingdom receives franked investment income, or receives any payment on which it bears income tax by deduction, the company may make a claim to have the income tax thereon brought into account under this paragraph.
- (2) If on the making of any such claim it is shown by the required evidence that income tax has been or will be paid in respect of any franked investment income or payment included in the claim, that tax shall be set against any income tax which the company has paid or is liable to pay in respect of distributions or other payments included in returns made under paragraph 2 above for the same year of assessment, and (where

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necessary) income tax paid by the company before the claim is allowed shall be repaid accordingly.

- (3) Where, on a claim made under this paragraph for any year of assessment, account would be taken of distributions made by the company in the year, and the company has a surplus of franked investment income carried forward to that year (and not already dealt with under this paragraph), the claim shall so state and the income tax on the surplus shall under sub-paragraph (2) above be set against income tax on distributions made by the company (but not against income tax on other payments).
- 4 (1) Where a claim has been made under paragraph 3 above no proceedings for collecting tax which would fall to be discharged if the claim were allowed shall be instituted pending the final determination of the claim, but this sub-paragraph shall not affect the date when the tax is due.
- (2) When the claim is finally determined any tax underpaid in consequence of sub-paragraph (1) above shall be paid.
- (3) Where proceedings are instituted for collecting tax assessed, or interest on tax assessed, under any provision of paragraph 2 above, effect shall not be given to any claim made after the institution of the proceedings so as to affect or delay the collection or recovery of the tax charged by the assessment or of interest thereon, until the claim has been finally determined.
- (4) When the claim is finally determined any tax overpaid in consequence of sub-paragraph (3) above shall be repaid.
- (5) References in this paragraph to proceedings for the collection of tax include references to proceedings by way of distraint or pointing for tax.
- 5 Income tax set against other tax under paragraph 3 above shall be treated as paid or repaid, as the case may be, and the same tax shall not be taken into account both under this Schedule and under section 240(5) of this Act; but for the purposes of the said section 240(5) any amount paid by a company by virtue of paragraph 1(2) (a) above shall be treated as if it were income tax borne by deduction on a payment not being franked investment income, and as if that payment had been received at the end of the year of assessment for which the said amount is paid, and the said amount shall be set off against corporation tax or repayable accordingly.

*Assessment and due date of tax*

- 6 (1) All the provisions of the Income Tax Acts as to the time within which an assessment may be made, so far as they refer or relate to the year of assessment for which an assessment is made, or the year to which an assessment relates, shall apply to an assessment under this Schedule notwithstanding that, under this Schedule, the assessment may be said to relate to a month rather than to a year of assessment, and the provisions of sections 36 and 37 of the Taxes Management Act 1970 as to the circumstances in which an assessment may be made out of time shall apply accordingly on the footing that any such assessment relates to the year of assessment the standard rate for which is the rate at which tax is charged by the assessment.
- (2) Income tax assessed on a company under this Schedule shall be due within fourteen days after the issue of the notice of assessment (unless due earlier under paragraph 2(3) above).

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- (3) Sub-paragraph (2) above has effect subject to any appeal against the assessment, but no such appeal shall affect the date when tax is due under paragraph 2(3) above.
- (4) On the determination of an appeal against an assessment under this Schedule any tax overpaid shall be repaid.

#### *Saving*

- 7 Nothing in the preceding provisions of this Schedule shall be taken to prejudice any powers conferred by the Income Tax Acts for the recovery of income tax by means of an assessment or otherwise.

#### *Regulations*

- 8 Subject to the provisions of this Schedule, the Board may by statutory instrument make regulations with respect to the procedure to be adopted for giving effect to sections 240 and 256 of this Act, and as to the information and evidence to be furnished by a company in or in connection with any return or claim made for the purposes thereof.

### SCHEDULE 10

Section 330.

#### UNDERWRITERS

### PART I

#### SPECIAL RESERVE FUNDS

- 1 If, in the case of Lloyd's or any approved association of underwriters—
  - (a) arrangements are made for the setting up, in relation to each underwriting member who elects to take advantage of the arrangements, of such a special reserve fund as is referred to in this Part of this Schedule, and
  - (b) the arrangements comply with the requirements of this Part of this Schedule, are approved by the Commissioners of Inland Revenue and are certified by the Board of Trade to be in the public interest,then, subject to the provisions of paragraph 14 below relating to the cancellation by the said Commissioners or the Board of Trade of their approval or certificate, the provisions of this Part of this Schedule relating to taxation shall have effect in relation to any such underwriting member who duly elects as aforesaid.

#### *Adherence to, and withdrawal from, arrangements*

- 2 (1) The arrangements must provide that an underwriting member who wishes to elect to take advantage of the arrangements shall do so by giving notice in writing to the inspector and to such other persons as may be specified in the arrangements.
- (2) Any such notice as aforesaid is referred to in the following provisions of this Schedule as a notice of adherence, and, in the said provisions, " the underwriter " means an underwriting member who has given such a notice.

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- 3 (1) The arrangements must enable the underwriter, if he thinks fit so to do, by giving notice in writing to the inspector and to such other persons as may be specified in the arrangements, to withdraw from the arrangements to the extent appearing from the following provisions of this Schedule.
- (2) Any such notice as aforesaid is referred to in the following provisions of this Schedule as a notice of withdrawal.
- 4 Where the underwriter has given a notice of withdrawal, he shall not be entitled to give another notice of adherence.

*Setting up and management of, and payments into and out of, special reserve funds*

- 5 The arrangements must provide for the setting up, in relation to the underwriter, of a special reserve fund vested in trustees who have control over it and power to invest the capital thereof and to vary the investments:

Provided that where part of the business of the underwriter is carried on through an underwriting agent and part thereof is not so carried on, or where different parts of his business are carried on through different underwriting agents, the arrangements may provide for separate special reserve funds being constituted in relation to the different parts of his business.

- 6 The arrangements must provide for the income arising from the investments of the underwriter's special reserve fund or funds being held on trust for the underwriter, his personal representatives or assigns.
- 7 (1) The arrangements must be such as to secure that if, for an underwriting year corresponding to a year of assessment to which this paragraph applies, the underwriter makes a profit from his business, he has the right to make, into his special reserve fund or funds, payments the gross amount of which is not in the aggregate greater than £7,000 or 50 per cent. of that profit, whichever is the less, or such less sum as may be specified in the arrangements:

Provided that—

- (a) no such payment shall be made after the expiration of six months from the date as at which the accounts of the business for that underwriting year are deemed by the Commissioners of Inland Revenue for the purposes of the arrangements to be closed, or such longer period as those Commissioners may allow ;
- (b) where the underwriter carries on his business during part only of that year of assessment, the maximum gross amount of the said payments shall be reduced by the application thereto of the proportion which the part of that year of assessment for which he is entitled to profits from the business bears to a full year.

- (2) Subject to the provisions of paragraph 14 of this Schedule (which relates to the effect of the cancellation by the Commissioners of Inland Revenue or the Board of Trade of their approval or certificate with respect to the arrangements), the years of assessment to which this paragraph applies are all years of assessment during the whole or any part of which the underwriter continues to carry on his business subsequent to the year of assessment during which the notice of adherence is given:

Provided that—

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- (a) in no case shall this paragraph apply to the year of assessment in which the underwriter commences to carry on his business or to the year of assessment next following that year;
  - (b) where the underwriter gives a notice of withdrawal, the last year of assessment to which this paragraph applies shall, subject to the provisions of the said paragraph 14, be the year of assessment corresponding to the underwriting year the accounts for which are deemed by the Commissioners of Inland Revenue for the purposes of the arrangements to be closed as at a date falling within the year of assessment preceding that in which the notice of withdrawal is given.
- (3) In sub-paragraph (1) of this paragraph, "profit" means a profit computed in the manner in which the profits or gains of the business of the underwriting year in question would fall to be computed under Case I of Schedule D if—
- (a) income arising from the investments forming part of the premiums trust fund of the underwriter, his special reserve fund or funds and any other fund required or authorised by the rules of Lloyd's or the association in question, or required by the underwriting agent through whom the business or any part thereof is carried on, to be kept in connection with the business fell to be taken into account, and
  - (b) all shares of the profits of the business and all charges related to those profits or to the said income, being shares and charges payable to persons other than the underwriter and not otherwise taken into account, fell to be deducted.
- (4) In sub-paragraph (3)(a) above the reference to income arising from the investments forming part of the funds mentioned in the said sub-paragraph (3)(a) shall include the amount of the gains chargeable to tax under Case VII of Schedule D which accrue in the underwriting year in question from the acquisition and disposal of any such investments, after deducting from those gains losses accruing before the end of that year from any chargeable acquisition and disposal (within the meaning of Case VII of Schedule D) of any such investments so far as those losses are not under this sub-paragraph deductible from gains accruing in a previous underwriting year.
- 8 (1) The arrangements must be such as to secure that, if it is certified that the underwriter has sustained a loss in his business for an underwriting year subsequent to that which corresponds to the first year of assessment to which paragraph 7 of this Schedule applies, there shall be made into his premiums trust fund, out of the capital of his special reserve fund or funds, payments the gross amount of which is equal in the aggregate to the certified amount of the loss:
- Provided that if the capital of his special reserve fund or funds, reduced by so much thereof as represents sums paid into it or them as a consequence of a profit for a year later than the year of the loss, is less than the net amount of the payments required to be made by this sub-paragraph, the said payments shall be reduced so that the net amount thereof is equal to the capital of the said fund or funds as so reduced.
- (2) In this paragraph, "loss" means a loss computed in the manner in which the profits or gains of the business of the underwriting year in question would fall to be computed under paragraph 7(3) above:
- Provided that where, under any arrangement between the underwriter and another person which provides for the sharing of losses, any amount is paid to the underwriter by that person as that person's share of a loss for that year, the loss, as computed for the purposes of this paragraph, shall be reduced by that amount.

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

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- (3) In this paragraph, " certified " means certified by a certificate of the inspector:
- Provided that—
- (a) no certificate shall be given by the inspector until thirty days have elapsed from the date on which he has given to the underwriter or his personal representatives notice in writing stating his intention to give a certificate and stating the amount which he proposes to specify therein as the amount of the loss ;
  - (b) the underwriter or his personal representatives may, on giving notice in writing to the inspector within the said thirty days, appeal to the Special Commissioners ;
  - (c) where notice is so given by the underwriter or his personal representatives, the inspector shall not without the consent of the underwriter or his personal representatives give any certificate until after the hearing of the appeal; and
  - (d) on the hearing of the appeal, the Special Commissioners may direct the inspector not to give a certificate or to give it with such an amount specified therein as the amount of the loss as may be specified in the direction.
- 9 (1) The arrangements may authorise the making of payments pursuant to paragraph 8(1) above on a provisional basis before the amount of the loss has been finally ascertained and certified by the inspector.
- (2) The amount so withdrawn shall not exceed such proportion of the estimated loss as may be specified in the arrangements.
- (3) When the amount of the loss has been certified by the inspector such adjustments shall be made by repayment to the underwriter's special reserve fund or funds, or by further withdrawal of sums for payment into the underwriter's premiums trust fund, as will secure that the net amount withdrawn from the underwriter's special reserve fund or funds in respect of the loss is that required pursuant to paragraph 8(1) above ; and no tax consequences shall ensue on the withdrawal of sums in respect of a loss until the amount of the loss has been so certified and any such adjustments have been made.
- 10 The arrangements must provide that, on the underwriter ceasing to carry on his business, the capital of his special reserve fund or funds, so far as not required for giving effect to the requirements of paragraph 8 above, shall be paid over to the underwriter or his personal representatives or assigns.

*Income tax consequences*

- 11 (1) Where such a payment as is mentioned in paragraph 7(1) above is made into a special reserve fund of an underwriter by reason of the making by him of a profit for an underwriting year—
- (a) the payment shall be deemed for all income tax purposes to be an annual payment chargeable to income tax by way of deduction and payable and paid in the year of assessment corresponding to that underwriting year ; and
  - (b) the sum actually paid shall be deemed for the purposes of this Part of this Schedule and for all income tax purposes to be a net amount corresponding to a gross amount from which income tax has been duly deducted at the standard rate for that year of assessment.



