



# Finance Act 1994

## 1994 CHAPTER 9

### PART IV

#### INCOME TAX, CORPORATION TAX AND CAPITAL GAINS TAX

### CHAPTER I

#### GENERAL

##### *Income tax: charge, rates and reliefs*

#### **75 Charge and rates of income tax for 1994-95**

- (1) Income tax shall be charged for the year 1994-95, and for that year—
  - (a) the lower rate shall be 20 per cent.,
  - (b) the basic rate shall be 25 per cent., and
  - (c) the higher rate shall be 40 per cent.
- (2) For the year 1994-95 section 1(2) of the Taxes Act 1988 shall apply as if—
  - (a) the amount specified in paragraph (aa) were £3,000 (the lower rate limit), and
  - (b) the amount specified in paragraph (b) were £23,700 (the basic rate limit);and accordingly section 1(4) of that Act (indexation) shall not apply for the year 1994-95.

#### **76 Personal allowance**

Section 257 of the Taxes Act 1988 (personal allowance) shall apply for the year 1994-95 as if the amounts specified in it were the same as the amounts specified in it as it applies for the year 1993-94, and accordingly section 257C(1) of that Act (indexation) so far as relating to section 257 shall not apply for the year 1994-95.

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## 77 **Rate of relief to married couples etc**

(1) The provisions of section 256 of the Taxes Act 1988 (general provision as to personal reliefs) shall become subsection (1) of that section and after that subsection there shall be inserted the following subsections—

“(2) Where under any provision of this Chapter the relief to which a person is entitled for any year of assessment consists in an income tax reduction calculated by reference to a specified amount, the effect of that relief shall be that the amount of that person’s liability for that year to income tax on his total income shall be the amount to which he would have been liable apart from that provision less whichever is the smaller of—

- (a) the amount equal to 20 per cent. of the specified amount; and
- (b) the amount which reduces his liability to nil.

(3) In determining for the purposes of subsection (2) above the amount of income tax to which a person would be liable apart from any provision providing for an income tax reduction, no account shall be taken—

- (a) where that provision is section 259 or 261A, of any income tax reduction under any of the other provisions of this Chapter;
- (b) where that provision is section 262(1), of any income tax reduction under any of the other provisions of this Chapter except section 259 or 261A; or
- (c) whatever that provision—
  - (i) of any relief by way of a reduction of liability to tax which is given in accordance with any arrangements having effect by virtue of section 788 or by way of a credit under section 790(1); or
  - (ii) of any tax at the basic rate on so much of that person’s income as is 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;

but paragraph (a) above, so far as it relates to any income tax reduction under section 261A, is without prejudice to the provisions of subsection (2) of that section.”

(2) In section 257A of that Act (married couple’s allowance)—

- (a) in subsection (1), for the words from “to a deduction” onwards there shall be substituted “for that year to an income tax reduction calculated by reference to £1,720”;
- (b) in subsection (2), for the words from “to a deduction” to “the deduction” there shall be substituted “for that year to an income tax reduction calculated by reference to £2,665 (instead of to the reduction”;
- (c) in subsection (3), for the words from “to a deduction” to “the deduction” there shall be substituted “for that year to an income tax reduction calculated by reference to £2,705 (instead of to the reduction”.

(3) In section 259(2) of that Act (additional personal allowance), for “to a deduction from his total income of” there shall be substituted “for that year to an income tax reduction calculated by reference to”.

- (4) In section 261A(1) of that Act (additional personal allowance for a year in which spouses separate), for “to a deduction from his total income of” there shall be substituted “for that year to an income tax reduction calculated by reference to”.
- (5) In subsection (1) of section 262 of that Act (widow’s bereavement allowance)—
  - (a) in paragraph (a), for “to a deduction from her total income of” there shall be substituted “to an income tax reduction calculated by reference to”; and
  - (b) in paragraph (b), for “to a deduction of” there shall be substituted “to an income tax reduction calculated by reference to”.
- (6) The Taxes Act 1988 and the Taxes Management Act 1970 shall have effect with the amendments specified in Schedule 8 to this Act (which supplements the provisions of this section).
- (7) This section and Schedule 8 to this Act shall have effect for the year 1994-95 and, subject to the following provisions of this section, for subsequent years of assessment.
- (8) For the year 1995-96 and subsequent years of assessment section 256(2)(a) of the Taxes Act 1988 shall have effect with the substitution of “15 per cent” for the words “20 per cent.”
- (9) For the year 1995-96, section 257A of the Taxes Act 1988 shall have effect—
  - (a) as if the same amount (namely £1,720) were specified in subsection (1) as is specified in that subsection as it applies for the year 1994-95;
  - (b) as if the amount specified in subsection (2) were “£2,995”; and
  - (c) as if the amount specified in subsection (3) were “£3,035”.
- (10) Section 257C(1) of the Taxes Act 1988 (indexation), so far as relating to section 257A (1) to (3) of that Act, shall not apply for the year 1994-95 or for the year 1995-96 but shall not be prevented by anything in this section from applying for the year 1996-97 or any subsequent year of assessment.

## **78 Amount by reference to which MCA is reduced**

Section 257A(5) of the Taxes Act 1988 (reduction of married couple’s allowance if claimant’s total income exceeds a certain amount) shall apply for the year 1994-95 as if the amount specified in it were the same as the amount specified in it as it applies for the year 1993-94, and accordingly section 257C(1) of that Act (indexation) so far as relating to section 257A(5) shall not apply for the year 1994-95.

## **79 Relief for maintenance payments**

- (1) Sections 347A and 347B of the Taxes Act 1988 and section 38 of the Finance Act 1988 (which contain provision with respect to the deductions from income allowed on account of maintenance payments) shall have effect in relation to payments becoming due on or after 6th April 1994 with the following modifications.
- (2) Section 347A (which restricts the making of deductions) shall apply to any payment made—
  - (a) in pursuance of any obligation which falls within paragraphs (a) to (c) of subsection (4) of section 36 of the Finance Act 1988 (existing obligations) and is an obligation under an order made by a court, a written or oral agreement or a deed executed for giving effect to an agreement, and

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- (b) for the benefit, maintenance or education of a person (whether or not the person to whom the payment is made) who attained the age of 21 on or before the day on which the payment became due but after 5th April 1994, as if that obligation were not an existing obligation within the definition contained in that subsection.
- (3) In subsection (2) of section 347B (relief for qualifying maintenance payments)—
- (a) the words “Notwithstanding section 347A(1)(a) but” shall be omitted; and
  - (b) for the words from “in computing” to “to deduct” there shall be substituted “for a year of assessment to an income tax reduction calculated by reference to”.
- (4) In subsection (3) of section 347B (restriction of relief to amount of married couple’s allowance), for the words from the beginning to “exceed” there shall be substituted “The amount by reference to which any income tax reduction is to be calculated under this section shall be limited to”.
- (5) In subsection (5) of section 347B (other payments attracting relief), for “otherwise than under this section” there shall be substituted “by virtue of section 36(3) of the Finance Act 1988 but otherwise than in accordance with section 38(2)(a) of that Act”.
- (6) After subsection (5) of section 347B there shall be inserted the following subsections—
- “(5A) Where any person is entitled under this section for any year of assessment to an income tax reduction calculated by reference to the amount determined in accordance with subsections (2) to (5) above (“the relevant amount”), the amount of that person’s liability for that year to income tax on his total income shall be the amount to which he would have been liable apart from this section less whichever is the smaller of—
- (a) the amount equal to the appropriate percentage of the relevant amount; and
  - (b) the amount which reduces his liability to nil;
- and in this subsection “the appropriate percentage” means 20 per cent. for the year 1994-95 and 15 per cent. for the year 1995-96 and subsequent years of assessment.
- (5B) In determining for the purposes of subsection (5A) above the amount of income tax to which a person would be liable apart from any income tax reduction under this section, no account shall be taken of—
- (a) any income tax reduction under Chapter I of Part VII;
  - (b) any relief by way of a reduction of liability to tax which is given in accordance with any arrangements having effect by virtue of section 788 or by way of a credit under section 790(1); or
  - (c) any tax at the basic rate on so much of that person’s income as is 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.”
- (7) In subsection (3) of section 38 (amount of relief in transitional cases for persons making payments), for the words from the word “aggregate”, in the first place where it occurs, to “exceed” there shall be substituted “amount (if any) by which the relevant aggregate exceeds the amount specified in section 257A(1) of the Taxes Act 1988 for the year; and in this subsection and subsection (3A) below “the relevant aggregate”

means whichever is the smaller of the following, that is to say, the aggregate amount of the payments made by him which fall due in that year and to which this section applies and”.

(8) After subsection (3) of section 38 there shall be inserted the following subsection—

“(3A) Sections 347A and 347B of the Taxes Act 1988 (except, in the case of section 347A, so far as it restricts the extent to which any payment is to be treated as forming part of the income of the person to whom it is made or any other person) shall have effect as if so much of the relevant aggregate for any year of assessment as does not exceed the amount specified for that year in section 257A(1) of that Act were a qualifying maintenance payment made otherwise than in pursuance of an existing obligation.”

## **80 Limit on relief for interest**

For each of the years 1994-95 and 1995-96 the qualifying maximum defined in section 367(5) of the Taxes Act 1988 (limit on relief for interest on certain loans) shall be £30,000.

## **81 Mortgage interest relief etc**

(1) For subsection (1) of section 353 of the Taxes Act 1988 (general provision for relief for interest payments) there shall be substituted the following subsection—

“(1) Where a person pays interest in any year of assessment, that person, if he makes a claim to the relief, shall for that year of assessment be entitled (subject to sections 354 to 368) to relief in accordance with this section in respect of so much (if any) of the amount of that interest as is eligible for relief under this section by virtue of sections 354 to 365.”

(2) After that subsection there shall be inserted the following subsections—

“(1A) Where a person is entitled for any year of assessment to relief under this section in respect of any amount of interest which—

- (a) is eligible for that relief by virtue of section 354 or 365, and
- (b) so far as eligible by virtue of section 354, is so eligible in a case which falls, or is treated as falling, within section 355(1)(a), 356 or 358,

that relief shall consist in an income tax reduction for that year calculated by reference to that amount.

(1B) Where a person is entitled for any year of assessment to relief under this section in respect of any amount of interest which—

- (a) is eligible for that relief otherwise than by virtue of section 354 or 365, or
- (b) is eligible for that relief by virtue of section 354 in a case falling within section 355(1)(b),

that relief shall consist (subject to sections 237(5)(b) and 355(4)) in a deduction or set-off of that amount from or against that person’s income for that year.

(1C) Without prejudice to subsection (1E) below, where the whole or any part of an amount of interest is eligible for relief under this section by virtue of section 354 in a case which (apart from this subsection) would fall, or be

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treated as falling, within both section 355(1)(a) or 356 and section 355(1)(b), then that case shall be treated for the purposes of this section and the following provisions of this Act—

- (a) except in relation to payments to which an election made for the purposes of this subsection by the person entitled to the relief applies, as falling within section 355(1)(b) and not within section 355(1)(a) or 356; and
- (b) in relation to payments to which such an election does apply, as falling within section 355(1)(a) or, as the case may be, 356, and not within section 355(1)(b).

(1D) An election for the purposes of subsection (1C)—

- (a) shall be made, and may be withdrawn, by the giving of written notice to an officer of the Board;
- (b) shall apply to every payment of interest which—
  - (i) is made after the time specified in the notice of that election as the time as from which it takes effect; and
  - (ii) is not made after a time specified in a notice of the withdrawal of that election as the time as from which that election is withdrawn;
- (c) shall not be made so as to take effect as from any time except the beginning of a year of assessment or a time as from which the conditions for the case to fall, or be treated as falling, within both section 355(1)(a) or 356 and section 355(1)(b) have begun to be satisfied in relation to payments of interest on the loan in question;
- (d) shall not be withdrawn except as from the beginning of a year of assessment; and
- (e) shall not be made so as to take effect, and shall not be withdrawn, as from any time before the beginning of the year of assessment immediately before that in which the notice of the election or, as the case may be, of the withdrawal is given to an officer of the Board.

(1E) Where any person is entitled for any year of assessment to relief under this section in respect of any amount of interest as is eligible for that relief partly as mentioned in subsection (1A) above and partly as mentioned in subsection (1B) above, that amount of interest shall be apportioned between the cases to which each of those subsections applies without regard to what parts of the total amount borrowed remain outstanding but according to the following factors, that is to say—

- (a) the proportions of the total amount borrowed which were applied for different purposes; and
- (b) in the case of so much of any amount of interest which is, or in pursuance of an apportionment under paragraph (a) above is treated as, eligible for relief by virtue of section 354, the different uses to which the land or other property in question is put from time to time;

and subsection (1A) or (1B) above shall apply accordingly in relation to the interest apportioned to the case to which that subsection applies.

(1F) Where any person is entitled under this section for any year of assessment to an income tax reduction calculated by reference to an amount of interest, the amount of that person's liability for that year to income tax on his total

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income shall be the amount to which he would have been liable apart from this section less whichever is the smaller of—

- (a) the amount equal to the applicable percentage of that amount of interest; and
- (b) the amount which reduces his liability to nil.

(1G) In subsection (1F) above “the applicable percentage”—

- (a) in relation to so much of any interest as is eligible for relief under this section by virtue of section 354, means 20 per cent.; and
- (b) in relation to so much of any interest as is eligible for relief under this section by virtue of section 365, means the percentage which is the basic rate for the year of assessment in question;

but, in relation to any payment of interest which (whenever falling due) is made in the year 1995-96 or any subsequent year of assessment, paragraph (a) above shall have effect with the substitution of “15 per cent.” for “20 per cent.”

(1H) In determining for the purposes of subsection (1F) above the amount of income tax to which a person would be liable apart from any income tax reduction under this section, no account shall be taken of—

- (a) any income tax reduction under Chapter I of Part VII or section 347B;
- (b) any relief by way of a reduction of liability to tax which is given in accordance with any arrangements having effect by virtue of section 788 or by way of a credit under section 790(1); or
- (c) any tax at the basic rate on so much of that person’s income as is 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.”

(3) In subsection (1) of section 369 of that Act (deduction at source of mortgage interest relief), for the words from “income tax” onwards there shall be substituted “the applicable percentage thereof.” and after that subsection there shall be inserted the following subsection—

“(1A) In subsection (1) above “the applicable percentage”—

- (a) in relation to so much of any payment of relevant loan interest as is not a payment in relation to which paragraph (b) below has effect, means 20 per cent.; and
- (b) in relation to so much of any payment as—
  - (i) has become due before 6th April 1994; or
  - (ii) being a payment becoming due on or after 6th April 1994, would, apart from section 353(2), be eligible for relief under section 353 by virtue of section 365,

means the percentage which is the basic rate for the year of assessment in which the payment has become or becomes due;

but, in relation to any payment of interest which becomes due in the year 1995-96 or any subsequent year of assessment, paragraph (a) above shall have effect with the substitution of “15 per cent.” for “20 per cent.””

(4) For subsections (3) to (5B) of section 369 of that Act (provisions balancing deduction of relevant loan interest from income against charge to tax) there shall be substituted the following subsection—

“(3) The following payments, that is to say—

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- (a) payments of relevant loan interest to which this section applies, and  
 (b) payments which would be such payments but for section 373(5),  
 shall not be allowable as deductions for any purpose of the Income Tax Acts except in so far as they fall to be treated as such payments by virtue only of section 375(2) and would be allowable apart from this subsection.”
- (5) Schedule 9 to this Act (which for the purposes of or in connection with the provisions of this section makes further modifications of certain enactments in relation to tax relief on interest payments) shall have effect.
- (6) The preceding provisions of this section and that Schedule—
- (a) shall have effect in relation to payments of interest made on or after 6th April 1994 (whenever falling due); and  
 (b) shall also have effect, so far as they relate to relevant loan interest, in relation to any payments of interest becoming due on or after 6th April 1994 which have been made at any time before that date but on or after 30th November 1993.
- (7) Any provision made before the passing of this Act by reference to the basic rate of income tax and contained in any instrument or agreement under or in accordance with which payments of relevant loan interest have been or are to be made shall be taken, in relation to any such payment as is mentioned in subsection (6)(a) or (b) above, to have been made, instead, by reference to a rate which, in the case of that payment, is the applicable percentage for the purposes of subsection (1) of section 369 of the Taxes Act 1988.
- (8) Section 377 of the Taxes Act 1988 (variation of terms of repayment of certain loans) shall have effect—
- (a) as if the references in subsections (3), (4) and (7) of that section to a change in the basic rate of income tax included references to the amendments having effect by virtue of this section and to any change in the applicable percentage for the time being specified in section 369(1A) of that Act; and  
 (b) in relation to any notice under section 377(2)(a) of that Act the effective date of which is on or after 6th April 1994, as if the reference to tax at the basic rate for the year of assessment in which that date falls, were a reference to tax at a rate equal to the percentage which is the applicable percentage for the purposes of section 369(1) of that Act in relation to payments becoming due in that year of assessment.
- (9) In this section “relevant loan interest” has the same meaning as in Part IX of the Taxes Act 1988.

## **82 Relief for blind persons**

- (1) In section 265(1) of the Taxes Act 1988 (blind person’s allowance) for “£1,080” there shall be substituted “£1,200”.
- (2) This section shall apply for the year 1994-95 and subsequent years of assessment.

## **83 Medical insurance**

Schedule 10 to this Act (which contains provisions about medical insurance) shall have effect.



## **84 Relief for vocational training**

- (1) In subsection (1) of section 32 of the Finance Act 1991 (relief for vocational training), after paragraph (c) there shall be inserted the following paragraphs—
  - “(ca) the individual has attained school-leaving age and, if under the age of nineteen, is not a person who is being provided with full-time education at a school,
  - (cb) the individual undertakes the course neither wholly nor mainly for recreational purposes or as a leisure activity.”
- (2) In subsection (10) of that section, the words after paragraph (b) (which exclude from the qualifying courses those programmes of activity capable of counting towards a qualification at the highest defined level) shall be omitted.
- (3) After subsection (10) of that section there shall be inserted the following subsection—

“(11) In this section—

“school” means any institution at which full-time education is provided to persons at least some of whom are under school-leaving age; and

“school-leaving age” means the age of sixteen.”
- (4) This section has effect in relation to payments made on or after 1st January 1994.

### *Corporation tax charge and rate*

## **85 Charge and rate of corporation tax for 1994**

Corporation tax shall be charged for the financial year 1994 at the rate of 33 per cent.

## **86 Small companies**

- (1) For the financial year 1994—
  - (a) the small companies' rate shall be 25 per cent., and
  - (b) the fraction mentioned in section 13(2) of the Taxes Act 1988 (marginal relief for small companies) shall be one fiftieth.
- (2) In section 13(3) of that Act (limits of marginal relief) in paragraphs (a) and (b)—
  - (a) for “£250,000” there shall be substituted “£300,000”, and
  - (b) for “£1,250,000” there shall be substituted “£1,500,000”.
- (3) Subsection (2) above shall have effect for the financial year 1994 and subsequent financial years; and where by virtue of that subsection section 13 of the Taxes Act 1988 has effect with different relevant maximum amounts in relation to different parts of a company's accounting period, then for the purposes of that section those parts shall be treated as if they were separate accounting periods and the profits and basic profits of the company for that period shall be apportioned between those parts.

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*Benefits in kind*

**87 Car fuel**

(1) In section 158 of the Taxes Act 1988 (car fuel) for the Tables in subsection (2) (tables of cash equivalents) there shall be substituted—

“TABLE A

<i>Cylinder capacity of car in cubic centimetres</i>	<i>Cash equivalent</i>
1,400 or less	£640
More than 1,400 but not more than 2,000	£810
More than 2,000	£1,200

TABLE AB

<i>Cylinder capacity of car in cubic centimetres</i>	<i>Cash equivalent</i>
2,000 or less	£580
More than 2,000	£750

TABLE B

<i>Description of car</i>	<i>Cash equivalent</i>
Any car	£1,200”

(2) This section shall have effect for the year 1994-95 and subsequent years of assessment.