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- (2) Where such a payment as is mentioned in paragraph 8(1) above is made out of a special reserve fund of an underwriter into a premiums trust fund of his by reason that he has sustained a loss for an underwriting year then, subject to paragraph 9(3) above—
- (a) the payment shall be deemed for all income tax purposes—
    - (i) to be an annual payment chargeable to income tax by way of deduction and paid out of profits or gains brought into charge to income tax ; and
    - (ii) to have been payable and paid to the underwriter ; and
    - (iii) to have been payable and paid to him on the last day of the year of assessment which immediately preceded the year of assessment corresponding to that underwriting year or, if he ceased to carry on his business before that day, on the last day on which he carried on his business ; and
  - (b) the sum actually paid shall be deemed for the purposes of this Part of this Schedule and for all income tax purposes to be a net amount corresponding to a gross amount from which income tax has been duly deducted at the standard rate for the year of assessment in which the payment is deemed as aforesaid to have been payable and paid.
- (3) Where the underwriter ceases to carry on his business before his death and, under so much of the arrangements as gives effect to paragraph 10 of this Schedule, a sum is paid to him or his personal representatives or assigns—
- (a) the payment shall be deemed for all income tax purposes—
    - (i) to be an annual payment chargeable to income tax by way of deduction and paid out of profits or gains brought into charge to income tax ; and
    - (ii) to have been payable and paid to the underwriter ; and
    - (iii) to have been payable and paid to him on the last day on which he carried on his business ; and
  - (b) the sum actually paid shall be deemed for the purposes of this Part of this Schedule and for all income tax purposes to be a net amount corresponding to a gross amount from which income tax has been duly deducted at the standard rate for the year of assessment in which the payment is deemed as aforesaid to have been payable and paid.
- (4) Neither the arrangements, nor any disposition, trust, covenant, agreement or arrangement entered into for the purposes thereof, shall be treated as included in the expression " settlement" for the purposes of Chapter LTI or Chapter IV of Part XVI of this Act, and nothing in section 31 of this Act (surtax relief where income for a period exceeding a year is received in a year) shall be construed as applying to the payments referred to in sub-paragraphs (2) and (3) of this paragraph.
- 12 (1) In this paragraph "the lower limit" means the limit which would be imposed by paragraph 7(1) above if the words " £5,000 or 35 per cent. of that profit, whichever is the less " stood in that sub-paragraph in place of the words " £7,000 or 50 per cent. of that profit, whichever is the less ".
- (2) Where an underwriter dies while carrying on his business and, after giving effect to the requirements of paragraph 8 above, his special reserve fund or funds include an amount which represents an excess in the payments made into the fund or funds for any underwriting year over the lower limit—

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- (a) he shall be deemed for all income tax purposes to have received in the year of assessment corresponding to the said underwriting year a payment of the said amount—
    - (i) which was an annual payment chargeable to income tax by way of deduction and paid out of profits or gains brought into charge to income tax, and
    - (ii) which was payable in the year of assessment in which it is deemed to have been paid, and
  - (b) the payment (to the said actual amount) shall be deemed for the purposes of this Part of this Schedule and for all income tax purposes to be a net amount corresponding to a gross amount from which tax has been duly deducted at the standard rate for the year of assessment in which the amount is deemed as aforesaid to have been payable and paid.
- (3) Where, to give effect to the requirements of the said paragraph 8 as to the meeting of a loss, any withdrawal was made at any time from the capital of the underwriter's special reserve fund or funds, the amount withdrawn shall be regarded for the purposes of sub-paragraph (2) above—
- (a) as having been met out of payments made into the fund or funds for underwriting years before that in which the loss was incurred, and as having been met before any withdrawal to meet a loss for a later underwriting year, and
  - (b) as having been met out of so much of the payments made for any underwriting year as was not in excess of the lower limit, rather than out of such part of the payments made for any underwriting year as was in excess of the lower limit, and
  - (c) subject to that, as having been met out of payments in excess of the lower limit for a later year rather than out of payments in excess of the lower limit for an earlier year,
- and, where payments have been made into the underwriter's special reserve fund or funds for any underwriting year in excess of the lower limit, his fund or funds shall be deemed at all subsequent times to include an amount representing that excess except to the extent that any withdrawal is, under the provisions of this sub-paragraph, to be regarded as having been met out of that amount.
- (4) Any tax chargeable by virtue of this paragraph shall be assessed and charged upon the underwriter's personal representatives and tax so charged shall be a debt due from and payable out of his estate; and, notwithstanding section 34(1) of the Taxes Management Act 1970 (which requires assessments to be made not later than six years after the end of the year to which they relate), assessments in respect of tax so chargeable may be made at any time not later than three years after the end of the year of assessment in which the underwriter died.
  - (5) References in this paragraph to payments made into a special reserve fund or funds for any underwriting year are references to payments made, as described in paragraph 7(1) above, by reference to the profits made for that underwriting year.

#### *Supplemental*

- 13           The arrangements may from time to time be varied with the consent of the Commissioners of Inland Revenue and the Board of Trade.

- 14 If, after giving notice in writing of their intention so to do to the Committee of Lloyd's or the managing body of whatever other association of underwriters is in question, the Commissioners of Inland Revenue or the Board of Trade cancel the approval or certificate which they have given with respect to the arrangements—
- (a) no underwriting member may give a notice of adherence to the arrangements after the date of the cancellation ; and
  - (b) paragraph 7 of this Schedule shall not apply, in the case of any underwriter, to any year of assessment after the year of assessment in which the approval or certificate is cancelled.

## PART II

### SHORT TERM CAPITAL GAINS

- 15 (1) An underwriting member of Lloyd's or of an approved association of underwriters shall be treated for the purposes of Chapter VIII of Part VI of this Act, and in particular of section 163(1) of this Act (persons absolutely entitled to assets held by nominees or trustees), as absolutely entitled as against the trustees to the investments of his premiums trust fund, his special reserve fund (if any) and any other trust fund required or authorised by the rules of Lloyd's or the association in question, or required by the underwriting agent through whom his business or any part of it is carried on, to be kept in connection with the business.
- (2) The trustees of any such fund shall (subject to sub-paragraph (3) below) be assessed and charged to income tax at the standard rate as if sub-paragraph (1) above had not been passed, and may, notwithstanding anything in any enactment or in the trusts of the fund, out of any gain accruing from the acquisition and disposal of an investment of the fund make good to the underwriting member any increase in the surtax borne by him which is attributable to that gain.
- (3) The assessment to be made on the trustees of a fund by virtue of this paragraph for any year of assessment shall not take account of losses accruing in any previous year of assessment, and if for that or any other reason the tax paid on behalf of an underwriting member for any year of assessment by virtue of assessments so made exceeds the tax for which he is liable, the excess shall be repaid on a claim being made by him.

## PART III

### INTERPRETATION

- 16 (1) In this Schedule—
- " approved association of underwriters " means an association of underwriters approved by the Board of Trade for the purposes of Part II of the Companies Act 1967 or by the Ministry of Commerce for Northern Ireland for the purposes of section 3 of the Insurance Companies Act (Northern Ireland) 1968,
- " business ", in relation to an underwriter, means his underwriting business as a member of Lloyd's or of whatever other association of underwriters is in question, whether carried on personally or through an underwriting agent, and does not include any other business carried on by him, and in particular,

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where he is himself an underwriting agent, does not include his business as such an agent,

" net amount " and " gross amount ", in relation to any payment, mean respectively the sum actually paid and the sum which, after deduction of income tax, is equal to the sum actually paid,

" premiums trust fund " means such a trust fund as is referred to in paragraph 1 of Schedule 1 to the Insurance Companies Act 1958, or paragraph 1 of Schedule 1 to the Insurance Companies Act (Northern Ireland) 1968,

" underwriting year " means, in relation to the business of an underwriter as a member of Lloyd's the calendar year, and, in relation to the business of an underwriter as a member of any other association of underwriters, the period of twelve months for which, under the rules or practice of that association, the accounts of the business of the underwriter fall to be made up.

- (2) For the purpose of construing any reference in this Schedule to the year of assessment which corresponds to an underwriting year or to the underwriting year which corresponds to a year of assessment, an underwriting year and a year of assessment shall be deemed to correspond to each other in the case of an underwriter if, assuming that there were no question arising in connection with the commencement or cessation of the business of that underwriter, that underwriting year is the period on the profits or gains of which income tax for that year of assessment would fall to be computed under Case I of Schedule D in respect of that business.

## SCHEDULE 11

Sections 408 and 410.

### TAX RELIEFS IN CONNECTION WITH REDUNDANCY SCHEMES

#### PART I

##### PRELIMINARY

- 1 (1) In this Schedule—

" scheme " means a scheme which is for the time being certified or has at any time been certified by the Board of Trade under section 406 of this Act;

" payment " means a payment made under a scheme, being a payment made to a person carrying on a trade to which the scheme relates and not being a payment made by way of repayment of contributions ;

" the person chargeable " means, in relation to any such payment, the person liable to pay any tax which may fall to be paid by reason of the receipt of the payment;

" damage " includes any loss, liability, expense or other burden, and references to the amount of any damage are references to the sum which would be fair compensation for that damage;

" contribution " includes part of a contribution, and " deductible contribution " means a contribution allowed to be deducted under the said section 406, any reduction thereof under Part III of this Schedule being left out of account; and

" asset " includes a part of an asset.

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- (2) For the purposes of this Schedule, a sum received by any person by way of repayment of contributions shall be deemed to be by way of repayment of the last contribution paid by him, and, if the sum exceeds the amount of that contribution, by way of repayment of the penultimate contribution so paid, and so on.

## PART II

### RELIEF IN RESPECT OF CERTAIN PAYMENTS

- 2 The question whether any, and if so, what, relief is to be given shall be determined separately in relation to each payment made under the scheme in respect of the trade, but for the purpose of determining that question regard shall be had, as hereinafter provided, to the sum (hereafter in this Schedule referred to as "the total payment") produced by adding the amount of the payment to the amount of any payments previously so made.
- 3 No relief shall be given in respect of the payment unless the person chargeable shows—
- (a) the amount of the damage in respect of which the total payment has been made ; and
  - (b) how much of that amount is referable to damage in respect of which no relief may be given under the Tax Acts.
- 4 No relief shall be given in respect of the payment unless the total payment, or the amount of the damage in respect of which the total payment has been made, whichever is the smaller, exceeds the aggregate amount of the deductible contributions which have been paid in furtherance of the scheme in respect of the trade in question before the payment is made, exclusive of any contributions which have been repaid before the payment is made.
- 5 The amount of the reduction to be made in respect of the payment shall be arrived at by—
- (a) ascertaining the sum which bears to the excess mentioned in paragraph 4 above the same proportion that the amount mentioned in paragraph 3(b) above bears to the amount mentioned in paragraph 3(a); and
  - (b) deducting from the said sum the total amount of any reductions which have been or fall to be made under this Schedule in respect of payments previously made under the scheme in respect of the trade.
- 6 (1) For the purposes of this Schedule, damage shall be deemed to be damage in respect of which relief may be given under the Tax Acts if and only if—
- (a) the damage is attributable to any of the following events, that is to say, the demolition, destruction or putting out of use of any asset, or the disposition or termination of an interest in any asset, and, by reason of that event, an allowance falls to be made under Chapter I or Chapter II of Part I of the Capital Allowances Act 1968 in taxing the trade; or
  - (b) the damage consists of any loss, liability, expense or other burden in respect of which an allowance may be made in computing the profits or gains of the trade for the purposes of the Tax Acts ;

Provided that where an allowance under the said Chapter I in respect of any damage falls to be reduced in the proportion specified in section 3(4) of the Capital Allowances Act 1968, only a proportionately reduced amount of the damage shall be

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treated as being referable to damage in respect of which relief may be given under the Tax Acts.

- (2) Where any event occurs which would give rise to an allowance under the Tax Acts in respect of any asset in taxing, or computing the profits or gains of, a trade but for any of the following matters, that is to say—
- (a) that there are no profits or gains against which the allowance could be made; or
  - (b) that account is required to be taken of allowances previously made or deemed to have been made in respect of the asset; or
  - (c) that account is required to be taken of any sum which falls to be written off the expenditure incurred on the asset for the purpose of determining whether any and if so what allowance may be given by reason of the event; or
  - (d) that account is required to be taken of any sum falling to be taken into account as sale, insurance, salvage or compensation moneys,
- the like consequences shall ensue under this Schedule as if an allowance had fallen to be made by reason of that event.
- (3) Where any damage is attributable to a permanent change in the purposes for which an asset is used, or the temporary or permanent putting out of use of an asset, the question whether the damage is damage in respect of which relief may be given under the Tax Acts shall be determined as if the damage had been attributable to a sale of the asset on the date upon which the change or putting out of use took place.

### PART III

#### EXCLUSION OF RELIEF IN RESPECT OF CONTRIBUTIONS PAID AFTER RELIEF HAS BEEN GIVEN UNDER PART II OF THIS SCHEDULE

- 7 The provisions of this Part of this Schedule shall have effect where—
- (a) a contribution is paid under a scheme in respect of a trade ; and
  - (b) before the contribution is paid, payments have been made under the scheme to the person carrying on the trade ; and
  - (c) reductions have been made, under the preceding provisions of this Schedule, in the amounts which, by reason of those payments, are to be treated as trading receipts of the trade.
- 8 There shall be ascertained—
- (a) the total amount of the said reductions ; and
  - (b) the sum by which that total would have been decreased if the contribution, and any previous contributions to which this Part of this Schedule applies, had been paid before any of the payments were made.
- 9 For the purpose of determining what deduction is to be made in respect of the contribution under section 406 of this Act, the contribution shall be deemed to be reduced by the sum specified in paragraph 8(6) above, but—
- (a) for the purpose of the application of the said paragraph 8 in relation to contributions subsequently paid under the scheme in respect of the trade, the total amount of the reductions referred to in that paragraph shall be treated as decreased by that sum ; and

- (6) for the purpose of the application of paragraph 5 above in relation to payments subsequently made under the scheme in respect of the trade, the total amount of the reductions referred to in paragraph 5 above shall be treated as decreased by the said sum.
- 10 When two or more contributions are paid at the same time, the provisions of this Part of this Schedule shall have effect as if they were a single contribution.

## SCHEDULE 12

Section 513.

### DOUBLE TAXATION RELIEF : REPUBLIC OF IRELAND

#### PART I

##### TEXT OF AGREEMENTS

##### *Agreement of 14th April 1926*

AGREEMENT MADE THE 14TH APRIL, 1926, BETWEEN THE BRITISH GOVERNMENT AND THE GOVERNMENT OF THE IRISH FREE STATE IN RESPECT OF DOUBLE INCOME TAX.