**88 Beneficial loan arrangements**

(1) In section 160(1) of the Taxes Act 1988 (charge to tax of benefit of loan obtained by reason of employment) for the words following paragraph (b) there shall be substituted—

“an amount equal to whatever is the cash equivalent of the benefit of the loan for that year shall, subject to the provisions of this Chapter, be treated as emoluments of the employment, and accordingly chargeable to tax under Schedule E; and where that amount is so treated, the employee is to be treated as having paid interest on the loan in that year of the same amount.

(1A) Interest treated as paid by virtue of subsection (1) above—

- (a) shall be treated as paid for all the purposes of the Tax Acts (other than this Chapter, including Schedule 7), but shall not be treated for any purpose as income of the person making the loan or be treated as relevant loan interest to which section 369 applies, and
- (b) shall be treated as accruing during, and paid by the employee at the end of, the year or, if different, the period in the year during which he is employed in employment to which this Chapter applies and the loan is outstanding.

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- (1B) All the loans between the same lender and borrower which—
- (a) are outstanding at any time, as to any amount, in any year,
  - (b) are not qualifying loans, and
  - (c) are made in the same currency,
- are, if a cash equivalent for them falls to be ascertained, to be treated for the purposes of subsections (1) and (1A) above and Part II of Schedule 7 as a single loan.
- (1C) In this section and section 161 “qualifying loan” means any loan made to any person where, assuming interest is being paid on the loan (whether or not it is in fact being paid), the whole or any part of the interest—
- (a) is eligible for relief under section 353 or would be so eligible but for subsection (2) of that section or section 357(1)(b), or
  - (b) is deductible in computing the amount of the profits or gains to be charged under Case I or II of Schedule D in respect of a trade, profession or vocation carried on by him.”
- (2) At the end of section 160(5) of that Act (interpretation, including “official rate of interest”) there shall be added—
- “and, without prejudice to the generality of section 178 of the Finance Act 1989, regulations under that section may make different provision in relation to a loan outstanding for the whole or part of a year if—
- (i) it was made in the currency of a country or territory outside the United Kingdom,
  - (ii) the benefit of the loan is obtained by reason of the employment of a person who normally lives in that country or territory, and
  - (iii) that person has lived in that country or territory at some time in the period of six years ending with that year”.
- (3) For section 161(1) of that Act (exemption for loans the cash equivalent of which does not exceed £300) there shall be substituted—
- “(1) The cash equivalent of the benefit of any such loan as is referred to in section 160(1) is not to be treated as emoluments of the employment if—
- (a) at no time in the year does the amount outstanding on the loan (or, if two or more such loans as are referred to in section 160(1) are outstanding in the year, the aggregate of the amounts outstanding on them) exceed £5000, or
  - (b) where paragraph (a) above does not apply, the loan is not a qualifying loan and at no time in the year does the amount outstanding on the loan (or, if two or more such loans as are referred to in section 160(1) and are not qualifying loans are outstanding in the year, the aggregate of the amounts outstanding on them) exceed £5000.
- (1A) Section 160(1) does not in any year apply to a loan made at any time in that or an earlier year by a person in the ordinary course of a business carried on by him which includes the lending of money if—
- (a) comparable loans were available, at the time the loan in question was made, to all those who might be expected to avail themselves of the services which he provides in the course of that business,

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- (b) of the total number of the loan in question and comparable loans made by him at or about the time the loan in question was made, a substantial proportion were made to members of the public at large with whom he was dealing at arm's length, and
- (c) the loan in question, and comparable loans in general made by him at or about that time to members of the public at large with whom he was dealing at arm's length, are held on the same terms and, if those terms differ from the terms applicable immediately after the loan was first made, they were imposed in the ordinary course of his business.

(1B) For the purposes of subsection (1A) above, a loan is comparable to the loan in question if it is made for the same or similar purposes, and on the same terms and conditions, as that loan.”

- (4) In Schedule 7 to that Act (beneficial loan arrangements)—
  - (a) in paragraph 1(5) for “Sub-paragraph (2) above does” there shall be substituted “Sub-paragraphs (2) and (4) above do” and the words “his employer, being” shall cease to have effect, and
  - (b) Parts III to V shall cease to have effect.
- (5) In determining for the purposes of section 161(1A) and (1B) of that Act (inserted by this section) whether any loans made by any person before 1st June 1994 are made or held on the same terms or conditions, there shall be left out of account any amounts, by way of fees, commission or other incidental expenses, incurred for the purpose of obtaining any of those loans by the persons to whom they are made.
- (6) This section shall have effect for the year 1994-95 and subsequent years of assessment.

## **89 Vouchers and credit-tokens**

- (1) Section 141 of the Taxes Act 1988 (non-cash vouchers) shall be amended as follows.
- (2) In subsection (1)—
  - (a) in paragraph (a), for the words from “the expense incurred” to “exchanged;” there shall be substituted “the expense incurred (“the chargeable expense”)—
    - (i) by the person at whose cost the voucher and the money, goods or services for which it is capable of being exchanged are provided,
    - (ii) in or in connection with that provision;”and
  - (b) the words following paragraph (b) shall be omitted.
- (3) In subsection (6B), in paragraph (a) for the words “the person providing the non-cash voucher” there shall be substituted “the person at whose cost the voucher and the entertainment are provided”.
- (4) Section 142 of the Taxes Act 1988 (credit-tokens) shall be amended as follows.
- (5) In subsection (1)(a), for the words from “the expense incurred” to “obtained;” there shall be substituted “the expense incurred—
  - (i) by the person at whose cost the money, goods or services are provided,
  - (ii) in or in connection with that provision;”.

- (6) In subsection (3) for the words “providing the credit-token as mentioned in subsection (1)(a) above” there shall be substituted “mentioned in subsection (1)(a)(i) above”.
- (7) In subsection (3B), in paragraph (a) for the words “providing the credit-token” there shall be substituted “mentioned in subsection (1)(a)(i) above”.
- (8) Section 143 of the Taxes Act 1988 (cash vouchers) shall be amended as follows.
- (9) In subsection (1) for the words from “(and in particular section 203)” to “paid by his employer” there shall be substituted “—
  - (a) he shall be treated as having received”.
- (10) In subsection (3) for the words “in providing the voucher by the person who provides it” there shall be substituted “by the person at whose cost the voucher is provided”.
- (11) In subsection (4)—
  - (a) in paragraph (a) for the words “in providing the voucher by the person who provides it” there shall be substituted “by the person at whose cost the voucher, stamp or similar document is provided”; and
  - (b) in the words following paragraph (b) for the words from “the expense incurred” to the end there shall be substituted “the expense incurred by the person mentioned in paragraph (a) above shall be treated as reduced by the difference or part of the difference mentioned in paragraph (b) above.”
- (12) Section 144 of the Taxes Act 1988 (supplementary provisions relating to sections 141 to 143) shall be amended as follows.
- (13) In subsection (1)—
  - (a) for the words “or credit-tokens” there shall be substituted “, credit-tokens or cash vouchers”; and
  - (b) for the words “141 or 142” there shall be substituted “141, 142 or 143”.
- (14) In subsection (3)—
  - (a) for the words “141 and 142” there shall be substituted “141, 142 and 143”; and
  - (b) for the words “by him of non-cash” there shall be substituted “of”.

### *Chargeable gains*

#### **90 Annual exempt amount for 1994-95**

For the year 1994-95 section 3 of the Taxation of Chargeable Gains Act 1992 (annual exempt amount) shall have effect as if the amount specified in subsection (2) were £5,800, and accordingly subsection (3) of that section (indexation) shall not apply for that year.

#### **91 Relief on re-investment**

- (1) Schedule 11 to this Act (which extends the relief on re-investment for individuals and trustees provided by Chapter IA of Part V of the Taxation of Chargeable Gains Act 1992) shall have effect.

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- (2) That Schedule shall have effect in relation to disposals made on or after 30th November 1993.
- (3) In section 164H(1) of that Act—
- (a) for “is greater than” there shall be substituted “exceeds”, and
  - (b) at the end there shall be added “or half the value of the company’s assets as a whole (whichever is the greater); and section 294(3) and (4) of the Taxes Act (meaning of value of company’s assets as a whole) applies for the purposes of this subsection as it applies for the purposes of section 294 of that Act”.
- (4) Subsection (3) above shall apply to determine whether a company is a qualifying company on or after 30th November 1993.

## **92 Relief on retirement**

- (1) In paragraph 13(1) of Schedule 6 to the Taxation of Chargeable Gains Act 1992 (amount available for relief on retirement)—
- (a) in paragraph (a) (gains not exceeding appropriate percentage of £150,000) for “£150,000” there shall be substituted “£250,000”, and
  - (b) in paragraph (b) (half gains not exceeding that percentage of £150,000 to £600,000) for “£150,000” and “£600,000” there shall be substituted respectively “£250,000” and “£1 million”.
- (2) This section shall have effect in relation to disposals made on or after 30th November 1993.

## **93 Indexation losses**

- (1) In section 53 of the Taxation of Chargeable Gains Act 1992 (indexation allowance), in subsection (1), for the words following “contrary” to the end of paragraph (c) there shall be substituted “if on the disposal of an asset there is an unindexed gain, an allowance (“the indexation allowance”) shall be allowed against the unindexed gain—
- (a) so as to give the gain for the purposes of this Act, or
  - (b) if the indexation allowance equals or exceeds the unindexed gain, so as to extinguish it (in which case the disposal shall be one on which, after taking account of the indexation allowance, neither a gain nor a loss accrues)”.
- (2) In subsection (2) of that section—
- (a) for “subsection (1) above” there shall be substituted “this Chapter”,
  - (b) for paragraph (a) there shall be substituted—
    - “(a) “unindexed gain” means the amount of the gain on the disposal computed in accordance with this Part”, and
  - (c) in paragraph (b), for “gain or loss” there shall be substituted “gain”.
- (3) After that subsection there shall be inserted—
- “(2A) Notwithstanding anything in section 16 of this Act, this section shall not apply to a disposal on which a loss accrues.”
- (4) In section 55 of that Act (assets acquired on a no gain/no loss disposal), after subsection (6) there shall be inserted—

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- “(7) The rules in subsection (8) below apply (after the application of section 53 but before the application of section 35(3) or (4)) to give the gain or loss for the purposes of this Act where—
- (a) subsection (6) above applies to the disposal (the “disposal in question”) of an asset by any person (the “transferor”), and
  - (b) but for paragraph (b) of that subsection, the consideration the transferor would be treated as having given for the asset would include an amount or amounts of indexation allowance brought into account by virtue of section 56(2) on any disposal made before 30th November 1993.
- (8) The rules are as follows—
- (a) where (apart from this subsection) there would be a loss, an amount equal to the rolled-up indexation shall be added to it so as to increase it,
  - (b) where (apart from this subsection) the unindexed gain or loss would be nil, there shall be a loss of an amount equal to the rolled-up indexation, and
  - (c) where (apart from this subsection)—
    - (i) there would be an unindexed gain, and
    - (ii) the gain or loss would be nil but the amount of the indexation allowance used to extinguish the gain would be less than the rolled-up indexation,the difference shall constitute a loss.
- (9) In this section the “rolled-up indexation” means, subject to subsections (10) and (11) below, the amount or, as the case may be, the aggregate of the amounts referred to in subsection (7)(b) above; and subsections (10) and (11) below shall, as well as applying on the disposal in question, be treated as having applied on any previous part disposal by the transferor.
- (10) Where, for the purposes of any disposal of the asset by the transferor, any amount falling within any, or any combination of, paragraphs (a) to (c) of section 38(1) is required by any enactment to be excluded, reduced or written down, the amount or aggregate referred to in subsection (9) above (or so much of it as remains after the application of this subsection and subsection (11) below on a previous part disposal) shall be reduced in proportion to any reduction made in the amount falling within the paragraph, or the combination of paragraphs, in question.
- (11) Where the transferor makes a part disposal of the asset at any time, then, for the purposes of that and any subsequent disposal, the amount or aggregate referred to in subsection (9) above (or so much of it as remains after the application of this subsection and subsection (10) above on a previous part disposal by him or after the application of subsection (10) above on the part disposal) shall be apportioned between the property disposed of and the property which remains in the same proportions as the sums falling within section 38(1)(a) and (b).”
- (5) In section 56 of that Act (amount of consideration on no gain/no loss disposals)—

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- (a) in subsection (2) for the words preceding paragraph (a) there shall be substituted “On a no gain/no loss disposal by any person (“the transferor”)”, and
- (b) after that subsection there shall be added—
  - “(3) Where apart from this subsection—
    - (a) a loss would accrue on the disposal of an asset, and
    - (b) the sums allowable as a deduction in computing that loss would include an amount attributable to the application of the assumption in subsection (2) above on any no gain/no loss disposal made on or after 30th November 1993,

those sums shall be determined as if that subsection had not applied on any such disposal made on or after that date and the loss shall be reduced accordingly or, if those sums are then equal to or less than the consideration for the disposal, the disposal shall be one on which neither a gain nor a loss accrues.
  - (4) For the purposes of this section a no gain/no loss disposal is one which, by virtue of any enactment other than section 35(4), 53(1) or this section, is treated as a disposal on which neither a gain nor a loss accrues to the person making the disposal.”
- (6) In section 110 of that Act (indexation allowance for share pools), after subsection (6) there shall be inserted—
  - “(6A) Where a disposal to a person acquiring or adding to a new holding is treated by virtue of any enactment as one on which neither a gain nor a loss accrues to the person making the disposal—
    - (a) section 56(2) shall not apply to the disposal (and, accordingly, the amount of the consideration shall not be calculated on the assumption that a gain of an amount equal to the indexation allowance accrues to the person making the disposal), but
    - (b) an amount equal to the indexation allowance on the disposal shall be added to the indexed pool of expenditure for the holding acquired or, as the case may be, held by the person to whom the disposal is made (and, where it is added to the indexed pool of expenditure for a holding so held, it shall be added after any increase required by subsection (8)(a) below).”
- (7) Sections 103 (collective investment schemes, etc.), 111 (building society etc. shares), 182 to 184 (groups and associated companies) and 200 (oil industry assets) of that Act (all of which relate to indexation allowance) shall cease to have effect.
- (8) In Schedule 7A to that Act (restriction on set-off of pre-entry losses), in paragraph 2—
  - (a) in sub-paragraph (2), for the definitions of “B” and “C” there shall be substituted—
    - “B is the amount of the item of relevant allowable expenditure for which an amount falls to be determined under this paragraph;
    - C is the total amount of all the relevant allowable expenditure”;
  - (b) in sub-paragraph (4), “except in relation to the calculation of any indexed rise” shall cease to have effect,
  - (c) after sub-paragraph (8) there shall be inserted—



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“(8A) Where by virtue of section 55(8) the allowable loss accruing on the disposal of a pre-entry asset, or any part of the loss, is attributable to an amount (“the rolled-up amount”) of rolled-up indexation (as defined in section 55(9) to (11)), then, for the purposes of this paragraph—

- (a) the total amount of all the relevant allowable expenditure shall be treated as increased by the rolled-up amount, and
- (b) the amount of each item of relevant allowable expenditure shall be treated as increased by so much (if any) of the rolled-up amount as is attributable to that item.

(8B) Where—

- (a) section 56(3) applies on the disposal of a pre-entry asset on which an allowable loss accrues, and
- (b) in accordance with that subsection, the total amount of all the relevant allowable expenditure is reduced by any amount (“the global reduction”),

the amount of each item of relevant allowable expenditure shall be treated for the purposes of this paragraph as reduced by so much (if any) of the global reduction as is attributable to that item”, and

- (d) in sub-paragraph (9), the definition of “indexed rise” shall cease to have effect.

(9) In paragraph 4 of that Schedule—

- (a) in sub-paragraph (12) the words from “together” to the end, and
- (b) sub-paragraph (13),

shall cease to have effect.

(10) In paragraph 5 of that Schedule, after sub-paragraph (2) there shall be inserted—

“(2A) In determining for the purposes of sub-paragraph (2)(a) above the amount of any loss which would have accrued if the asset had been disposed of at the relevant time at its market value at that time—

- (a) it shall be assumed that the amendments of this Act made by section 93(1) to (5) of the Finance Act 1994 (indexation losses) had effect in relation to that disposal and, accordingly,
- (b) references in those amendments and in subsection (11) of that section to 30th November 1993 shall be read as references to the day on which the relevant time falls.”

(11) This section shall have effect in relation to disposals made on or after 30th November 1993 and Schedule 12 to this Act (which gives transitional relief) shall have effect for the years 1993–94 and 1994–95.

## **94 Set-off of pre-entry losses**

(1) Schedule 7A to the Taxation of Chargeable Gains Act 1992 (set off of pre-entry losses) shall be amended as follows.

(2) In sub-paragraph (3)(a) of paragraph 2 (calculation of pre-entry proportion of loss), for “assumption applying by virtue of sub-paragraphs (4) and (5)” there shall be substituted “assumptions applying by virtue of sub-paragraphs (4) to (6B)”, and

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for sub-paragraph (7) of that paragraph there shall be substituted the following sub-paragraphs—

“(6A) Notwithstanding anything in section 56(2), where in the case of the disposal of any pre-entry asset—

- (a) any company has at any time between the relevant time and the time of the disposal acquired that asset or the equivalent asset, and
- (b) the acquisition was either an acquisition in pursuance of a disposal on which there is treated by virtue of section 171 as having been neither a gain nor a loss accruing or an acquisition by virtue of which an asset is treated as the equivalent asset,

the items of relevant allowable expenditure and the times when those items shall be treated as having been incurred shall be determined for the purposes of this paragraph on the assumptions specified in sub-paragraph (6B) below.

(6B) Those assumptions are that—

- (a) the company by reference to which the asset in question is a pre-entry asset, and
- (b) the company mentioned in sub-paragraph (6A) above and every other company which has made an acquisition which, in relation to the disposal of that asset, falls within that sub-paragraph,

were the same person and, accordingly, that the pre-entry asset had been acquired by the company disposing of it at the time when it or the equivalent asset would have been treated for the purposes of this paragraph as acquired by the company mentioned in paragraph (a) above.

(7) In sub-paragraphs (5) to (6B) above the references to the equivalent asset, in relation to another asset acquired or disposed of by any company, are references to any asset which falls in relation to that company to be treated (whether by virtue of paragraph 1(8) above or otherwise) as the same as the other asset or which would fall to be so treated after applying, as respects other assets, the assumptions for which those sub-paragraphs provide.”

- (3) In paragraph 9(2)(c) (cases where a group is relevant if a company was a member of it in the accounting period in which it joined another relevant group), after “paragraph (a)” there shall be inserted “or (b)”.
- (4) This section shall apply in relation to the making in respect of any loss of any deduction from a chargeable gain where either the gain or the loss is one accruing on or after 11th March 1994.

## **95 Commodity and financial futures**

(1) In section 143 of the Taxation of Chargeable Gains Act 1992 (commodity and financial futures and qualifying options), subsection (4) shall cease to have effect and for subsection (6) there shall be substituted the following subsections—

“(6) In any case where, in the course of dealing in commodity or financial futures, a person has entered into a futures contract and—

- (a) he has not closed out the contract (as mentioned in subsection (5) above), and

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- (b) he becomes entitled to receive or liable to make a payment, whether under the contract or otherwise, in full or partial settlement of any obligations under the contract,

then, for the purposes of this Act, he shall be treated as having disposed of an asset (namely, that entitlement or liability) and the payment received or made by him shall be treated as consideration for the disposal or, as the case may be, as incidental costs to him of making the disposal.

- (7) Section 46 shall not apply to obligations under—

- (a) a commodity or financial futures contract which is entered into by a person in the course of dealing in such futures on a recognised futures exchange; or
- (b) a commodity or financial futures contract to which an authorised person or listed institution is a party.

- (8) In this section—

“authorised person” has the same meaning as in the Financial Services Act 1986, and

“listed institution” has the same meaning as in section 43 of that Act.”

- (2) This section shall apply in relation to contracts entered into on or after 30th November 1993.

## **96 Cash-settled options**

- (1) After section 144 of the Taxation of Chargeable Gains Act 1992 (options and forfeited deposits) there shall be inserted the following section—

### **“144A Cash-settled options**

- (1) In any case where—

- (a) an option is exercised; and
- (b) the nature of the option (or its exercise) is such that the grantor of the option is liable to make, and the person exercising it is entitled to receive, a payment in full settlement of all obligations under the option,

subsections (2) and (3) below shall apply in place of subsections (2) and (3) of section 144.