The British Government and the Government of the Irish Free State, being desirous of concluding an Agreement for the reciprocal exemption from income tax and super-tax of persons who are resident in Great Britain (including Northern Ireland) or in the Irish Free State but are not resident in both countries and for the reciprocal granting of relief from double taxation in respect of income tax (including super-tax) to persons who are resident in both countries, and being desirous of making such supplemental consequential and incidental provisions as appear necessary or proper for the purposes of such Agreement, have agreed as follows:—

1. (a) Any person who proves to the satisfaction of the Commissioners of Inland Revenue that for any year he is resident in the Irish Free State and is not resident in Great Britain or Northern Ireland shall be entitled to exemption from British income tax for that year in respect of all property situate and all profits or gains arising in Great Britain or Northern Ireland and to exemption from British super-tax for that year.
  - (b) Any person who proves to the satisfaction of the Revenue Commissioners that for any year he is resident in Great Britain or Northern Ireland and is not resident in the Irish Free State shall be entitled to exemption from Irish Free State income tax for that year in respect of all property situate and all profits or gains arising in the Irish Free State, and to exemption from Irish Free State super-tax for that year.
  - (c) Exemption under this Article may be given either by discharge or by repayment of tax, or otherwise, as the case may require.
- [*Note.—Article 2, which was superseded by Article 2 of the agreement of 25th April 1928, is omitted.*]
3. (a) Any person who is entitled to exemption from British income tax by virtue of Article 1(a) of this Agreement in respect of property situate and profits or gains arising in Great Britain or Northern Ireland shall, if and so far as the

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- Oireachtas of the Irish Free State so provides, and subject to any exemption or relief to which he may be entitled under the laws in force in the Irish Free State, be chargeable to Irish Free State income tax in respect of such property profits or gains.
- (b) Any person who is entitled to exemption from Irish Free State income tax by virtue of Article 1(b) of this Agreement in respect of property situate and profits or gains arising in the Irish Free State shall, if and so far as the British Parliament so provides, and subject to any exemption or relief to which he may be entitled under the laws in force in Great Britain and Northern Ireland, be chargeable to British income tax in respect of such property profits or gains.
- (c) Any person who is entitled to relief by virtue of Article 2 of this Agreement shall, subject to such relief, be chargeable, if and so far as the British Parliament so provides, to British income tax in respect of property situate and profits or gains arising in the Irish Free State in like manner in all respects as if he were resident in Great Britain or Northern Ireland but not resident in the Irish Free State and shall, subject to such relief as aforesaid, be chargeable, if and so far as the Oireachtas of the Irish Free State so provides, to Irish Free State income tax in respect of property situate and profits or gains arising in Great Britain or Northern Ireland in like manner in all respects as if he were resident in the Irish Free State but not resident in Great Britain or Northern Ireland.
4. For the purpose of this Agreement a company, whether incorporated by or under the laws of Great Britain or of Northern Ireland or of the Irish Free State or otherwise, shall be deemed to be resident in that country only in which its business is managed and controlled.
5. The Commissioners of Inland Revenue and the Revenue Commissioners may from time to time make arrangements generally for carrying out this Agreement and may in particular make such arrangements as may be practicable to avoid the collection of both British and Irish Free State income tax on the same income without allowance for any relief due under this Agreement, and the Commissioners of Inland Revenue and the Revenue Commissioners may make such regulations as they respectively think fit for carrying out such arrangements.
6. The obligation as to secrecy imposed by any enactment with regard to income tax shall not prevent the disclosure by any authorised officer of the British Government to any authorised officer of the Government of the Irish Free State or by any authorised officer of the Government of the Irish Free State to any authorised officer of the British Government of such facts as may be necessary to enable full effect to be given to this Agreement.
7. Any question that may arise between the parties to this Agreement as to the interpretation of this Agreement or as to any matter arising out of or incidental to the Agreement shall be determined by such tribunal as may be agreed between them, and the determination of such tribunal shall, as between them, be final.
8. This Agreement shall be subject to confirmation by the British Parliament and by the Oireachtas of the Irish Free State and shall have effect only if and so long as legislation confirming the Agreement is in force both in Great Britain and Northern Ireland and in the Irish Free State.

Dated this fourteenth day of April, nineteen hundred and twenty-six.



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

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(signed)

WINSTON S. CHURCHILL,  
Chancellor of the Exchequer.

EARNÁN DE BLAGHD,  
Minister for Finance, Saorstát Éireann.

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*Agreement of 25th April 1928*

AGREEMENT MADE THE 25TH DAY OF APRIL, 1928, BETWEEN THE BRITISH GOVERNMENT AND THE GOVERNMENT OF THE IRISH FREE STATE AMENDING THE AGREEMENT MADE ON THE 14TH DAY OF APRIL, 1926, BETWEEN THE SAID GOVERNMENTS IN RESPECT OF DOUBLE INCOME TAX.

With a view to making such alterations in the Agreement made the 14th April, 1926, between the British Government and the Government of the Irish Free State in respect of Double Income Tax as may be necessary in consequence of the alterations in the British Income Tax Acts effected by the British Finance Act, 1927, and of the alterations contemplated in the Irish Free State Income Tax Acts, it is hereby agreed between the said Governments that the said Agreement shall be amended as follows:—

1.
  - (a) In Article 1(a) of the said Agreement the words " British income tax " shall as respects the year 1928-29 and any subsequent year be construed as meaning British income tax charged or chargeable at the standard rate and the expression " British super-tax " shall for the year 1928-29 include British sur-tax and shall for subsequent years mean British sur-tax.
  - (b) In Article 1(b) of the said Agreement the expression "Irish Free State super-tax " shall for the year 1928-29 include Irish Free State sur-tax and shall for subsequent years mean Irish Free State sur-tax.
2. The following Article shall be substituted for Article 2 of the said Agreement:—
  - “2 (1) Relief from double taxation in respect of income tax (including sur-tax) in the case of any person who is resident both in Great Britain or Northern Ireland and in the Irish Free State shall be allowed from British income tax and Irish Free State tax respectively in accordance with and under the provisions of section 27 of the Finance Act, 1920, provided that—
    - (a) the rate of relief to be allowed from British income tax shall be one-half of that person's appropriate rate of British income tax or one-half of his appropriate rate of Irish Free State tax, whichever is the lower ;
    - (b) the rate of relief to be allowed from Irish Free State tax shall be one-half of that person's appropriate rate of British income tax or one-half of his appropriate rate of Irish Free State tax, whichever is the lower ;
    - (c) the appropriate rate of British income tax for any year shall in the case of a person whose income is chargeable to British income tax at the standard rate only be a rate ascertained by dividing the amount of tax payable by him for that year in respect of his total income (before deduction of any relief granted in respect of life assurance premiums or any relief granted under the provisions of Section 27 of the Finance Act, 1920, as amended by this Article) by the amount of his total income and shall in the case of a person part of whose total income is chargeable to British income tax at a rate or rates in excess of the standard rate be the sum of the following rates:—

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- (i) the rate which would have been the appropriate rate in the case of that person if his income had been chargeable at the standard rate only, and
- (ii) the rate ascertained by dividing the amount of the British sur-tax payable by that person for that year by the amount of his total income for that year;
- (d) the appropriate rate of Irish Free State tax for any year shall in the case of a person whose income is chargeable in the Irish Free State to income tax only be a rate ascertained by dividing the amount of tax payable by him for that year in respect of his total income (before deduction of any relief granted in respect of life assurance premiums or any relief granted under the provisions of Section 27 of the Finance Act, 1920, as amended by this Article) by the amount of his total income, and shall in the case of a person whose income is chargeable to Irish Free State sur-tax be the sum of the following rates:—
  - (i) the rate which would have been the appropriate rate in the case of that person if his income had been chargeable to income tax only, and
  - (ii) the rate ascertained by dividing the amount of the Irish Free State sur-tax payable by that person for that year by the amount of his total income for that year ;
- (e) relief under this Article from British income tax allowable to any person for any year shall be given as to such an amount as would be due if his income for the year were chargeable to British income tax at the standard rate only and to Irish Free State income tax only by repayment of or set off against the tax at the standard rate payable by him for that year, and as to any balance by repayment of or set off against any British sur-tax payable by him for that year ;
- (f) relief under this Article from Irish Free State tax allowable to any person for any year shall be given as to such an amount as would be due if his income for the year were chargeable to British income tax at the standard rate only and to Irish Free State income tax only by repayment of or set off against the income tax payable by him for that year, and as to any balance by repayment of or set off against any Irish Free State sur-tax payable by him for that year.

*[Note.—Paragraph (2) of this Article, which related only to supertax for the year 1928-29, is omitted.]*

- (3) For the purposes of this Article references to Section 27 of the Finance Act, 1920, shall in relation to British taxation be construed as references to that section subject to the amendments thereof effected by the British Finance Act, 1927, other than the amendment of the said section numbered (iv) in Part II of the Fifth Schedule to the said Act of 1927.”

- 3. This Agreement shall be subject to confirmation by the British Parliament and by the Oireachtas of the Irish Free State and shall have effect only if and so long as legislation confirming the Agreement is in force both in Great Britain and Northern Ireland and in the Irish Free State.

Dated this 25th day of April, nineteen hundred and twenty-eight.

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

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(signed)

WINSTON S. CHURCHILL,  
Chancellor of the Exchequer.

EARNÁN DE BLAGHD,  
Minister for Finance, Saorstát Éireann.

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*Agreement of 4th April 1959*

[*Note.—(1) The agreement of 21st July 1947 referred to in italics in Article 1 of this agreement is not reproduced. It related solely to provisions of the Finance (No. 2) Act 1945 which, as re-enacted in section 350 of the Income Tax Act 1952, were repealed for years after 1965-66 by the Finance Act 1965.*

*(2) Other passages italicised in the agreement are inoperative for years after 1965-66 by reason of the repeal for such years, by the Finance Act 1965, of section 4 of the Finance (No. 2) Act 1955.]*

AGREEMENT BETWEEN THE GOVERNMENT OF THE UNITED KINGDOM AND THE GOVERNMENT OF THE REPUBLIC OF IRELAND WITH RESPECT TO CERTAIN EXEMPTIONS FROM TAX.

The Government of the United Kingdom and the Government of the Republic of Ireland,

Considering the Agreement of the 14th April, 1926, between the British Government and the Government of the Irish Free State, in pursuance of which exemptions from tax are conferred on persons resident in one only of the countries from tax under the law of the other,

Considering that doubts have arisen as to the effect on the said exemptions of the provisions of subsection (2) of Section four of the United Kingdom Finance (No. 2) Act, 1955 (hereinafter called "the Act of 1955") and subsection (2) of Section fifty-one of the Irish Republican Finance Act, 1958 (hereinafter called "the Act of 1958") (which relate to purchases of shares by persons exempted from tax),

Desiring to remove these doubts for the year 1959-60 and subsequent years,

Have agreed as follows:—

Article 1

- (1) The said exemptions fall within, and are subject to, the said provisions of the Act of 1955 and the Act of 1958.
- (2) Subject as aforesaid the said Agreement of 1926 as amended by Agreements made on the 25th April, 1928, and the 21st July, 1947, continues in force.
- (3) Paragraph (1) of this Article does not relate to cases where the dividend in respect of which exemption is claimed is one on a holding of shares or stock acquired by the person claiming exemption, or regarded as having been acquired by him, before the eighth day of April, nineteen hundred and fifty-nine except in so far as that dividend is one falling within subsection (2) of the said Section four or subsection (2) of the said Section fifty-one by reason (directly or indirectly) that in respect of another dividend, received by a body corporate other than the person claiming exemption from a holding of shares or stock acquired, or regarded as acquired, by the body corporate on or after the said eighth day of April, a deduction is to be made in determining the income of that body corporate arising after a given date ; but this paragraph is without prejudice to any question as to the application of the said provisions of the

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Act of 1955 and the Act of 1958 in circumstances to which paragraph (1) of this Article does not relate.

## Article 2

This Agreement shall become effective on the exchange of notes confirming that the necessary steps have been taken to give it the force of law in the United Kingdom and the Republic of Ireland, and thereafter shall remain effective only so long as it has the force of law in both countries.

Dated this fourth day of April, 1959.

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For the Government of the United Kingdom	For the Government of the Republic of Ireland
D. HEATHCOAT AMORY	SÉAMAS O RIAIN

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### *Agreement of 23rd June 1960*

[*Note.—See paragraph (1) of note to agreement of 4th April 1959.*]

AGREEMENT BETWEEN THE GOVERNMENT OF THE UNITED KINGDOM AND THE GOVERNMENT OF THE REPUBLIC OF IRELAND WITH RESPECT TO CERTAIN EXEMPTIONS FROM TAX.

The Government of the United Kingdom and the Government of the Republic of Ireland,

Considering the Agreement of the 14th April, 1926, between the British Government and the Government of the Irish Free State in pursuance of which exemptions from tax are conferred on persons resident in one only of the countries from tax under the law of the other,

Considering that legislation may be enacted in either country to maintain the proper incidence of liability to income tax and to prevent the obtaining of undue tax advantages,

Considering that such legislation may be insufficiently effective unless, as well as applying to persons resident in the country where it is enacted, it applies also to persons not so resident but resident in the other of the two countries and accordingly affects exemptions from tax conferred in pursuance of the said Agreement of 1926,

Recognising that the legislation which was the subject of the Agreement of the 4th April, 1959, made between the two Governments affected the said exemptions in particular ways, and desiring to supplement that Agreement by a more general Agreement,

Desiring to declare that save as provided by this Agreement the continuance in force of the said Agreement of 1926 shall not be affected by the enactment of such legislation,

Have agreed as follows:—

## Article 1

Legislation enacted in either country at any time after the date of this Agreement and affecting in any way exemptions from income tax of that country of persons resident in that country shall, except as otherwise provided by the legislation and subject to the next following Article of this Agreement, have the like effect on exemptions from that tax which persons enjoy as not resident in that country but resident in the other of the two countries, and the enactment of such legislation shall not affect the continuance in force of the said Agreement of 1926, as amended by Agreements of the 25th April, 1928, the 21st July, 1947, and the 4th April, 1959, and this Agreement.

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## Article 2

If the Government of either country represents that any provisions of legislation enacted in the other country, being provisions falling within Article 1 of this Agreement, are nevertheless not within the intention of the Agreement, the two Governments shall consult and if they agree that Article 1 ought not to apply the Government of the country in which the legislation was enacted shall take the necessary steps to secure that the said provisions shall not affect, or be deemed to have affected, exemptions from the income tax of that country which persons enjoy as not resident therein but resident in the other country.

## Article 3

This Agreement shall become effective on the exchange of notes confirming that the necessary steps have been taken to give it the force of law in the United Kingdom and the Republic of Ireland, and thereafter shall remain effective only so long as it has the force of law in both countries.