- (2) As regards the grantor of the option—

- (a) he shall be treated as having disposed of an asset (namely, his liability to make the payment) and the payment made by him shall be treated as incidental costs to him of making the disposal; and
- (b) the grant of the option and the disposal shall be treated as a single transaction and the consideration for the option shall be treated as the consideration for the disposal.

- (3) As regards the person exercising the option—

- (a) he shall be treated as having disposed of an asset (namely, his entitlement to receive the payment) and the payment received by him shall be treated as the consideration for the disposal;

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- (b) the acquisition of the option (whether directly from the grantor or not) and the disposal shall be treated as a single transaction and the cost of acquiring the option shall be treated as expenditure allowable as a deduction under section 38(1)(a) from the consideration for the disposal; and
  - (c) for the purpose of computing the indexation allowance (if any) on the disposal, the cost of the option shall be treated (notwithstanding paragraph (b) above) as incurred when the option was acquired.
- (4) In any case where subsections (2) and (3) above would apply as mentioned in subsection (1) above if the reference in that subsection to full settlement included a reference to partial settlement, those subsections and subsections (2) and (3) of section 144 shall both apply but with the following modifications—
- (a) for any reference to the grant or acquisition of the option there shall be substituted a reference to the grant or acquisition of so much of the option as relates to the making and receipt of the payment or, as the case may be, the sale or purchase by the grantor; and
  - (b) for any reference to the consideration for, or the cost of or of acquiring, the option there shall be substituted a reference to the appropriate proportion of that consideration or cost.
- (5) In this section “appropriate proportion” means such proportion as may be just and reasonable in all the circumstances.”
- (2) This section shall apply in relation to options granted on or after 30th November 1993.

## **97 Settlements with foreign element: information**

- (1) The Taxation of Chargeable Gains Act 1992 shall be amended as mentioned in subsections (2) to (4) below.
- (2) In Chapter II of Part III (settlements) the following section shall be inserted after section 98—

### **“98A Settlements with foreign element: information**

Schedule 5A to this Act (which contains general provisions about information relating to settlements with a foreign element) shall have effect.”

- (3) The following Schedule shall be inserted after Schedule 5—

#### “SCHEDULE 5A

Section 98A.

#### SETTLEMENTS WITH FOREIGN ELEMENT: INFORMATION

- 1 In this Schedule “the commencement day” means the day on which the Finance Act 1994 was passed.
- 2 (1) This paragraph applies if—
  - (a) a settlement was created before 19th March 1991,
  - (b) on or after the commencement day a person transfers property to the trustees otherwise than under a transaction entered into

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- at arm's length and otherwise than in pursuance of a liability incurred by any person before that day,
- (c) the trustees are not resident or ordinarily resident in the United Kingdom at the time the property is transferred, and
  - (d) the transferor knows, or has reason to believe, that the trustees are not so resident or ordinarily resident.
- (2) Before the expiry of the period of twelve months beginning with the relevant day, the transferor shall deliver to the Board a return which—
- (a) identifies the settlement, and
  - (b) specifies the property transferred, the day on which the transfer was made, and the consideration (if any) for the transfer.
- (3) For the purposes of sub-paragraph (2) above the relevant day is the day on which the transfer is made.
- 3 (1) This paragraph applies if a settlement is created on or after the commencement day, and at the time it is created—
- (a) the trustees are not resident or ordinarily resident in the United Kingdom, or
  - (b) the trustees are resident or ordinarily resident in the United Kingdom but fall to be regarded for the purposes of any double taxation relief arrangements as resident in a territory outside the United Kingdom.
- (2) Any person who—
- (a) is a settlor in relation to the settlement at the time it is created, and
  - (b) at that time fulfils the condition mentioned in sub-paragraph (3) below,
- shall, before the expiry of the period of three months beginning with the relevant day, deliver to the Board a return specifying the particulars mentioned in sub-paragraph (4) below.
- (3) The condition is that the person concerned is domiciled in the United Kingdom and is either resident or ordinarily resident in the United Kingdom.
- (4) The particulars are—
- (a) the day on which the settlement was created;
  - (b) the name and address of the person delivering the return;
  - (c) the names and addresses of the persons who are the trustees immediately before the delivery of the return.
- (5) For the purposes of sub-paragraph (2) above the relevant day is the day on which the settlement is created.
- 4 (1) This paragraph applies if a settlement is created on or after 19th March 1991, and at the time it is created—
- (a) the trustees are not resident or ordinarily resident in the United Kingdom, or
  - (b) the trustees are resident or ordinarily resident in the United Kingdom but fall to be regarded for the purposes of any double

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taxation relief arrangements as resident in a territory outside the United Kingdom.

- (2) Any person who—
- (a) is a settlor in relation to the settlement at the time it is created,
  - (b) at that time does not fulfil the condition mentioned in sub-paragraph (3) below, and
  - (c) first fulfils that condition at a time falling on or after the commencement day,
- shall, before the expiry of the period of twelve months beginning with the relevant day, deliver to the Board a return specifying the particulars mentioned in sub-paragraph (4) below.
- (3) The condition is that the person concerned is domiciled in the United Kingdom and is either resident or ordinarily resident in the United Kingdom.
- (4) The particulars are—
- (a) the day on which the settlement was created;
  - (b) the name and address of the person delivering the return;
  - (c) the names and addresses of the persons who are the trustees immediately before the delivery of the return.
- (5) For the purposes of sub-paragraph (2) above the relevant day is the day on which the person first fulfils the condition as mentioned in paragraph (c) of that sub-paragraph.
- 5 (1) This paragraph applies if—
- (a) the trustees of a settlement become at any time (the relevant time) on or after the commencement day neither resident nor ordinarily resident in the United Kingdom, or
  - (b) the trustees of a settlement, while continuing to be resident and ordinarily resident in the United Kingdom, become at any time (the relevant time) on or after the commencement day trustees who fall to be regarded for the purposes of any double taxation relief arrangements as resident in a territory outside the United Kingdom.
- (2) Any person who was a trustee of the settlement immediately before the relevant time shall, before the expiry of the period of twelve months beginning with the relevant day, deliver to the Board a return specifying—
- (a) the day on which the settlement was created,
  - (b) the name and address of each person who is a settlor in relation to the settlement immediately before the delivery of the return, and
  - (c) the names and addresses of the persons who are the trustees immediately before the delivery of the return.
- (3) For the purposes of sub-paragraph (2) above the relevant day is the day when the relevant time falls.
- 6 (1) Nothing in paragraph 2, 3, 4 or 5 above shall require information to be contained in the return concerned to the extent that—

- (a) before the expiry of the period concerned the information has been provided to the Board by any person in pursuance of the paragraph concerned or of any other provision, or
  - (b) after the expiry of the period concerned the information falls to be provided to the Board by any person in pursuance of any provision other than the paragraph concerned.
- (2) Nothing in paragraph 2, 3, 4 or 5 above shall require a return to be delivered if—
- (a) before the expiry of the period concerned all the information concerned has been provided to the Board by any person in pursuance of the paragraph concerned or of any other provision, or
  - (b) after the expiry of the period concerned all the information concerned falls to be provided to the Board by any person in pursuance of any provision other than the paragraph concerned.”
- (4) In Schedule 5, paragraphs 11 to 14 (information) shall be omitted.
- (5) Subsection (4) above shall have effect where the relevant day falls on or after the day on which this Act is passed.
- (6) In the Table in section 98 of the Taxes Management Act 1970 (penalties) at the end of the second column there shall be inserted—
- “Paragraphs 2 to 6 of Schedule 5A to the 1992 Act.”

### *Profit-related pay*

## **98 The distributable pool**

- (1) Schedule 8 to the Taxes Act 1988 (profit-related pay schemes: conditions for registration) shall be amended as follows.
- (2) After paragraph 13 (determination of distributable pool by method A) there shall be inserted—
- “13A (1) Where a scheme includes provision by virtue of paragraph 13(4) or (5) above the scheme must be so framed that in arriving at the profits for the base year or for the previous profit period any profit-related pay and any secondary Class I contributions in respect of it are accorded the same accountancy treatment as is accorded to any profit-related pay and any secondary Class I contributions in respect of it in arriving at the profits in the profit period.
- (2) In sub-paragraph (1) above—
- (a) “profit-related pay” means profit-related pay under whatever scheme;
  - (b) “secondary Class I contributions” means secondary Class I contributions under Part I of the Social Security Act 1975 or Part I of the Social Security (Northern Ireland) Act 1975 or Part I of the Social Security Contributions and Benefits Act 1992 or Part I of the Social Security Contributions and Benefits (Northern Ireland) Act 1992.