Dated this 23rd day of June, 1960.

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For the Government of the United Kingdom

For the Government of the Republic of  
Ireland

D. HEATHCOAT AMORY

SÉAMAS O RIAIN

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## PART II

### SECTION 27 OF THE FINANCE ACT 1920 AS IT APPLIES IN THE UNITED KINGDOM IN RELATION TO REPUBLIC OF IRELAND INCOME TAX

“27 (1) If any person who has paid, by deduction or otherwise, or is liable to pay, United Kingdom income tax for any year of assessment on any part of his income proves that he has paid Republic of Ireland income tax for that year in respect of the same part of his income, he shall be entitled to relief from United Kingdom income tax paid or payable by him on that part of his income at a rate thereon to be determined in accordance with the provisions in that behalf of Article 2 of the agreement dated 25th April 1928 set out in Part I of Schedule 12 to the Income and Corporation Taxes Act 1970.

(2) Where a person has not established his claim to relief under this section for any year of assessment before the 1st January in that year, the relief shall be granted by way of repayment of tax.

.....

(4) Notwithstanding anything in the provisions of the Income and Corporation Taxes Act 1970 and, in particular, notwithstanding anything in section 516 of that Act, no deduction shall be made on account of the payment of Republic of Ireland income tax in estimating income for the purposes of United Kingdom income tax, and where income tax has been paid or is payable in the Republic of Ireland either on the income out of which income subject to United Kingdom income tax arises or is received, or as a direct charge in respect of that income, the income so subject to United Kingdom income tax shall be deemed to be income arising or received after deduction of Republic of Ireland income tax, and an addition shall, in estimating income for the purposes of the United Kingdom income tax, be made to that income of the proportionate part of the income tax paid or payable in the Republic of Ireland in respect of the income out of which that income arises or is received, together with the full amount of any Republic of Ireland

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income tax directly charged or chargeable in the Republic of Ireland in respect of that income:

Provided that where any income arising or received as aforesaid consists of dividends which are entrusted to any person in the United Kingdom for payment and the Board are satisfied that the person so entrusted is not in a position to ascertain the amount of the addition to be made under this subsection, the assessment and charge may be made on the amount of the dividends as received by the person so entrusted, but in any such case the amount of the addition shall be chargeable on the recipient of the dividends under Case VI of Schedule D.

In the above proviso, the expression " dividends" includes any interest, annuities, dividends, shares of annuities or other annual payments in respect of which tax is charged under Schedule C, or under section 159 of the Income and Corporation Taxes Act 1970; and the jurisdiction of the Special Commissioners on any appeal shall include jurisdiction to review any decision of the Board under that proviso.

.....

- (7) The Board may from time to time make regulations generally for carrying out the provisions of this section, and may in particular by those regulations provide—
- (a) for making such arrangements with the Government of the Republic of Ireland as may be necessary to enable the appropriate relief to be granted, and
  - (b) for prescribing the year which, in relation to any Republic of Ireland income tax, is, for the purposes of relief under this section, to be taken as corresponding to the year of assessment for the purposes of United Kingdom income tax.”

### PART III

#### PROVISIONS FOR GIVING EFFECT TO AGREEMENTS SET OUT IN PART I OF THIS SCHEDULE

- 1 The provisions of this Part of this Schedule shall have effect for any year for which the agreements set out in Part I of this Schedule are in force, and the other provisions of the Income Tax Acts shall be modified accordingly.
- 2 (1) Notwithstanding anything in sections 122 or 123 of this Act, but subject to the provisions of this paragraph, income tax chargeable under Case IV or Case V of Schedule D shall, in the case of property situated and profits or gains arising in the Republic of Ireland, be computed on the full amount of the income arising in the year of assessment, whether the income has been or will be received in the United Kingdom or not, subject in the case of income not received in the United Kingdom—
- (a) to the same deductions and allowances as if it had been so received, and
  - (b) to a deduction on account of any annuity or other annual payment (not being interest) payable out of the income to a person not resident in the United Kingdom, and
  - (c) to a deduction on account of any annual interest payable out of the income to a person not resident in the United Kingdom, being interest paid before 6th April 1975 on a debt incurred on or before 15th April 1969.
- (2) Sub-paragraph (1) above shall not apply—
- (a) to any income which is immediately derived by a person from the carrying on by him of any trade, profession or vocation, either solely or in partnership, or
  - (b) to any income which arises from any pension,

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but the tax in respect of any such income arising in the Republic of Ireland shall be computed either on the full amount thereof arising in the year of assessment, or on the full amount thereof on an average of such period as the case may require and as may be directed by the inspector, so that, according to the nature of the income, the tax may be computed on the same basis as that on which it would have been computed if the income had arisen in the United Kingdom, and subject in either case to a deduction on account of any annual interest or any annuity or other annual payment payable out of the income to a person not resident in the United Kingdom ; and the person chargeable and assessable shall be entitled to the same allowances, deductions and reliefs as if the income had arisen in the United Kingdom.

The jurisdiction of the General or Special Commissioners on any appeal shall include jurisdiction to review the inspector's decision under this sub-paragraph.

- 3 (1) Any duties of an office or employment performed in the Republic of Ireland by a person resident in the United Kingdom shall be treated for the purposes of Cases I and II of Schedule E as performed in the United Kingdom, but there shall be deducted from any emoluments chargeable by virtue only of this paragraph any annuity or other annual payment (not being interest) payable out of the emoluments to a person not resident in the United Kingdom.
- (2) A person resident in the Republic of Ireland, but not resident in the United Kingdom, shall not be chargeable to tax under Case II of Schedule E.
- (3) The emoluments excepted from Cases I and II of Schedule E as foreign emoluments shall not include the emoluments of a person resident in the United Kingdom from an office or employment under or with a person, body of persons or partnership resident in the Republic of Ireland.
- 4 Any claim for exemption from tax on the ground that the claimant is resident in the Republic of Ireland and is not resident in the United Kingdom shall be made to the Board:  
  
Provided that a claimant shall not be entitled to the exemption in respect of any income the income tax on which he is entitled to charge against any other person, or to deduct, retain or satisfy out of any payment which he is liable to make to any other person.
- 5 (1) Any claim under section 27 of the Finance Act 1920, as set out in Part II of this Schedule, shall be made to the Board.
- (2) The Special Commissioners, in determining any appeal on such a claim, shall have power to determine the rate at which relief is to be given, the amount of the relief to be given, and all questions whatsoever incidental to the determination of the matters as aforesaid.
- 6 (1) Any person who is entrusted with the payment of any interest, dividends or other annual payments which are payable to any persons in the United Kingdom out of the public revenue of the Republic of Ireland, or out of or in respect of the stocks, funds, shares or securities of any Republic of Ireland company, society, adventure or concern, shall be relieved from the obligation imposed on him under Schedule 5 to this Act, to pay income tax thereon on behalf of the persons entitled thereto as regards any such interest, dividends or other annual payments in respect of which he furnishes to the Board, in such form and subject to such conditions as they may prescribe, a list containing—
  - (a) a full description of the interest, dividends or other annual payments, and

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- (b) the name and address of each person who is entitled thereto, and
  - (c) the amount thereof to which each such person is entitled.
- (2) Any person entrusted with payment who, by virtue of sub-paragraph (1) above, is relieved from the obligation to pay income tax on interest, dividends or other annual payments, shall be entitled to the like remuneration to which, if he had paid tax thereon, he would have been entitled under paragraph 10 of Schedule 5 to this Act.
- (3) Any interest, dividends or other annual payments in respect of which the person entrusted with payment is relieved from the obligation to pay income tax by virtue of the said sub-paragraph (1) shall be assessable and chargeable under Case IV or Case V of Schedule D, as the case may be.
- (4) The Board may make such regulations as may be necessary for the purposes of this paragraph.

### SCHEDULE 13

Section 528.

#### RETURNS OF TOTAL INCOME

First.—Declaration of the amount of profits or gains returned, or for which the person in question has been or is liable to be assessed.

Second.—Declaration of the amount of rents, interest, annuities or other annual payments, in respect of which the person in question is liable to allow the tax, with the names of the respective persons by whom such payments are to be made, distinguishing the amount of each payment.

Third.—Declaration of the amount of annuities or other annual payments (not being interest) to be made out of the property or profits or gains assessed on the person in question, distinguishing each source.

Fourth.—Statement of the amount of income derived according to the three preceding declarations.

Fifth.—Statement of any tax which the person in question may be entitled to deduct, retain or charge against any other person.

### SCHEDULE 14

Sections 84(4), 437(2) and 537.

#### SAVINGS AND TRANSITORY PROVISIONS

##### *Personal reliefs: income accumulated under trusts*

- 1 The repeals made by this Act shall not be taken as affecting section 228 of the Income Tax Act 1952 or the limitation of that section by section 11(5) of the Finance Act 1969 (no relief for 1969-70 or later years of assessment), or by sections 400(4) and 406(6) of the Income Tax Act 1952 (settlements).

##### *Interest on debt secured on land in Scotland*

- 2 The repeals made by this Act shall not be taken as altering the effect of section 18(8) of the Finance Act 1969 or, so far as it relates to interest paid not later than 15th August 1970, of section 169(5) of the Income Tax Act 1952.



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*Duration of leases*

- 3 (1) Subject to sub-paragraph (2) below, section 84 of this Act has effect—
- (a) as respects a lease granted after 12th June 1969, and
  - (b) so far as it relates to section 80(4) of this Act, as respects a variation or waiver of the contract for which is entered into after that date.
- (2) So far as relates to relief under—
- (a) section 171 or section 177(1) of this Act (carry forward of trading losses), or
  - (b) section 168(1) of this Act as applied by subsection (2) of the same section (set-off of trading loss against general income of succeeding year), or
  - (c) section 72(1) of this Act (sums deductible from rent), given by setting a loss against, or making a deduction from, income of—
    - (i) the year 1969-70 or any subsequent year of assessment, or
    - (ii) a company's accounting period ending after 5th April 1969,the said section 84 shall be deemed to have had effect as from the passing of the Finance Act 1963, and as respects leases granted at any time.

(3) In applying sub-paragraph (2) above it shall be assumed—

    - (a) that all relief which could not be affected by the operation of that sub-paragraph was given (for all years of assessment and accounting periods before or after the passing of this Act) before relief which could be affected by the operation of that sub-paragraph, and
    - (b) that, in particular, any loss which would not have been sustained if the said section 84 had always had effect was postponed to any other loss in giving relief against income of a year of assessment before the year 1969-70, or of a company's accounting period ending on or before 5th April 1969.

This sub-paragraph shall have effect notwithstanding the provisions of section 77 of this Act or any other enactment governing the order in which reliefs are given.

(4) All such adjustments shall be made, whether by way of assessment or discharge or repayment of tax, as are required to give effect to the said section 84 with this paragraph.

4 (1) Where section 84 of this Act does not have effect, the following provisions of this paragraph shall apply in ascertaining the duration of a lease for the purposes of sections 80 to 82 of this Act.

(2) Subject to sub-paragraph (4) below, where the terms of the lease include provision for the determination thereof by notice given either by the landlord or by the tenant, the lease shall not be treated as granted for a term longer than one ending at the earliest date on which it could be determined by notice.

(3) Subject to sub-paragraph (4) below, where any of the terms of the lease (whether relating to forfeiture or to any other matter) or any other circumstances render it unlikely that the lease will continue beyond a date falling before the expiration of the term of the lease, the lease shall not be treated as having been granted for a term longer than one ending on that date.

(4) Where the duration of a lease falls to be ascertained after the date on which the lease has for any reason come to an end, the duration shall be taken to have extended from its commencement to that date, and where the duration falls to be ascertained at a

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time when the lease is subsisting the preceding provisions of this paragraph shall be applied in accordance with circumstances prevailing at that time.

- (5) In relation to Scotland the expression " term " in this paragraph, where referring to the duration of a lease, means " period " .
- (6) This paragraph shall be construed as one with Part III of this Act.

*Allowance of interest as a business expense*

- 5 (1) In computing for the purposes of income tax for the year 1970-71 or any subsequent year of assessment the profits or gains arising from a trade, profession or vocation in a basis period falling wholly or partly before 6th April 1970, there may, subject to section 57(10) and section 130 of this Act, be deducted—
- (a) the gross amount of any annual interest paid before that date under deduction of tax, and
  - (b) the amount of any interest paid to a bank, stockbroker or discount house relief for which was allowed under section 200 of the Income Tax Act 1952 for the year of assessment in which the payment was made, and
  - (c) the amount of any interest paid to a building society relief for which was allowed under section 445(3) of the Income Tax Act 1952 for the year of assessment in which the payment was made.
- (2) It is hereby declared that, subject to sub-paragraph (1) above, relief in respect of any payment of interest cannot be given both under the said section 200 and in computing the profits or gains of a trade, profession or vocation.
- (3) In this paragraph " basis period ", in relation to any year of assessment, means the period the profits or gains of which are taken into account in charging income tax under Case I or Case II of Schedule D on the profits or gains of the trade, profession or vocation for that year of assessment.
- (4) In this paragraph " building society " includes any company within section 445(6) of the Income Tax Act 1952.

*Repeal of section 136 of the Income Tax Act 1952:*  
*allowance of annual value of land as a business expense*

- 6 (1) This paragraph has effect for allowing deductions by reference to those which would have fallen to be made if section 136 of the Income Tax Act 1952 had applied for the years 1963-64 and 1964-65.
- (2) Subject to the provisions of this paragraph, an allowance under this paragraph shall be made to the person carrying on a trade where land which was occupied by him at any time before the end of the year 1962-63 for the purposes of the trade permanently ceases to be occupied by him for those purposes.
- (3) The amount of the allowance shall be the excess of—
- (a) the aggregate of any deductions in respect of the annual value of the land which, by virtue of section 136 of the Income Tax Act 1952, would have been made in computing the profits or gains of the trade for the years 1963-64 and 1964-65 but for section 29(1) of the Finance Act 1963 and the repeal by that Act of the said section 136, over

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- (b) the aggregate of any deductions relating to the land made in computing the profits or gains of the trade for those years, being—
  - (i) deductions permitted by section 29(2) of the said Act of 1963, so far as made in respect of the period in respect of which the deductions mentioned in paragraph (a) above would have been made, or
  - (ii) deductions in respect of rent from which an amount representing tax was deducted under section 173 of the said Act of 1952, so far as made in respect of that period.
- (4) The allowance shall be made by—
  - (a) treating the amount of it as rent paid for the land by the said person (in addition to any actual rent), becoming due from day to day during the period defined in sub-paragraph (5) below, and
  - (b) allowing deductions accordingly in computing the profits or gains of the trade chargeable under Case I of Schedule D for any chargeable period the profits or gains for which fall to be computed by reference to a period including the period defined in sub-paragraph (5) below or any part thereof.
- (5) The said period is that ending when the land permanently ceases to be occupied by the said person for the purposes of the trade, and of a duration equal to the aggregate of—
  - (a) the number of months and fractions of months during which the land was occupied by him for the purposes of the trade in so much of the period by reference to which the profits or gains of the trade for the year 1963-64 fell to be computed as fell before the beginning of that year, and
  - (b) the number of months and fractions of months during which the land was so occupied in so much of the period by reference to which the profits or gains of the trade for the year 1964-65 fell to be computed as fell before the beginning of the year 1963-64.
- (6) No allowance shall be made under this paragraph where the date on which the land permanently ceases to be occupied by the said person for the purposes of the trade—
  - (a) falls within a chargeable period in which he permanently ceases to carry on the trade, or
  - (b) the said person not being a company, falls within a year of assessment and also within a period by reference to which the profits or gains of the trade for that year of assessment fall to be computed.
- (7) Where, by reason of a change in the persons carrying on the trade, the trade falls to be treated for any of the purposes of the Income Tax Acts as permanently discontinued, a person engaged in carrying on the trade immediately before the change occurred who continues to be so engaged immediately after it occurred shall be treated for the purposes of this paragraph as not having been in occupation of the land at any time before it occurred.
- (8) Where there has been a change in the persons carrying on the trade, but by virtue of section 154 of this Act, or section 17(1) of the Finance Act 1954 (company reconstructions before introduction of corporation tax), the trade does not by reason of the change fall to be treated for any of the purposes of the Income Tax Acts as permanently discontinued, this paragraph (including this sub-paragraph) shall apply as if any occupation of the land before the change occurred by the persons carrying on the trade immediately before it occurred were occupation by the persons carrying on the trade immediately after it occurred.

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- (9) Where section 252(1) of this Act (company reconstructions) applies, then for the purposes of this paragraph any occupation of land for the purposes of the trade by the predecessor shall be treated as having been the occupation of the successor. Subsection (6) of the said section 252 shall apply to this sub-paragraph as it applies to subsections (2) to (5) of that section, and in this sub-paragraph "predecessor" and "successor" have the same meaning as in that section.
- (10) Where section 352 of this Act (harbour reorganisation schemes) has effect, then for the purposes of this paragraph any occupation of land for the purposes of the trade by the transferor shall be treated as having been the occupation of the transferee.
- This sub-paragraph shall be construed as one with the said section 352, and as if it were referred to in subsection (1(3)(b) of that section.
- (11) The preceding provisions of this paragraph shall apply in relation to a profession or vocation as they apply in relation to a trade, but as if the reference in sub-paragraph (4) to Case I of Schedule D were a reference to Case II of that Schedule.

*Case VII of Schedule D*

- 7 (1) Section 164(3) of this Act (disallowance of interest in computing gains) shall not apply to interest paid in the year 1969-70, being—
- (a) bank, discount house or stock exchange interest paid in respect of any period ending before 1st July 1969, or
  - (b) interest on any debt incurred before 16th April 1969, not being bank, discount house or stock exchange interest,
- and shall not apply to interest paid before the year 1969-70.
- (2) In this paragraph "bank, discount house or stock exchange interest" means interest paid without deduction of tax in the United Kingdom on an advance from a bank carrying on a bona fide banking business in the United Kingdom, or from a person bona fide carrying on business as a member of a stock exchange in the United Kingdom, or bona fide carrying on the business of a discount house in the United Kingdom, and the reference to such interest in respect of a period ending before 1st July 1969 applies whether or not interest continues to run on or after that date.
- 8 Where, on or before 19th June 1969—
- (a) paragraph 7(2) of Schedule 7 to the Finance Act 1965 (transfer of business on amalgamation or reconstruction to be on a no-gain, no-loss basis in certain cases) applied on the transfer of the whole or part of a business to a body which is not a company as defined in section 526(5) of this Act (with section 354 of this Act), but
  - (b) all or any of the assets included in the transfer were not disposed of by that body,
- then any disposal by that body after that date of any of the assets referred to in paragraph (b) above shall be disregarded for the purposes of Chapter VIII of Part VI of this Act.

*Carry forward and backward of losses, etc.*

- 9 (1) The substitution of this Act for the corresponding enactments repealed by this Act shall not alter the effect of any provision enacted before this Act (whether or not

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there is a corresponding provision in this Act) so far as it determines whether and to what extent—

- (a) losses or expenditure incurred in, or other amounts referable to, a chargeable period earlier than those to which this Act applies may be taken into account for any tax purposes in a chargeable period to which this Act applies, or
- (b) losses or expenditure incurred in, or other amounts referable to, a chargeable period to which this Act applies may be taken into account for any tax purposes in a chargeable period earlier than those to which this Act applies.

(2) Without prejudice to sub-paragraph (1) above, the repeals made by this Act shall not affect the following enactments (which are not re-enacted):—

- (a) section 27(4) of the Finance Act 1952 (restrictions on removal of six year time limit on carry forward of trading losses),
- (b) section 29(3) of the Finance Act 1953 (Isles of Scilly),
- (c) section 17 of, and Schedule 3 to, the Finance Act 1954 so far as in force by virtue of the saving in Part IV of Schedule 22 to the Finance Act 1965, and section 80(8) of the Finance Act 1965 (which amends the said Schedule 3),
- (d) section 82(4) of the Finance Act 1965 (losses allowable against chargeable gains),
- (e) section 85 of the Finance Act 1965 (carry forward of surplus of franked investment income: dividends paid out of pre-1966-67 profits) and the enactments amending that section,
- (f) Part II of Schedule 15 to the Finance Act 1965 (introduction of corporation tax: continuity of loss relief and other matters),
- (g) paragraph 7 of Schedule 16 to the Finance Act 1965 (company ceasing to be overseas trade corporation by operation of Part IV of that Act),

in so far as those enactments may be relevant to tax for any chargeable period to which this Act applies.

#### *Interest paid by companies*

10 (1) Sections 248(6) and 300 of this Act shall not apply to interest paid in the year 1969-70, being—

- (a) bank, discount house or stock exchange interest paid in respect of any period ending before 1st July 1969, or
- (b) interest on any debt incurred before 16th April 1969, not being bank, discount house or stock exchange interest,

and as respects interest paid in the year 1969-70 which is within paragraph (a) or paragraph (b) above, subsection (2) of section 296 of this Act shall apply as if the words "not being interest" in that subsection were omitted.

(2) In this paragraph "bank, discount house or stock exchange interest" means interest paid without deduction of tax in the United Kingdom on an advance from a bank carrying on a bona fide banking business in the United Kingdom or from a person bona fide carrying on business as a member of a stock exchange in the United Kingdom, or bona fide carrying on the business of a discount house in the United Kingdom, and the reference to such interest in respect of a period ending before 1st July 1969 applies whether or not interest continues to run on or after that date.

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*Company reconstruction or amalgamation: transfer of assets*

- 11 The repeal by this Act of paragraph 7(2) of Schedule 7 to the Finance Act 1965, and of the other provisions re-enacted in section 267 of this Act, shall apply only where the transfer referred to in the said paragraph 7(2) takes effect after 5th April 1970.

*Meaning of "distributio"n for close companies*

- 12 Section 285 of this Act shall apply in relation to any accounting period ending after 5th April 1970 ; but for that purpose an accounting period beginning on or before, and ending after, 15th April 1969 shall be treated as two separate accounting periods the first of which ended with 15th April 1969, and in relation to the said first period paragraph 9(1)(a) of Schedule 11 to the Finance Act 1965 (which was superseded by the provisions re-enacted in the said section 285) shall apply notwithstanding the repeals made by this Act.

*Tax on close companies at standard rate of income tax*

- 13 (1) For the avoidance of doubt it is hereby declared that—
- (a) sections 286 to 288 of this Act come into force for the year 1970-71 and subsequent years of assessment, and
  - (b) section 289 of this Act, and the other provisions about close companies' shortfalls, come into force for accounting periods ending after 5th April 1970.
- (2) In the case of an accounting period beginning on or before 15th April 1969 the relief to be given under section 290(5) of this Act shall be subject to such adjustment, if any, as may be required by the proviso to paragraph 3(7) of Schedule 14 to the Finance Act 1969.

*Directors' remuneration: provisions repealed by Finance Act 1969*

- 14 (1) The repeal by this Act of section 28 of the Finance Act 1969 (which is not re-enacted in this Act) has effect only as respects accounting periods ending after 31st December 1970, and the following provisions of this paragraph have effect only as respects earlier accounting periods (and then only so far as the said section 28 applies to any such period).
- (2) The repeals made by this Act shall not affect—
- (a) in the Finance Act 1965, sections 74 and 89(5) (with the enactments applied by that subsection), and paragraph 6(3) of Schedule 18,
  - (b) in the Finance Act 1967 paragraph 9 of Schedule 11 as it applies to the said paragraph 6(3).
- (3) For the purposes of section 289 of this Act the distributions of a close company for an accounting period shall be taken to consist (in addition to the dividends and distributions mentioned in section 291(1) of this Act) of any amount by which the directors' remuneration paid for the period exceeds the deduction allowed for it in computing the company's income for the period.
- (4) No deduction shall be made under section 289(5) of this Act from the distributions for any accounting period so as to reduce those distributions below the amount of the directors' remuneration included in the distributions in computing them for the purposes of section 289.

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- (5) At the end of section 298(2) of this Act (before the proviso) there shall be added the words " or amounts treated as such for the purposes of section 289 above ".
- 15 Any power which the Board may exercise under section 301 of this Act for the purposes of sections 296 to 300 may be exercised by the inspector for the purposes of section 74 of the Finance Act 1965.

*Close company's distributable income*

- 16 As respects accounting periods beginning before the year 1971-72, at the end of section 291(2)(a) of this Act insert "and  
(iii) any deduction made by virtue of section 87 of the Finance Act 1965 by way of allowance in respect of any source of income".

*Close companies: meaning of "associat"e*

- 17 (1) As respects any time before 15th April 1969 proviso (ii) to section 303(3) of this Act shall have effect as if after the words " individual in question " there were inserted " is not in receipt of remuneration from the company of more than £4,000 per annum and ".
- (2) In the amendment so made " remuneration " has the meaning given by paragraph 18(3) of Schedule 5 to the Finance Act 1966.

*Children's settlements: irrevocable dispositions made before 22nd April 1936*

- 18 (1) This paragraph shall not apply in relation to any settlement, as defined for the purpose of Chapter II of Part XVI of this Act, except a settlement made or entered into before 22nd April 1936 which, immediately before that date, was an irrevocable settlement within the meaning of the said Chapter II.
- (2) Subject to the provisions of this paragraph, any income which, by virtue or in consequence of any disposition made, directly or indirectly, by any person after 5th April 1914, is payable to or applicable for the benefit of a child of that person for some period less than the life of the child shall, if and so long as the child is an infant and unmarried, be deemed for all the purposes of the Income Tax Acts to be the income of the person, if living, by whom the disposition was made and not to be the income of any other person.
- (3) This paragraph shall not apply as regards any income which is derived from capital which, at the end of the period during which that income is payable to or applicable for the benefit of the child, is required by the disposition to be held on trust absolutely for, or to be transferred to, the child, or any income which is payable to or applicable for the benefit of a child during the whole period of the life of the person by whom the disposition was made.
- (4) Income shall not be deemed, for the purposes of this paragraph, to be payable to or applicable for the benefit of a child for some period less than its life by reason only that the disposition contains a provision for the payment to some other person of the income in the event of the bankruptcy of the child, or of an assignment thereof, or a charge thereon, being executed by the child.
- (5) In this paragraph, unless the context otherwise requires—

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" child " includes a stepchild or illegitimate child, and  
" disposition " includes any trust, covenant, agreement or arrangement.

- (6) Sections 435 and 436 of this Act shall apply as if this paragraph were contained in Chapter I of Part XVI of this Act, and this paragraph, notwithstanding that it is referred to in Chapter II of Part XVI of this Act, shall not be construed as one with that Chapter.

*Cancellation of tax advantages and transfer of assets abroad*

- 19 (1) In paragraph A(a) of section 461 of this Act the reference to any exemption from tax shall, in relation to any distribution made after 29th April 1969, include a reference to any limitation (as well as any exemption) applied by section 31(2) of the Finance Act 1966 (transitory provisions for dividends paid to non-residents) to the amount of income tax under Schedule F chargeable in respect of a dividend.

This sub-paragraph shall be construed as one with Chapter I of Part XVII of this Act.

- (2) As respects years of assessment before the year 1966-67, in subsection (3) of section 481 of this Act, for the words from " The bodies corporate mentioned" to the end of that subsection there shall be substituted the words " The bodies corporate mentioned in the preceding provisions of this section are bodies corporate resident or incorporated outside the United Kingdom which are, or, if they were incorporated in the United Kingdom, would be, investment companies to which section 245 of the Income Tax Act 1952 applies ; and ' investment companies' here has the meaning given by section 257 of that Act ".