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- (3) Sub-paragraph (1) above shall apply notwithstanding anything in paragraph 19 below.
- (4) Where a scheme includes provision by virtue of paragraph 13(4) above the scheme must also include provision that if the pay for the profit period is less than the pay for the base year or for the previous profit period (as the case may be) the percentage to be applied for the purposes of the provision included by virtue of paragraph 13(4) above shall be the increased percentage (instead of any other percentage).
- (5) The increased percentage must be one arrived at by—
- (a) taking the percentage that would be applied for the purposes of the provision included by virtue of paragraph 13(4) above apart from the provision included by virtue of sub-paragraph (4) above, and
  - (b) adding the percentage found by expressing the difference in pay as a percentage of the profits for the base year or for the previous profit period (as the case may be).
- (6) For the purposes of this paragraph—
- (a) the pay for the profit period or for the previous profit period or for the base year is the pay paid to employees in respect of employment in the period or year concerned in the employment unit concerned;
  - (b) the difference in pay is the difference between the pay for the profit period and the pay for the previous profit period or for the base year (as the case may be);
- and any profit-related pay shall be ignored in applying paragraph (a) above.”
- (3) After paragraph 14 (determination of distributable pool by method B) there shall be inserted—
- “14A (1) Where a scheme includes provision to give effect to paragraph 14(3) above or provision by virtue of paragraph 14(4) above the scheme must be so framed that in arriving at the profits in the preceding period of 12 months any profit-related pay and any secondary Class I contributions in respect of it are accorded the same accountancy treatment as is accorded to any profit-related pay and any secondary Class I contributions in respect of it in arriving at the profits in the profit period.
- (2) Where a scheme includes provision by virtue of paragraph 14(5) above the scheme must be so framed that in arriving at the profits in the relevant period of 12 months any profit-related pay and any secondary Class I contributions in respect of it are accorded the same accountancy treatment as is accorded to any profit-related pay and any secondary Class I contributions in respect of it in arriving at the profits in the profit period; and for this purpose the relevant period of 12 months is the period of 12 months immediately preceding the first or only profit period to which the scheme relates.
- (3) In sub-paragraphs (1) and (2) above—
- (a) “profit-related pay” means profit-related pay under whatever scheme;



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- (b) “secondary Class I contributions” means secondary Class I contributions under Part I of the Social Security Contributions and Benefits Act 1992 or Part I of the Social Security Contributions and Benefits (Northern Ireland) Act 1992.
- (4) Sub-paragraphs (1) and (2) above shall apply notwithstanding anything in paragraph 19 below.
- (5) Where a scheme includes provision by virtue of paragraph 14(4) above the scheme must also include provision that if the pay for the profit period is less than the pay for the preceding period of 12 months the percentage to be applied for the purposes of the provision included by virtue of paragraph 14(4) above shall be the increased percentage (instead of any other percentage).
- (6) The increased percentage must be one arrived at by—
  - (a) taking the percentage that would be applied for the purposes of the provision included by virtue of paragraph 14(4) above apart from the provision included by virtue of sub-paragraph (5) above, and
  - (b) adding the percentage found by expressing the difference in pay as a percentage of the profits in the preceding period of 12 months.
- (7) For the purposes of this paragraph—
  - (a) the pay for the profit period or for the preceding period of 12 months is the pay paid to employees in respect of employment in the period concerned in the employment unit concerned;
  - (b) the difference in pay is the difference between the pay for the profit period and the pay for the preceding period of 12 months;and any profit-related pay shall be ignored in applying paragraph (a) above.”
- (4) This section shall have effect in relation to any scheme not registered before 1st December 1993.

## **99 Parts of undertakings**

- (1) Schedule 8 to the Taxes Act 1988 shall also be amended by inserting the following paragraphs after paragraph 22 (which, with paragraph 21, applies to schemes relating to parts of undertakings)—
  - “23 (1) In a case where—
    - (a) paragraph 21 above applies to a scheme, and
    - (b) method A (specified in paragraph 13 above) is employed for the purposes of the scheme,the scheme must contain provisions which comply with this paragraph and which apply as regards each profit period to which the scheme relates.
  - (2) The scheme must ensure that no payments are made under it by reference to a given profit period if the percentage mentioned in paragraph 13(1) above exceeds the permitted percentage.

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- (3) The scheme must ensure that the permitted percentage is a percentage found by—
- (a) taking the pay paid to employees in respect of employment in the relevant year in the employment unit to which the other scheme mentioned in paragraph 22(1)(a) above relates or (if there are two or more other schemes) the aggregate of the pay paid to employees in respect of employment in the relevant year in the employment units to which the other schemes relate;
  - (b) taking the profit-related pay paid to employees in respect of employment in the relevant year in the employment unit to which the other scheme mentioned in paragraph 22(1)(a) above relates or (if there are two or more other schemes) the aggregate of the profit-related pay paid to employees in respect of employment in the relevant year in the employment units to which the other schemes relate;
  - (c) taking the pay paid to employees in respect of employment in the relevant year in the employment unit to which the scheme mentioned in paragraph 21 above relates;
  - (d) taking the fraction whose denominator is equal to the number of whole pounds found under paragraph (a) above and whose numerator is equal to the number of whole pounds found under paragraph (b) above;
  - (e) multiplying the amount found under paragraph (c) above by the fraction found under paragraph (d) above;
  - (f) taking the profits for the relevant year of the undertaking mentioned in paragraph 21 above;
  - (g) expressing the amount found under paragraph (e) above as a percentage of the amount found under paragraph (f) above;
  - (h) taking the percentage found under paragraph (g) above as the permitted percentage.
- (4) The scheme must ensure that the relevant year is a period of 12 months identified in the scheme and ending at a time within the period of two years immediately preceding the given profit period.
- 24 (1) In a case where—
- (a) paragraph 21 above applies to a scheme, and
  - (b) method B (specified in paragraph 14 above) is employed for the purposes of the scheme,
- the scheme must contain provisions which comply with this paragraph and which apply as regards each profit period to which the scheme relates.
- (2) The scheme must ensure that no payments are made under it by reference to the first or only profit period to which the scheme relates if the notional pool mentioned in paragraph 14(1)(a) above exceeds the permitted limit.
- (3) The scheme must also ensure that no payments are made under it by reference to a given profit period other than the first if the distributable pool for the previous profit period (mentioned in paragraph 14(1)(b) above) exceeds the permitted limit.
- (4) The scheme must ensure that the permitted limit is a limit found by—

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- (a) taking the pay paid to employees in respect of employment in the relevant year in the employment unit to which the other scheme mentioned in paragraph 22(1)(a) above relates or (if there are two or more other schemes) the aggregate of the pay paid to employees in respect of employment in the relevant year in the employment units to which the other schemes relate;
  - (b) taking the profit-related pay paid to employees in respect of employment in the relevant year in the employment unit to which the other scheme mentioned in paragraph 22(1)(a) above relates or (if there are two or more other schemes) the aggregate of the profit-related pay paid to employees in respect of employment in the relevant year in the employment units to which the other schemes relate;
  - (c) taking the pay paid to employees in respect of employment in the relevant year in the employment unit to which the scheme mentioned in paragraph 21 above relates;
  - (d) taking the fraction whose denominator is equal to the number of whole pounds found under paragraph (a) above and whose numerator is equal to the number of whole pounds found under paragraph (b) above;
  - (e) multiplying the amount found under paragraph (c) above by the fraction found under paragraph (d) above;
  - (f) taking the amount found under paragraph (e) above as the permitted limit.
- (5) The scheme must ensure that the relevant year is—
- (a) a period of 12 months identified in the scheme and ending at a time within the period of two years immediately preceding the first or only profit period to which the scheme relates (in the case of provisions contained in the scheme by virtue of sub-paragraph (2) above);
  - (b) a period of 12 months identified in the scheme and ending at a time within the period of two years immediately preceding the given profit period (in the case of provisions contained in the scheme by virtue of sub-paragraph (3) above).”
- (2) This section shall have effect in relation to any scheme not registered before 1st December 1993.

#### *Profit sharing schemes*

### **100 Relevant age for purpose of appropriate percentage**

- (1) Schedule 10 to the Taxes Act 1988 (profit sharing schemes) shall be amended as follows.
- (2) In paragraph 3 (the appropriate percentage for purposes of tax charge) the words from “In this paragraph” to the end of the paragraph shall be omitted.
- (3) The following paragraph shall be inserted after paragraph 3—
  - “3A (1) In paragraph 3 above the reference to the relevant age shall be construed as follows.

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- (2) Where the scheme is approved before 25th July 1991 and the event occurs before 30th November 1993, the relevant age is pensionable age.
- (3) Where—
- (a) the scheme is approved before 25th July 1991,
  - (b) the event occurs on or after 30th November 1993,
  - (c) the scheme defines the period of retention by reference to the age of 60 for both men and women, and
  - (d) the reference to that age is incorporated in the definition by virtue of an alteration approved by the Board under paragraph 4 of Schedule 9 before the event occurs,
- the relevant age is 60.
- (4) Where—
- (a) the scheme is approved before 25th July 1991,
  - (b) the event occurs on or after 30th November 1993, and
  - (c) sub-paragraph (3) above does not apply,
- the relevant age is pensionable age.
- (5) Where the scheme is approved on or after 25th July 1991, the relevant age is the specified age.”

#### **101 Acceptance of qualifying corporate bonds for shares**

- (1) Schedule 10 to the Taxes Act 1988 (profit sharing schemes) shall be amended as mentioned in subsections (2) to (4) below.
- (2) In paragraph 1 (limitations on contractual obligations of participants) in sub-paragraph (1) the following paragraph shall be inserted after paragraph (c)—
- “(cc) directing the trustees to accept an offer of a qualifying corporate bond, whether alone or with cash or other assets or both, for his shares if the offer forms part of a general offer which is made as mentioned in paragraph (c) above; or”.
- (3) In paragraph 1 the following sub-paragraph shall be inserted after sub-paragraph (3)—
- “(4) In sub-paragraph (1)(cc) above “qualifying corporate bond” shall be construed in accordance with section 117 of the 1992 Act.”
- (4) The following paragraph shall be inserted after paragraph 5 (company reconstructions)
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- “5A (1) Paragraph 5(2) to (6) above apply where there occurs in relation to any of a participant’s shares (“the original holding”) a relevant transaction which would result in a new holding being equated with the original holding for the purposes of capital gains tax, were it not for the fact that what would be the new holding consists of or includes a qualifying corporate bond; and “relevant transaction” here means a transaction mentioned in Chapter II of Part IV of the 1992 Act.
- (2) In paragraph 5(2) to (6) above as applied by this paragraph—
- (a) references to a company reconstruction are to the transaction referred to in sub-paragraph (1) above;

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- (b) references to the new holding are to what would be the new holding were it not for the fact mentioned in sub-paragraph (1) above;
  - (c) references to the original holding shall be construed in accordance with sub-paragraph (1) above (and not paragraph 5(1));
  - (d) references to shares, in the context of the new holding, include securities and rights of any description which form part of the new holding.
- (3) In sub-paragraph (1) above “qualifying corporate bond” shall be construed in accordance with section 117 of the 1992 Act.”
- (5) In paragraph 32(1) of Schedule 9 to the Taxes Act 1988 (requirements applicable to profit sharing schemes) for “or (c)” there shall be substituted “, (c) or (cc)”.
- (6) In paragraph 33(a) of Schedule 9 to the Taxes Act 1988 (which provides that the trust instrument must contain certain provision by reference to new shares within the meaning of paragraph 5 of Schedule 10) the reference to paragraph 5 of Schedule 10 shall be construed as including a reference to that paragraph as applied by paragraph 5A.
- (7) Subsections (2) and (3) above shall have effect where a direction is made on or after the day on which this Act is passed.
- (8) Subsection (4) above shall have effect where what would be the new holding comes into being on or after the day on which this Act is passed; but this is subject to subsection (13) below.
- (9) Subsection (5) above shall have effect in relation to any scheme not approved before the day on which this Act is passed.
- (10) In a case where—
  - (a) a scheme is approved before the day on which this Act is passed, and
  - (b) on or after that day the trust instrument is altered in such a way that paragraph 32(1) of Schedule 9 to the Taxes Act 1988 would be fulfilled if subsection (5) above applied in relation to the scheme,subsection (5) above shall apply in relation to the scheme with effect from the time the alteration is made.
- (11) Subsection (6) above shall have effect in relation to any scheme not approved before the day on which this Act is passed.
- (12) In a case where—
  - (a) a scheme is approved before the day on which this Act is passed, and
  - (b) on or after that day the trust instrument is altered in such a way that paragraph 33(a) of Schedule 9 to the Taxes Act 1988 would be fulfilled if subsection (6) above applied in relation to the scheme,subsection (6) above shall apply in relation to the scheme with effect from the time the alteration is made.
- (13) In a case where—
  - (a) a scheme is approved before the day on which this Act is passed,
  - (b) subsection (4) above would apply in relation to the scheme by virtue of subsection (8) above and apart from this subsection, and

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(c) the trust instrument is not altered as mentioned in subsection (12)(b) above before what would be the new holding comes into being, subsection (4) above shall not apply in relation to the scheme.