*Dividend stripping and bond washing*

- 20 With respect to distributions made before 30th April 1969, the repeals made by this Act shall not affect section 65 of the Finance Act 1965 (dividend stripping), or any other enactment which, except with respect to such distributions, is repealed by Part IV of Schedule 21 to the Finance Act 1969, or section 31(4)(a) of the Finance Act 1966 (which amends the said section 65).

*Tax avoidance: provisions repealed by Finance Act 1969*

- 21 (1) This paragraph applies to the following provisions (which by virtue of section 32(15) of the Finance Act 1969 ceased to have effect as respects any transaction or event carried out or occurring on or after 15th April 1969).

The said provisions are—

- (a) in the Finance Act 1960, sections 21 to 24, all of section 25 except subsection (4), and section 26, and  
(b) in the Finance Act 1962, sections 23 and 24 and in section 25 subsection (1) except so far as it relates to section 28, and subsection (2).
- (2) As respects transactions or events carried out or occurring before 15th April 1969 the repeals made by this Act shall not affect the said provisions, or any enactment relating to those provisions.
- (3) Relief under subsection (4) of the said section 21 of the Finance Act 1960 shall be given on the making of a claim to the Board, and any appeal on the claim shall be



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to the General Commissioners unless the appellant elects that it shall lie instead to the Special Commissioners.

- (4) For the purpose of section 292(1) of this Act any such amount as, in relation to a company, is directed by section 21(2), section 25(1) or section 26(2) of the Finance Act 1960, or section 24(11) of the Finance Act 1962, to be treated as investment income, shall be deemed to be income of the company and to be investment income, and references in any enactment to the definition of " trading company " in the said section 292(1) shall be construed accordingly.

*Disallowance of interest as a deduction*

- 22 As respects annual interest paid before 6th April 1970 on a debt incurred before 16th April 1969 section 519(1)(b) of this Act shall have effect as if the words " (not being interest)" in that paragraph were omitted.

*Transitional relief for companies existing in 1965 with overseas trading income*

- 23 (1) In section 84 of the Finance Act 1965 " trade " has the same meaning as in Part XI of this Act.
- (2) If under paragraph 3(4)(b) of Schedule 20 to the Finance Act 1965 the appropriate fraction of a loss incurred by one company is set off (for the purposes of subsection (3) of the said section 84) against the income of another company, any group relief in respect of that part of the loss shall be left out of account in any computation under the said subsection (3) as respects that other company or any other company.
- (3) In subsection (5) of the said section 84 the reference to section 48 of the Finance Act 1965 shall include a reference to section 256 of this Act, and in subsection (8) (b) of the said section 84 the reference to Part XIII of the Income Tax Act 1952 shall include a reference to Part XVIII of this Act.
- (4) In paragraph 3(4)(a) of Schedule 20 to the Finance Act 1965 the reference to section 62 of the Finance Act 1965 shall include a reference to sections 254 and 255 of this Act.

*Transitional relief for companies existing in 1965 on cessation of trade, etc.*

- 24 (1) In section 87(7) of the Finance Act 1965 the reference to section 430(1) of the Income Tax Act 1952 shall include a reference to section 316(1) of this Act.
- (2) In paragraph 3(8) of Schedule 21 to the Finance Act 1965 " control" shall be construed in accordance with section 302 of this Act, and the reference to Schedule 18 to the Finance Act 1965 shall be omitted.

*Investment allowances*

- 25 Nothing in the repeals made by this Act shall affect the operation of any enactment relating to investment allowances in respect of expenditure incurred before 17th January 1966, or in respect of such expenditure as is referred to in section 35(2) of the Finance Act 1966 (existing contracts)..

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*Capital allowances: free depreciation*

- 26 Nothing in the repeals made by this Act shall affect section 38 or section 39 of the Finance Act 1963, or any enactment supplementing or amending those sections, so far as those sections remain in force by virtue of the saving in Part V of Schedule 13 to the Finance Act 1966.

*Expired taxes*

- 27 (1) Nothing in the repeals made by this Act shall affect any enactment or instrument as it applies to or for the purposes of excess profits tax, excess profits levy, the profits tax or the special contribution.
- (2) Sub-paragraph (1) above shall not apply to—
- (a) section 504 of the Income Tax Act 1952 (re-enacted in section 105 of the Taxes Management Act 1970),
  - (b) paragraphs 9 and 10 of Schedule 6 to the Finance Act 1966 (re-enacted in section 39 of the said Act of 1970), or
  - (c) section 43 of the Finance Act 1967 (re-enacted in section 45 of the said Act of 1970).
- (3) Subsections (1) and (3) of section 45 of the Taxes Management Act 1970 shall not apply to proceedings under paragraph 9 of Schedule 7 to the Finance Act 1960 (profits tax penalties).
- (4) In section 105 of the said Act of 1970 " tax " shall include excess profits tax and the profits tax.

*Functions of the Minister for the Civil Service*

- 28 If and so far as any functions conferred on the Minister for the Civil Service by this Act, or by the Taxes Management Act 1970, are not comprised in the descriptions of functions transferred to the said Minister from the Treasury by the Minister for the Civil Service Order 1968, those functions shall be exercisable by the Treasury, and not by the said Minister.

*Validity of subordinate legislation*

- 29 So far as this Act or the Taxes Management Act 1970 re-enacts any provision contained in a statutory instrument made in exercise of powers conferred by any Act, it shall be without prejudice to the validity of that provision, and any question as to its validity shall be determined as if the re-enacted provision were contained in a statutory instrument made under those powers.

SCHEDULE 15

Section 537.

CONSEQUENTIAL AMENDMENTS

*Betterment levy*

- 1 In section 51 of the Land Commission Act 1967 (interest on betterment levy), after subsection (2) insert—

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“(2A) Interest payable to the Commission by virtue of this section at the rate determined by the Betterment Levy (Rate of Interest) (No. 2) Order 1969, or by any subsequent order under subsection (2) above, shall be paid without deduction of income tax.”.

*Reserved taxes for purposes of Government of Ireland Act 1920*

2 In the Government of Ireland Act 1920, after section 22(1) insert—

“(1A) This Act shall have effect as if the capital gains tax and corporation tax were included among the taxes mentioned in subsection (1) above.”

*Friendly societies and trade unions*

3 (1) In section 26(2) of the Finance Act 1956, for the words from the beginning to " ceases to be paid " substitute—

“(2) If, in the event of a dissolution of any registered friendly society or registered trade union, any approved annuity as defined in section 226(13) of the Income and Corporation Taxes Act 1970 ceases to be paid,”.

(2) For section 29(9) of the Finance Act 1966 substitute—

“(9) Part II of Schedule 8 to this Act shall be construed in accordance with subsections (2) and (3) of section 337 of the Income and Corporation Taxes Act 1970.”.

(3) For paragraph 5(4)(b) of Schedule 8 to the Finance Act 1966 substitute—

“(b) any approved annuities as defined in section 226(13) of the Income and Corporation Taxes Act 1970.”.

*Post-war credits*

4 In the Income Tax (Repayment of Post-War Credits) Act 1959, after section 1(6) insert—

“(6A) Notwithstanding any other enactment relating to summary jurisdiction, proceedings for an offence under subsection (6) above may be commenced at any time within three years from the time when the offence was committed.”

*Capital allowances*

5 (1) The Capital Allowances Act 1968 shall be amended as follows.

(2) In section 6(5)(a), for " Case VIII of Schedule D " substitute " Schedule A ".

(3) For section 12(3) substitute—

“(3) The reference in this section to the permanent discontinuance of a trade does not include a reference to the happening of any event which, by virtue of section 154 or 251(1) of the principal Act (changes in persons carrying on a trade, and special rules for corporation tax), is to be treated as equivalent to the discontinuance of the trade.”

(4) At the end of section 15 add—

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- “(4) Section 42 of the Taxes Management Act 1970 shall apply to any claim under this section for relief from corporation tax, but, without prejudice to section 71(3) of this Act, not to any other claim under this section.”
- (5) In section 48(1), for paragraphs (a) and (b) substitute " of section 154 or 251(1) of the principal Act (changes in persons carrying on a trade, and special rules for corporation tax) ".
- (6) In section 67(3), for the words from the beginning to " permanently discontinued " substitute—
- “(3) For the purposes of this section, a trade shall not be treated by virtue of section 154 or 251(1) of the principal Act (changes in persons carrying on a trade, and special rules for corporation tax) as permanently discontinued”.
- (7) In section 69, in the definitions of " agricultural income " and " forestry income", for " Case VIII of Schedule D" substitute " Schedule A ".
- (8) At the end of section 70(3) add—
- “Section 42 of the Taxes Management Act 1970 shall not apply to any such claim.”.
- (9) In section 71(3), for the words from "made to the inspector" to the end of the proviso substitute " (that is to say, a claim to which section 42 of the Taxes Management Act 1970 applies) ".
- (10) In section 74(3), for " may claim" substitute " may, on making a claim (to which section 42 of the Taxes Management Act 1970 applies), require ".
- (11) In section 74(4), for "Part IV of the Finance Act 1965 " substitute " the Corporation Tax Acts ".
- (12) In section 79(1), for paragraphs (a) and (b) substitute " of section 154 or 251(1) of the principal Act (changes in persons carrying on a trade, and special rules for corporation tax) ".
- (13) At the end of section 100 add—
- “(5) In this Act " the principal Act" means the Income and Corporation Taxes Act 1970.”.
- (14) In paragraph 8(1)(a) of Schedule 2, before " Schedule D" insert " Schedule A or ".

#### *Chargeable gain*

- 6 (1) In section 39 of the Finance Act 1965—
- (a) in subsection (1), for " sections 347 and 348 of the Income Tax Act 1952 (double taxation relief and unilateral relief), with Schedules 16 and 17 to that Act" substitute " Chapters I and II of Part XVIII of the Income and Corporation Taxes Act 1970 as they apply for the purposes of income tax ",
- (b) in subsection (2), for " the said section 347" substitute " section 347 of the Income Tax Act 1952 ",
- (c) in subsection (3), for " the said provisions of the Income Tax Act 1952" substitute " the said Chapters I and II ", and for " those provisions of the Income Tax Act 1952 " substitute " those Chapters, " and

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- (d) in subsection (4), for "Section 353 of the Income Tax Act 1952" substitute "Section 518 of the Income and Corporation Taxes Act 1970".
- (2) In section 45(1) of the Finance Act 1965, insert the following definitions (after those of "company" and "control" respectively)—
- “close company” has the meaning given by sections 282 and 283 of the Income and Corporation Taxes Act 1970 ;”
- “inspector” means any inspector of taxes ;”.
- (3) At the end of paragraph 4 of Schedule 6 to the Finance Act 1965 add—
- “(3) Except as provided by section 269 of the Income and Corporation Taxes Act 1970 (companies: interest charged to capital), no payment of interest shall be allowable under this paragraph.”.
- (4) In paragraph 6(b) of Schedule 13 to the Finance Act 1967, for " paragraph 2(1) of Schedule 13 to that Act" substitute " section 273(1) of the Income and Corporation Taxes Act 1970 " ; and (in consequence), in paragraph 6(c) of that Schedule, for " that Act" substitute " the Finance Act 1965 ".
- (5) In paragraph 23(1) of Schedule 12 to the Finance Act 1968, for paragraph (b) substitute the following—
- “(b) ' group ' shall be construed in accordance with subsections (1) (without paragraph (a)), (3) and (4) of section 272 of the Income and Corporation Taxes Act 1970.”
- (6) In paragraph 22(3) of Schedule 19 to the Finance Act 1969, for " the said paragraph 7(2) of Schedule 7 " substitute " paragraph 7(2) of Schedule 7 to the Finance Act 1965 or section 267 of the Income and Corporation Taxes Act 1970 ".
- 7 Section 207 of this Act (residence) shall apply in relation to capital gains tax as it applies for the purposes mentioned in that section.

#### *Estate Duty*

- 8 In section 37(3) of the Finance Act 1958, for the reference to subsection (1) of that section substitute a reference to section 215(1) of this Act.
- 9 (1) In section 88(2) of the Finance Act 1965 (consequential amendments for estate duty), for the reference to Part IV of the Finance Act 1965 substitute a reference to the Corporation Tax Acts.
- (2) Nothing in this Act shall affect the operation of section 58(1) of the Finance Act 1940.

#### *General powers of amendment in Acts relating to overseas countries*

- 10 Where under any Act passed before this Act and relating to a country or territory outside the United Kingdom there is a power to affect Acts passed or in force before a particular time, or instruments made or having effect under such Acts, and the power would, but for the passing of this Act or the Taxes Management Act 1970, have included power to change the law which is reproduced in, or is made or has effect under, this Act or the said Taxes Management Act, then that power shall include power to make such provision as will secure the like change in the law reproduced in, or made or having effect under, this Act or the said Taxes

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Management Act, notwithstanding that neither Act is an Act passed or in force before that time.

*Translation of references to enactments repealed and re-enacted*

- 11 In the enactments specified in column 1 of the following Table, for the words in column 2 substitute the words in column 3, adding, except as otherwise indicated—
- (a) for those in Part I of the Table, " of the Taxes Management Act 1970 ", and
  - (b) for those in Part II, " of the Income and Corporation Taxes Act 1970 ", or, in the case of enactments contained in the Capital Allowances Act 1968, " of the principal Act ",
- (but in all cases saying " to ", instead of " of", if the substituted words refer to a Schedule rather than a section).

TABLE

**PART I**

<i>Enactment amended</i>	<i>Words to be replaced</i>	<i>Corresponding provision of the Taxes Management Act 1970</i>
<i>The Post Office Savings Bank Act 1954 (1954 c. 62)</i>		
In the Post Office Savings Bank Act 1954		
section		
10(2)	subsection (3) of section twenty-nine of the Income Tax Act 1952.	section 17(3).
<i>The Finance Act 1965 (1965 c. 25)</i>		
In the Finance Act 1965		
section		
45(1)	section 373 of the Income Tax Act 1952.	section 82.
Schedule 10 paragraph		
3(3)	section 7 or section 9(6) of the Income Tax Management Act 1964.	section 8 or 42(5).
4(1)	sections 495 to 497 of the Income Tax Act 1952 as applied by this Schedule.	Part IX (except sections 87 and 88).
<i>The National Insurance Act 1965 (1965 c. 51)</i>		
In the National Insurance Act 1965		
section		
15(3)	Sections 46 and 47 of the Finance Act 1960.	Section 98.
<i>The Finance Act 1966 (1966 c. 18)</i>		

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<i>Enactment amended</i>	<i>Words to be replaced</i>	<i>Corresponding provision of the Taxes Management Act 1970</i>
In the Finance Act 1966		
Schedule 6		
paragraph		
23(3)	Section 50 of the Finance Act 1960.	Section 99.
23(4)	Sections 47(3) and 48(3) of the Finance Act 1960. the said section 47.	Subsections (1) and (2) of section 97. section 95 of that Act (without adding more words).
23(5)	Section 58 of the Finance Act 1960.	Section 88.
<i>The National Insurance Act (Northern Ireland) 1966 (1966 c. 6 (N.I.))</i>		
In the National Insurance Act (Northern Ireland) 1966		
section		
14(3)	Sections 46 and 47 of the Finance Act 1960.	Section 98.
<i>The Finance Act 1968 (1968 c. 44)</i>		
In the Finance Act 1968		
section		
43(11)	Part III of the Finance Act 1960.	Part X.
column 2 of Schedule 6 to that Act	column 1 of the Table in section 98 of that Act (without adding more words).	
the said Part III	the said Part X (without adding more words).	
46(4)	section 9 of the Income Tax Management Act 1964.	section 42.
50(4)	Part III of the Finance Act 1960. column 2 of Schedule 6 to that Act the said Part III.	Part X. column 1 of the Table in section 98 of that Act (without adding more words). the said Part X (without adding more words).

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**PART II**

<i>Enactment amended</i>	<i>Words to be replaced</i>	<i>Corresponding provision of this Act</i>
<i>The Finance Act 1952 (1952 c. 33)</i>		
In the Finance Act 1952		
section		
30(4)	section one hundred and fifty-seven of the Income Tax Act 1952 (or section one of the Income Tax (Employments) Act 1943).	section 204.
<i>The Ministerial Salaries and Members' Pensions Act 1965 (1965 c. 11)</i>		
In the Ministerial Salaries and Members' Pensions Act 1965		
section		
13(1)(a)	section 379 of the Income Tax Act 1952.	section 208.
<i>The Finance Act 1965 (1965 c. 25)</i>		
In the Finance Act 1965		
section		
20(2) proviso.	Part XHI of the Income Tax Act 1952.	Part XVIII.
21(2)	section 525(1)(b) of the Income Tax Act 1952.	section 530(1)(b).
	Part VIII of the Income Tax Act 1952.	Chapter II of Part I.
	sections 219 and 225.	sections 19 and 20 (without adding more words).
27(2)	section 17(6) of this Act.	section 166(1).
34(6)	paragraph 8 of Schedule 18 to this Act.	section 292(1).
37(1)	section 67 of this Act.	section 357.
38(2)	section 36(1) of this Act.	section 208(2).
	provisions of section 67.	provisions of section 357.
	within section 67(1) of this Act.	an authorised unit trust within the meaning of section 358.
41(5)(c)	section 50(2)(6) of this Act.	section 246(2)(b).



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<i>Enactment amended</i>	<i>Words to be replaced</i>	<i>Corresponding provision of this Act</i>
42(7)	the same meanings as in Chapter HI of Part XVUI of the Income Tax Act 1952.	the meanings given by section 454(3).
45(1)	paragraph 3 of Schedule 18 to this Act.	section 302.
	section 423(4) of the Income Tax Act 1952.	section 432(4).
	section 143(4) of the Income Tax Act 1952 as extended by section 35(5) of the Finance Act 1960.	section 137(4).
45(3)	section 361(1)(2) of the Income Tax Act 1952.	section 42(1)(2).
45(6)	section 24 of the Finance Act 1953.	subsections (4) to (7) of section 122.
	it would apply for purposes of section 132(3) of the Income Tax Act 1952.	they would apply for purposes of subsection (3) of the said section 122 (without adding more words).
45(7)(c)	section 147 of the Income Tax Act 1952.	section 153(1)(2).
45(8)	authorised unit trust scheme within the meaning of section 71 of the Finance Act 1960.	authorised unit trust within the meaning of section 358.
93(6)	section 43 of the Finance Act 1963.	section 341.
94(1)	section 12(5) of the Finance Act 1962.	section 163(1).
94(3)	Chapter II of Part II of the Finance Act 1962.	Chapter VIII of Part VI.
Schedule 6 paragraph 3(2)(a)	Schedule 9 to the Finance Act 1962.	Schedule 7.
3(3)(a)	the said Schedule 9.	the said Schedule 7 (without adding more words).

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<i>Enactment amended</i>	<i>Words to be replaced</i>	<i>Corresponding provision of this Act</i>
3(4)	the said Schedule 9.	the said Schedule 7 (without adding more words).
3(7)	section 13(3) of the Finance Act 1962. section 13(5).	section 164(4). section 164(6) (without adding more words).
6(4)(a)	section 313 of that Act.	section 79(1).
6(4)(b)	paragraph 16 of Schedule 4 to the Finance Act 1963.	section 76.
6(4)(c)	section 22 of the Finance Act 1954.	section 141.
18(1)	section 249 of the Income Tax Act 1952 (under which, as extended by section 78(7) of this Act, individuals may be assessed to surtax in respect of sums apportioned under Chapter III of Part IX of the Income Tax Act 1952 or under Part IV of this Act).	section 297 (consequences of apportioning close company's income for purposes of surtax).
18(2)	subsection (5) of the said section 249.	subsection (8) of the said section 297 (without adding more words).
18(5)	the said section 249.	the said section 297 (without adding more words).
26(5)	Schedule 9 to the Finance Act 1962.	Schedule 7.
Schedule 7 paragraph		
2(4)	Schedule 9 to the Finance Act 1962.	Schedule 7.
21(3)	section 411(4) of the Income Tax Act 1952. Chapter III of Part XVIII of the Income Tax Act 1952).	section 454. subsection (3) of the said section 454) (without adding more words).

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<i>Enactment amended</i>	<i>Words to be replaced</i>	<i>Corresponding provision of this Act</i>
Schedule 8		
paragraph		
5(1)	section 22 of the Finance Act 1963.	section 80.
5(2)	the said section 22.	the said section 80 (without adding more words).
5(3)	section 22(6) of the said Act.	subsection (6) of the said section 80 (without adding more words).
5(4)	section 24 of the Finance Act 1963.	section 82.
5(5)	section 22 of the Finance Act 1963.	section 80.
5(6)	Chapter II of Part II of the Finance Act 1963.	Part III.
6(1)	paragraph 9(1) of Schedule 4 to the Finance Act 1963.	section 83(2).
6(2)	section 23 of the Finance Act 1963.	section 81.
6(3)	section 24(2)(6) of the Finance Act 1963.	section 82(2)(6).
7	section 22(2) of the Finance Act 1963.	section 80(2).
9(2)	section 17 of the Finance Act 1964.	section 492.
Schedule 10		
paragraph		
3(4)	Section 359 (collection from wife of tax assessed on husband attributable to her income) and section 360 (right of husband to disclaim liability for tax on deceased wife's income) of the Income Tax Act 1952.	Section 40 (collection from wife of tax assessed on husband attributable to her income) and section 41 (right of husband to disclaim liability for tax on deceased wife's income).

*The National Insurance Act 1965 (1965 c. 51)*

In the National Insurance Act 1965

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<i>Enactment amended</i>	<i>Words to be replaced</i>	<i>Corresponding provision of this Act</i>
section		
15(1)	section 157 (pay as you earn) of the Income Tax Act 1952.	section 204 (pay as you earn).
15(2)(b)	the said section 157.	the said section 204 (without adding more words).
15(3)	the said section 157.	the said section 204 (without adding more words)

*The National Insurance Act (Northern Ireland) 1966 (1966 c. 6 (N.I.))*

In the National Insurance Act (Northern Ireland) 1966

section		
14(1)	section 157 (pay as you earn) of the Income Tax Act 1952.	section 204 (pay as you earn).
14(2)(b)	the said section 157.	the said section 204 (without adding more words).
14(3)	the said section 157.	the said section 204 (without adding more words).

*The Land Commission Act 1967 (1967 c. 1)*

In the Land Commission Act 1967

Schedule 13

paragraph

5(8)(b)	Chapter III of Part XVUI of the Income Tax Act 1952.	section 454(3).
5(8)(c)	paragraph 3 of Schedule 18 to the Finance Act 1965.	section 302.

*The Forestry Act 1967 (1967 c. 10)*

In the Forestry Act 1967

Schedule 1

paragraph

9(2)(b)	section 384 of the Income Tax Act 1952.	section 210.
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*The Housing Subsidies Act 1967 (1967 c. 29)*

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

<i>Enactment amended</i>	<i>Words to be replaced</i>	<i>Corresponding provision of this Act</i>
In the Housing Subsidies Act 1967		
section		
26(4)	section 43 of the Finance Act 1963.	section 341.
	subsection (1)0 of the said section 43.	section 341(1)0.
	paragraph 2 of Schedule 10 to the said Act of 1963.	section 341(10).
32(1)	section 43 of the Finance Act 1963.	section 341.
<i>The Finance Act 1967 (1967 c. 54)</i>		
In the Finance Act 1967		
Schedule 13		
paragraph		
5(1)	paragraph 2(1) of Schedule 13 to that Act.	section 273(1).
Schedule 14		
paragraph		
8(b)	paragraph 2(1) of Schedule 13 to that Act.	section 273(1).
<i>The Provisional Collection of Taxes Act 1968 (1968 c. 2)</i>		
In the Provisional Collection of Taxes Act 1968		
section		
5(1)(c)	section 49(6) of the Finance Act 1965.	section 243(6).
5(2)	the said section 49(6) and section 492 of the Income Tax Act 1952.	the said section 243(6) and section 522.
<i>The Capital Allowances Act 1968 (1968 c. 3)</i>		
In the Capital Allowances Act 1968		
section		
15(3)	section 59 of the Finance Act 1965.	section 178.
	section 59 (twice).	section 178 (without adding more words).
33(2)(6)	Chapter II of Part VI of the Income Tax Act 1952.	Chapter II of Part VIII.

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

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<i>Enactment amended</i>	<i>Words to be replaced</i>	<i>Corresponding provision of this Act</i>
34(3)	Chapter II of Part VI of the Income Tax Act 1952.	Chapter II of Part VIII.
34(4)	Chapter II of Part VI of the Income Tax Act 1952.	Chapter II of Part VIII.
47(4)	paragraph 2 of Schedule 2 to the Finance Act 1956.	section 189(2).
48(6)(a)	section 19 of the Finance Act 1953.	section 154.
60(10)	Schedule 9 to the Finance Act 1963 paragraph 5 of that Schedule.	section 134. subsection (5) of the said section 134 (without adding more words).
60(11)	section 127 of the Income Tax Act 1952.	section 115.
67(3)	section 61(2) of the Finance Act 1965.	section 252(2).
69	section 125 of the Income Tax Act 1952.	section 111.
70(5)	section 20 of the Finance Act 1954.	section 169.
72(2)	section 127 of the Income Tax Act 1952.	section 115.
79(4)	section 19 of the Finance Act 1953.	section 154.
80(3)(b)	section 342 of the Income Tax Act 1952 or section 58(1) of the Finance Act 1965.	section 171 or 177(1).
82(1)	Chapter I of Part VII of the Income Tax Act 1952.	section 52 or 53.
82(2)	section 15(1)(c) of the Finance Act 1965.	section 411(1)(c).
85(4)	section 125 of the Income Tax Act 1952.	section 111.
90	section 137 of the Income Tax Act 1952.	section 130.
91(3)	section 127 of the Income Tax Act 1952.	section 115.
100(2)	section 63(5) of the Finance Act 1965.	section 250(5).

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<i>Enactment amended</i>	<i>Words to be replaced</i>	<i>Corresponding provision of this Act</i>
Schedule 2 paragraph 8(1)(c)	section 72(2) of the Finance Act 1960.	section 78(1) or 306(1).
Schedule 10 paragraph 1(5)	section 127 of the Income Tax Act 1952.	section 115.
<i>The Finance Act 1968 (1968 c. 44)</i>		
In the Finance Act 1968 section 23(3)	subsection (1) above (twice).	section 236(1).
Schedule 11 paragraph 1(4)(b)	paragraph 2(1) of Schedule 13 to that Act.	section 273(1).
2(5)	paragraph 1 of Schedule 13 to the Finance Act 1965.	subsections (1) and (2) of section 272.
Schedule 12 paragraph 3(3)	section 26(2) of the Finance Act 1952.	section 140(2).
10(2)(b)	Schedule 9 to the Finance Act 1962.	Schedule 7.
11(4)	section 13(4) of the Finance Act 1962.	section 164(5).
11(6)	section 13(8)0 of the Finance Act 1962.	section 164(9)0).
12(2)	paragraph 18(1) of Schedule 9 to the Finance Act 1962.	paragraph 21(1) of Schedule 7.
22(2)	Part I of Schedule 13 to the Finance Act 1965 (group of companies resident in the United Kingdom) without paragraph 1 (definition of company and group)	Sections 273 to 275 and 276(1).