(14) Subsection (6) above shall not imply a contrary intention for the purposes of section 20(2) of the Interpretation Act 1978 in its application to other references to paragraph 5 of Schedule 10 to the Taxes Act 1988.

*Employee share ownership trusts*

**102 Employee share ownership trusts**

Schedule 13 to this Act (which contains provisions about employee share ownership trusts) shall have effect.

*Retirement benefits schemes*

**103 The administrator**

(1) The following section shall be inserted after section 611 of the Taxes Act 1988—

**“611AA Definition of the administrator**

- (1) In this Chapter references to the administrator, in relation to a retirement benefits scheme, are to the person who is, or the persons who are, for the time being the administrator of the scheme by virtue of the following provisions of this section.
- (2) Subject to subsection (7) below, where—
- (a) the scheme is a trust scheme, and
  - (b) at any time the trustee, or any of the trustees, is or are resident in the United Kingdom,
- the administrator of the scheme at that time shall be the trustee or trustees of the scheme.
- (3) Subject to subsection (7) below, where—
- (a) the scheme is a non-trust scheme, and
  - (b) at any time the scheme sponsor, or any of the scheme sponsors, is or are resident in the United Kingdom,
- the administrator of the scheme at that time shall be the scheme sponsor or scheme sponsors.
- (4) At any time when the trustee of a trust scheme is not resident in the United Kingdom or (if there is more than one trustee) none of the trustees is so resident, the trustee or trustees shall ensure that there is a person, or there are persons—
- (a) resident in the United Kingdom, and
  - (b) appointed by the trustee or trustees to be responsible for the discharge of all duties relating to the scheme which are imposed on the administrator under this Chapter.

- (5) At any time when the scheme sponsor of a non-trust scheme is not resident in the United Kingdom or (if there is more than one scheme sponsor) none of the scheme sponsors is so resident, the scheme sponsor or scheme sponsors shall ensure that there is a person, or there are persons—
- (a) resident in the United Kingdom, and
  - (b) appointed by the scheme sponsor or scheme sponsors to be responsible for the discharge of all duties relating to the scheme which are imposed on the administrator under this Chapter.
- (6) Without prejudice to subsections (4) and (5) above—
- (a) the trustee or trustees of a trust scheme, or
  - (b) the scheme sponsor or scheme sponsors of a non-trust scheme,
- may at any time appoint a person who is, or persons who are, resident in the United Kingdom to be responsible for the discharge of all duties relating to the scheme which are imposed on the administrator under this Chapter.
- (7) Where at any time there is or are a person or persons—
- (a) for the time being appointed under subsection (4), (5) or (6) above as regards a scheme, and
  - (b) resident in the United Kingdom,
- the administrator of the scheme at that time shall be that person or those persons (and no other person).
- (8) Any appointment under subsection (4), (5) or (6) above—
- (a) must be in writing, and
  - (b) if made after the time when the scheme is established, shall constitute an alteration of the scheme for the purposes of section 591B(2).
- (9) In this section—
- (a) references to a trust scheme are to a retirement benefits scheme established under a trust or trusts;
  - (b) references to the trustee or trustees, in relation to a trust scheme and to a particular time, are to the person who is the trustee, or the persons who are the trustees, of the scheme at that time;
  - (c) references to a non-trust scheme are to a retirement benefits scheme not established under a trust or trusts, and
  - (d) references to the scheme sponsor or scheme sponsors, in relation to a retirement benefits scheme and to a particular time, are references to any person who established the scheme and is in existence at that time or, if more than one, all such persons.”
- (2) In consequence of subsection (1) above, in section 612(1) of the Taxes Act 1988 (interpretation of Chapter I of Part XIV) the definition of “administrator” shall cease to have effect.
- (3) This section—
- (a) so far as it relates to section 591B(1) of the Taxes Act 1988, shall apply in relation to notices given on or after the day on which this Act is passed;
  - (b) so far as it relates to section 593(3) of that Act, shall apply in relation to contributions paid on or after that day;

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- (c) so far as it relates to section 596A(3) of that Act, shall apply in relation to benefits received on or after that day;
- (d) so far as it relates to sections 598(2) and (4), 599(3) and 599A(2) of that Act, shall apply in relation to payments made on or after that day;
- (e) so far as it relates to section 602(1) and (2) of that Act and regulations made under section 602, shall apply in relation to amounts becoming recoverable on or after that day;
- (f) so far as it relates to section 604(1) of that Act, shall apply in relation to applications made on or after that day;
- (g) so far as it relates to section 605(1) and (4) of that Act, shall apply in relation to notices given on or after that day.

#### **104 Default of administrator etc**

(1) The following section shall be substituted for section 606 of the Taxes Act 1988—

##### **“606 Default of administrator etc**

- (1) This section applies in relation to a retirement benefits scheme if at any time—
  - (a) there is no administrator of the scheme, or
  - (b) the person who is, or all of the persons who are, the administrator of the scheme cannot be traced, or
  - (c) the person who is, or all of the persons who are, the administrator of the scheme is or are in default for the purposes of this section.
- (2) If the scheme is a trust scheme, then—
  - (a) if subsection (1)(b) or (c) above applies and at the time in question the condition mentioned in subsection (3) below is fulfilled, the trustee or trustees shall at that time be responsible for the discharge of all duties imposed on the administrator under this Chapter (whenever arising) and liable for any tax due from the administrator in the administrator’s capacity as such (whenever falling due);
  - (b) if subsection (1)(a) above applies, or subsection (1)(b) or (c) above applies and at the time in question the condition mentioned in subsection (3) below is not fulfilled, the employer shall at that time be so responsible and liable;

and paragraph (b) above shall apply to a person in his capacity as the employer even if he is also the administrator, or a trustee, of the scheme.
- (3) The condition is that there is at least one trustee of the scheme who—
  - (a) can be traced,
  - (b) is resident in the United Kingdom, and
  - (c) is not in default for the purposes of this section.
- (4) If the scheme is a non-trust scheme, then—
  - (a) if subsection (1)(b) or (c) above applies and at the time in question the condition mentioned in subsection (5) below is fulfilled, the scheme sponsor or scheme sponsors shall at that time be responsible for the discharge of all duties imposed on the administrator under this Chapter (whenever arising) and liable for any tax due from



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- the administrator in the administrator's capacity as such (whenever falling due);
- (b) if subsection (1)(a) above applies, or subsection (1)(b) or (c) above applies and at the time in question the condition mentioned in subsection (5) below is not fulfilled, the employer shall at that time be so responsible and liable;
- and paragraph (b) above shall apply to a person in his capacity as the employer even if he is also the administrator of the scheme, or a scheme sponsor.
- (5) The condition is that there is at least one scheme sponsor who—
- (a) can be traced,
  - (b) is resident in the United Kingdom, and
  - (c) is not in default for the purposes of this section.
- (6) Where at any time—
- (a) paragraph (b) or (c) of subsection (1) above applies in relation to a scheme, and
  - (b) a person is by virtue of this section responsible for the discharge of any duties, or liable for any tax, in relation to the scheme,
- then at that time the person or persons mentioned in paragraph (b) or (as the case may be) paragraph (c) of subsection (1) above shall not, by reason only of being the administrator of the scheme, be responsible for the discharge of those duties or liable for that tax.
- (7) Where the scheme is a trust scheme and the employer is not a contributor to the scheme, subsection (2) above shall have effect as if—
- (a) for “the employer”, in the first place where those words occur, there were substituted “the scheme sponsor or scheme sponsors”, and
  - (b) for “the employer”, in the second place where those words occur, there were substituted “scheme sponsor”.
- (8) Where the scheme is a non-trust scheme and the employer is not a contributor to the scheme, subsection (4) above shall have effect as if paragraph (b) and the words after that paragraph were omitted.
- (9) No liability incurred under this Chapter—
- (a) by the administrator of a scheme, or
  - (b) by a person by virtue of this section,
- shall be affected by the termination of a scheme or by its ceasing to be an approved scheme or to be an exempt approved scheme.
- (10) Where by virtue of this section a person becomes responsible for the discharge of any duties, or liable for any tax, the Board shall, as soon as is reasonably practicable, notify him of that fact; but any failure to give such notification shall not affect that person's being responsible or liable by virtue of this section.
- (11) A person is in default for the purposes of this section if—
- (a) he has failed to discharge any duty imposed on him under this Chapter, or
  - (b) he has failed to pay any tax due from him by virtue of this Chapter, and (in either case) the Board consider the failure to be of a serious nature.