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

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<i>Enactment amended</i>	<i>Words to be replaced</i>	<i>Corresponding provision of this Act</i>
22(3)	and without paragraph 7 (recovery of tax), Paragraphs 18 and 19 above shall apply for the said purposes as if for any reference in those paragraphs.	Sections 278 and 279 of the said Act shall apply for the said purposes as if for any reference therein (without adding more words).
<i>The Finance Act 1969 (1969 c. 32)</i>		
In the Finance Act 1969		
section		
52(1)	section 9 of the Finance Act 1956.	section 414.
58(1)(a)	section 157 of the Income Tax Act 1952.	section 204.
Schedule 18		
paragraph		
4(3)	Schedule 9 to the Finance Act 1962.	Schedule 7.
Schedule 19		
paragraph		
10(1)(b)	paragraph 2 of Schedule 13 to that Act.	section 273(1).
15(1)(7)	Chapter II of Part II of the Finance Act 1962.	Chapter VIII of Part VI.
<i>The Trustee Savings Banks Act 1969 (1969 c. 50)</i>		
In the Trustee Savings Banks Act 1969		
section		
82(3)	section 384 of the Income Tax Act 1952.	section 210.

*Amendments converting references about capital allowances to references to the Capital Allowances Act 1968*

- 12 (1) In Schedule 6 to the Finance Act 1965—
- (a) in paragraph 2(2), for " Part X or Part XI of the Income Tax Act 1952 (capital allowances)" substitute " the Capital Allowances Act 1968 (including the provisions of the Income and Corporation Taxes Act 1970 which under that Act are to be treated as contained in the said Act of 1968) ",
  - (b) in paragraph 6(3), for " Schedule 14 to the Income Tax Act 1952" substitute " Schedule 7 to the Capital Allowances Act 1968 ", and for " paragraph 6 or



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- paragraph 7 of Schedule 6 to the Finance Act 1952 " substitute " section 35(2) to (4) or section 48(2) of that Act ",
- (c) in paragraph 6(4)(a), for "Part X or Part XI of the Income Tax Act 1952" substitute " the Capital Allowances Act 1968 (including the provisions of the Income and Corporation Taxes Act 1970 which under that Act are to be treated as contained in the said Act of 1968) " , and
- (d) in paragraph 6(6), for " section 296 of the Income Tax Act 1952 " substitute " section 40 of the Capital Allowances Act 1968 ".
- (2) In section 99(1) of the Capital Allowances Act 1968 (construction of future enactments) after " past or future " insert " (including any amendment made by any such provision in any enactment or instrument passed or made before the passing of this Act) ".

*Regulations about double taxation relief*

- 13 In Regulation 6 of the Double Taxation Relief (Taxes on Income) (General) Regulations 1966, the references to section 170 of the Income Tax Act 1952 shall include a reference to section 54 of this Act.

SCHEDULE 16

Section 538(1).

REPEALS

Chapter	Short title	Extent of repeal
15 & 16 Geo. 6 and 1 Eliz. 2. c. 10.	The Income Tax Act 1952.	The whole Act.
15 & 16 Geo. 6 and 1 Eliz. 2. c. 33.	The Finance Act 1952.	Part III, except section 30. Sections 67 and 70. Section 76(4). In Schedule 6, Part II, and paragraph 18(2).
1 & 2 Eliz. 2. c. 34.	The Finance Act 1953.	Part III. In section 35, subsection (4)(a)(6).
2 & 3 Eliz. 2. c. 32.	The Atomic Energy Authority Act 1954.	Section 6(2).
2 & 3 Eliz. 2. c. 44.	The Finance Act 1954.	Part III, except section 15. Section 35(4). Schedules 2 to 4.
2 & 3 Eliz. 2. c. 62.	The Post Office Savings Bank Act 1954.	In section 10(2), the words " by a post office savings bank ".
3 & 4 Eliz. 2. c. 15.	The Finance Act 1955.	The whole Act.

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Chapter	Short title	Extent of repeal
4 & 5 Eliz. 2. c. 17.	The Finance (No. 2) Act 1955.	The whole Act.
4 & 5 Eliz. 2. c. 54.	The Finance Act 1956.	Part II, but, in the case of section 19, only as respects deaths occurring after 3rd June 1969.  Part III except section 26(2).  In section 40, subsection (1) except paragraph (b); subsection (3); and subsection (6).  In section 41, the words "Part XIX of the Income Tax Act 1952, and".  Section 44(3).  Schedules 2 and 3.
5 & 6 Eliz. 2. c. 48.	The Electricity Act 1957.	Section 24.
5 & 6 Eliz. 2. c. 49.	The Finance Act 1957.	Part III.  Section 42(2)(c).
6 & 7 Eliz. 2. c. 56.	The Finance Act 1958.	Part III.  Section 37(1), and, in section 37(4), the words "employment in the public services of an overseas territory and to".  Section 40(2)(c).  Schedules 5 and 6.
6 & 7 Eliz. 2. c. 72.	The Insurance Companies Act 1958.	In section 33(1), the definition of "life assurance business".
7 & 8 Eliz. 2. c. 58.	The Finance Act 1959.	Part III.  Section 37(2)(c).  Schedules 4 to 7.
8 & 9 Eliz. 2. c. 44.	The Finance Act 1960.	Parts II and III.  Sections 68 to 72.  In section 73, in subsection (1), the words "income tax and from"; in subsection (3), the words "either of income tax or" and the proviso; in subsection (6),

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Chapter	Short title	Extent of repeal
8 & 9 Eliz. 2. c. 58.	The Charities Act 1960.	paragraph (b) and the word "and" preceding it. In section 79, subsection (2), from " and in Part II" to the end; and subsection (3)(6). Schedules 4 to 7.
9 & 10 Eliz. 2. c. 36.	The Finance Act 1961.	In Schedule 6, the entry relating to Schedule 8 to the Income Tax Act 1952. Part II. In section 37, subsection (2) from "and in Part II" to the end; and subsection (3) from " and Part II " to the end.
10 & 11 Eliz. 2. c. 44.	The Finance Act 1962.	Part II. In section 34(2), the words from " Part II" to the second " the profits tax ". Schedules 9 and 10.
1963 c. 24.	The British Museum Act 1963.	In Schedule 2, paragraph 3 from the beginning to " Trustees of the British Museum and ".
1963 c. 25.	The Finance Act 1963.	Part II. In section 73, subsection (3) from " and in Part II" to the end, and subsection (4) from " Part II" to " Income Tax Acts ".
1964 c. 37.	The Income Tax Management Act 1964.	Schedules 4 to 10, and Part I (except paragraph 1) of Schedule 12. The whole Act.
1964 c. 49.	The Finance Act 1964.	Part II. Section 26(3) from "and Part II" to the end. Schedule 7. In Schedule 8, paragraphs 4 to 7.
1964 c. 92.	The Finance (No. 2) Act 1964.	Section 1.

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Chapter	Short title	Extent of repeal
1965 c. 4.	The Science and Technology Act 1965.	Section 10(2) from the beginning to " Income Tax Acts and " In Schedule 2, the entry relating to section 449(1)(a) of the Income Tax Act 1952.
1965 c. 11.	The Ministerial Salaries and Members' Pensions Act 1965.	Sections 4(5), 13(2) and 18. In Schedule 4, the entry relating to section 385(2) of the Income Tax Act 1952.
1965 c. 25.	The Finance Act 1965.	Part II, except section 17(15). In section 20(3), the words " and subject to section 82 of this Act". In section 35, subsection (2) from " notwithstanding " to " assessments"; and subsections (3) to (5). Section 36. Section 37, except subsection (1). In section 41, in subsection (1)(b), the words " as denned by Schedule 18 to this Act"; and in subsection (9), the words " as defined in Schedule 18 to this Act". In section 44, subsections (6) to (8). Section 45(11). Sections 46 to 83. In section 84(7), the words " to the inspector" and " to his satisfaction ", and from " Section 9 " to the end. Sections 85, 86 and 89. In section 94, subsections (4) to (8). Section 96. Section 97(2).

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Chapter	Short title	Extent of repeal
1966 c. 18.	The Finance Act 1966.	<p>In Schedule 6, paragraph 29(4).</p> <p>In Schedule 7, paragraph 7(2); and in paragraph 18, the words " as defined in Schedule 18 to this Act" in sub-paragraph (1), and the words " as so defined " in sub-paragraph (3).</p> <p>In Schedule 10, paragraphs 1 and 2, and 5 to 11; paragraph 12(2) from " but the provisions " to the end; and paragraphs 14, 16, 17 and 18.</p> <p>Schedules 11 to 19.</p> <p>In Schedule 21, in paragraph 2(2)(a), the words " (within the meaning of Schedule 14 to this Act)"; and paragraph 3(8) from " (control" to the end.</p> <p>Part II.</p> <p>Sections 26 and 28.</p> <p>In section 29, subsections (1) to (3) ; subsection (4) from " and so much" to the end; subsections (5) to (8); subsections (10) and (11); and in subsection (12), paragraphs (a) and (c).</p> <p>Section 30.</p> <p>Sections 33 and 34.</p> <p>Part IV.</p> <p>In section 45, subsections (1) to (4) ; subsection (6) from the definition of "limited liability company " to the end; and subsection (7).</p> <p>Sections 49 to 51.</p> <p>So much of section 53(2) as relates to Parts II and IV of the Act.</p>

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

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Chapter	Short title	Extent of repeal
<p>1967 c. 17. 1967 c. 54.</p>	<p>The Iron and Steel Act 1967. The Finance Act 1967.</p>	<p>Schedules 4 to 7, except paragraph 19 of Schedule 5 and paragraphs 14 and 23 of Schedule 6.</p> <p>Part I of Schedule 8.</p> <p>In Schedule 10, paragraphs 3, 14 and 15.</p> <p>Schedule 12.</p> <p>Section 26(8)(b).</p> <p>Parts II and III.</p> <p>In section 34(1), from "allowance " to " and ".</p> <p>In section 35, subsections (1) and (4).</p> <p>Section 36.</p> <p>Section 37, from " and a sum so payable " to the end.</p> <p>In section 38, subsections (1) to (3); and, in subsection (6), from the first " for " to " years, and ".</p> <p>Sections 39 to 41.</p> <p>Section 43.</p> <p>In section 45(3), paragraphs (d) and (e), and paragraph (h) from first " with " to " income tax, and ".</p> <p>Schedules 10 and 11.</p> <p>In Schedule 13, paragraph 7 and Part II.</p> <p>In Schedule 14, paragraph 7(4).</p> <p>In Schedule 15, paragraph 1.</p>
<p>1968 c. 3.</p>	<p>The Capital Allowances Act 1968.</p>	<p>In section 47(4), the words from the beginning to " this Act".</p> <p>In section 70(5), the words from the beginning to " this Act".</p> <p>In section 81(1), the words (after paragraph (c)) "against</p>

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Chapter	Short title	Extent of repeal
1968 c. 13.	The National Loans Act 1968.	<p>an assessment under Schedule D ".</p> <p>In section 82, in subsection (1), the words " interest and other "; and in subsection (2), the words from the beginning to the first " this Act".</p> <p>In section 87(1), the definition of " company ".</p> <p>In section 94(2), the definition of " company ".</p> <p>Section 98(2).</p> <p>Schedule 12.</p> <p>Section 16(5).</p>
1968 c. 44.	The Finance Act 1968.	<p>Sections 11 to 22.</p> <p>In section 23, subsections (1) and (2); in subsection (3), paragraph (b), the word " and " preceding that paragraph, and the words " and the proviso to the said paragraph 10(3)"; and subsections (4) and (5).</p> <p>Sections 24 to 30.</p> <p>Section 33.</p> <p>In section 34, the words " and Schedule 13 to this Act (tax on short-term capital gains)".</p> <p>In section 40, subsections (4) to (7); paragraphs (b) and (c) of subsection (8); and subsection (9).</p> <p>In section 53, subsection (1) from the beginning to " 1952 and "; and subsection (2) from " and in particular " to the end.</p> <p>Section 61(4).</p> <p>Schedules 8 to 10.</p> <p>In Schedule 12, paragraphs 13, 15(3) and 18 to 21;</p>

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Chapter	Short title	Extent of repeal
<p>1968 c. 73.</p> <p>1969 c. 32.</p>	<p>The Transport Act 1968.</p> <p>The Finance Act 1969.</p>	<p>and, in paragraph 23, sub-paragraph (1)(c), and sub-paragraphs (2) to (6).</p> <p>Schedule 13.</p> <p>Section 161(2).</p> <p>Part II, except subsections (1) and (2) of section 16.</p> <p>In section 41, subsections (4) to (6).</p> <p>Section 53.</p> <p>Section 61(3)(c).</p> <p>Schedules 13 to 16.</p> <p>In Schedule 17, paragraph 21 of Part III as respects deaths occurring after 3rd June 1969.</p> <p>Part II of Schedule 18.</p> <p>In Schedule 19, paragraph 3(2); in paragraph 6(1), the words "and section 16(1) of the Finance Act 1962"; in paragraph 8(3), the words " and of the proviso to section 12(6) of the Finance Act 1962"; in paragraph 9, the words " and in Chapter II of Part II of the Finance Act 1962 "; paragraph 11(2); paragraph 13; paragraph 16(6); paragraphs 18 to 21; and sub-paragraphs (1) and (2) of paragraph 22.</p> <p>Schedule 20, except paragraphs 11, 26 and 28(2), and paragraph 30(4) in its application to paragraph 11.</p>
<p>1969 c. 48.</p>	<p>The Post Office Act 1969.</p>	<p>In section 109, the words from " and, accordingly " to the end.</p> <p>In Part III of Schedule 6, the entries relating to section 29 of the Income Tax Act 1952, section 9 of the Finance Act 1956 and section 20 of the Finance Act 1966.</p>



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

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Chapter	Short title	Extent of repeal
1969 c. 50.	The Trustee Savings Banks Act 1969.	Paragraph 21 of Schedule 9. Subsections (1) and (2) of section 93.
1970 c. .	The Radiological Protection Act 1970.	Section 2(7).
	<i>Statutory Instrument</i>	
S.I. 1969 No. 535.	The Income Tax (Interest on Unpaid Tax) Order 1969.	The whole Order.