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- (12) References in this section to a trust scheme, a non-trust scheme, trustees and scheme sponsors shall be construed in accordance with section 611AA.
- (13) References in this section to the employer include, where the employer is resident outside the United Kingdom, references to any branch or agent of the employer in the United Kingdom, and in this subsection “branch or agent” has the meaning given by section 118(1) of the Management Act.
- (14) This section does not apply for the purposes of sections 602 and 603 and Schedule 22.”
- (2) In consequence of subsection (1) above, in section 607(3)(b)(iii) of the Taxes Act 1988 for the words “section 606(1) and (3)” there shall be substituted “section 606(2)(b), (4)(b), (7), (8) and (13)”.
- (3) This section shall apply where the time in question falls on or after the day on which this Act is passed.

## **105 Information**

- (1) The Taxes Act 1988 shall be amended in accordance with subsections (2) and (3) below.
- (2) In section 605 (information) at the beginning there shall be inserted the following subsections—
  - “(1A) The Board may by regulations make any of the following provisions—
    - (a) provision requiring prescribed persons to furnish to the Board at prescribed times information relating to any of the matters mentioned in subsection (1B) below;
    - (b) provision enabling the Board to serve a notice requiring prescribed persons to furnish to the Board, within a prescribed time, particulars relating to any of those matters;
    - (c) provision enabling the Board to serve a notice requiring prescribed persons to produce to the Board, within a prescribed time, documents relating to any of those matters;
    - (d) provision enabling the Board to serve a notice requiring prescribed persons to make available for inspection on behalf of the Board books, documents and other records, being books, documents and records which relate to any of those matters;
    - (e) provision requiring prescribed persons to preserve for a prescribed time books, documents and other records, being books, documents and records which relate to any of those matters.
  - (1B) The matters referred to in subsection (1A) above are—
    - (a) an approved scheme;
    - (b) a relevant statutory scheme;
    - (c) an annuity contract by means of which benefits provided under an approved scheme or a relevant statutory scheme have been secured;
    - (d) a retirement benefits scheme which is not an approved scheme but in relation to which an application for approval for the purposes of this Chapter has been made.

- (1C) A person who fails to comply with regulations made under subsection (1A) (e) above shall be liable to a penalty not exceeding £3,000.
- (1D) Regulations under subsection (1A) above may make different provision for different descriptions of case.
- (1E) In subsection (1A) above “prescribed” means prescribed by regulations made under that subsection.”
- (3) Subsections (1) and (2) of section 605 shall cease to have effect.
- (4) In section 98 of the Taxes Management Act 1970 (penalties for failure to provide information etc.)—
- (a) in the first column of the Table after the entry “regulations under section 602;” there shall be inserted the entry “regulations under section 605(1A)(b) to (d);”;
  - (b) in the first column of the Table for the entry “section 605(1), (2), (3)(b) and (4);” there shall be substituted the entry “section 605(3)(b) and (4);”;
  - (c) in the second column of the Table after the entry “regulations under section 602;” there shall be inserted the entry “regulations under section 605(1A)(a);”.
- (5) Subsections (3) and (4)(b) above shall come into force on such day as the Treasury may by order appoint.

## **106 False statements etc**

- (1) The following section shall be inserted after section 605 of the Taxes Act 1988—

### **“605A False statements etc**

- (1) A person who fraudulently or negligently makes a false statement or false representation on making an application for the approval for the purposes of this Chapter of—
- (a) a retirement benefits scheme, or
  - (b) an alteration in such a scheme,
- shall be liable to a penalty not exceeding £3,000.
- (2) In a case where—
- (a) a person fraudulently or negligently makes a false statement or false representation, and
  - (b) in consequence that person, or any other person, obtains relief from or repayment of tax under this Chapter,
- the person mentioned in paragraph (a) above shall be liable to a penalty not exceeding £3,000.”
- (2) This section shall apply in relation to things done or omitted after the day on which this Act is passed.

## **107 Discretionary approval**

- (1) Section 591 of the Taxes Act 1988 (discretionary approval of retirement benefits schemes) shall be amended as follows.

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- (2) In subsection (2)(g) (annuity contracts)—
- (a) after “relevant benefits” there shall be inserted “falling within subsection (2A) below”;
  - (b) the words “approved by the Board and” shall be omitted.
- (3) The following subsection shall be inserted after subsection (2)—
- “(2A) Relevant benefits fall within this subsection if they correspond with benefits that could be provided by an approved scheme, and for this purpose—
- (a) a hypothetical scheme (rather than any particular scheme) is to be taken, and
  - (b) benefits provided by a scheme directly (rather than by means of an annuity contract) are to be taken.”
- (4) This section shall apply in relation to a scheme not approved by virtue of section 591 of the Taxes Act 1988 before 1st July 1994.

## **108 Taxation of benefits of non-approved schemes**

- (1) Section 596A of the Taxes Act 1988 (taxation of benefits under non-approved schemes) shall be amended as follows.
- (2) In subsection (4), at the beginning there shall be inserted “Subject to subsection (9) below”.
- (3) For subsection (6) there shall be substituted—
- “(6) Tax shall not be charged under this section in the case of—
- (a) any pension or annuity which is chargeable to tax under Schedule E by virtue of section 19(1); or
  - (b) any pension or other benefit chargeable to tax under section 58.”
- (4) In subsection (7)—
- (a) for the words “by virtue of section 19(1)1”, in the first place where they occur, there shall be substituted “as mentioned in subsection (6)(a) above”;
  - (b) in paragraph (a), for the words “subsection (6) above” there shall be substituted “subsection (6)(a) above”; and
  - (c) in paragraph (b) for the words “section 19(1)1” there shall be substituted “section 19(1)”.
- (5) For subsections (8) and (9) there shall be substituted—
- “(8) Subject to subsection (9) below, tax shall not be charged under this section (or section 19(1) or 148) in the case of a lump sum where—
- (a) the employer has paid any sum or sums with a view to the provision of any relevant benefits under a retirement benefits scheme;
  - (b) an employee has been assessed to tax in respect of the sum or sums by virtue of section 595(1); and
  - (c) the lump sum is provided under the scheme to the employee, any person falling within section 595(5) in relation to the employee or any other individual designated by the employee.

- (9) Where any of the income or gains accruing to the scheme under which the lump sum is provided is not brought into charge to tax, tax shall be charged under this section on the amount of the lump sum received less any deduction applicable under subsection (10) or (11) below.
- (10) Subject to subsection (11) below, the deduction applicable is the aggregate of—
- (a) any sum or sums in respect of which the employee has been assessed as mentioned in subsection (8)(b) above, and
  - (b) any sum or sums paid by the employee,
- which in either case were paid by way of contribution to the provision of the lump sum.
- (11) Where—
- (a) the lump sum is provided under the scheme on the disposal of a part of any asset or the surrender of any part of or share in any rights in any asset, and
  - (b) the employee, any person falling within section 595(5) in relation to the employee or any person connected with the employee has any right to receive or any expectation of receiving a further lump sum (or further lump sums) under the scheme on a further disposal of any part of the asset or a further surrender of any part of or share in any rights in the asset,
- the deduction applicable shall be determined in accordance with the formula in subsection (12) below.

- (12) The formula is—

$$D = S \times \frac{A}{B}$$

- (13) For the purposes of the formula in subsection (12) above—
- D is the deduction applicable;
  - S is the aggregate amount of any sum or sums of a description mentioned in paragraphs (a) and (b) of subsection (10) above;
  - A is the amount of the lump sum received in relation to which the deduction applicable falls to be determined;
  - B is the market value of the asset in relation to which the disposal or surrender occurred, on the assumption that the valuation is made immediately before the disposal or surrender.
- (14) An individual may not claim that a deduction is applicable in relation to a lump sum more than once.
- (15) For the purposes of subsections (8) and (9) above, it shall be assumed unless the contrary is shown—
- (a) that no sums have been paid, and the employee has not been assessed in respect of any sums paid, with a view to the provision of relevant benefits;
  - (b) that the income or gains accruing to a scheme under which the benefit is provided are not brought into charge to tax; and

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- (c) that no deduction is applicable under subsection (10) or (11) above.
- (16) Section 839 shall apply for the purposes of subsection (11) above.
- (17) In subsection (13) above “market value” shall be construed in accordance with section 272 of the 1992 Act.”
- (6) The amendments of section 596A made by this section shall have effect in relation to retirement benefit schemes—
  - (a) entered into on or after 1st December 1993, or
  - (b) entered into before that day if the scheme is varied on or after that day with a view to the provision of the benefit.
- (7) Subject to subsection (8) below, in the Taxes Act 1988—
  - (a) in section 188(1), paragraph (c), and
  - (b) in section 189, paragraph (b),
 (exemption from tax where recipient of benefit or lump sum chargeable to tax in respect of sums paid or treated as paid with a view to the provision of the benefit or lump sum) shall cease to have effect in relation to any benefit provided or lump sum paid on or after 1st December 1993.
- (8) The repeals made by subsection (7) above shall not have effect in relation to any benefit provided or lump sum paid on or after 1st December 1993 in pursuance of a scheme or arrangement entered into before that day unless the scheme or arrangement is varied on or after that day with a view to the provision of the benefit or lump sum.

### *Annuities*

#### **109 Annuities derived from personal pension schemes**

- (1) In Chapter IV of Part XIV of the Taxes Act 1988 (personal pension schemes) the following shall be inserted after section 648—

#### *“Annuities: charge to tax*

##### **648A Annuities: charge under Schedule E**

- (1) Subject to subsection (2) below, where funds held for the purposes of an approved personal pension scheme are used to acquire an annuity—
  - (a) the annuity shall be charged to tax under Schedule E and section 203 shall apply accordingly;
  - (b) the annuity shall not be charged to tax under Case III of Schedule D.
- (2) As respects any approved personal pension scheme the Board may direct that, until such date as the Board may specify, annuities acquired with funds held for the purposes of the scheme shall be charged to tax as annual payments under Case III of Schedule D, and tax shall be deductible under sections 348 and 349 accordingly.”
- (2) This section shall apply in relation to payments which are made under annuities on or after 6th April 1995.

## 110 Annuities derived from retirement benefits schemes

- (1) In section 597 of the Taxes Act 1988 (pensions paid under retirement benefits schemes generally charged under Schedule E) the following subsection shall be inserted after subsection (2)—

“(3) Without prejudice to subsection (1) above, where funds held for the purposes of any scheme which is approved or is being considered for approval under this Chapter are used to acquire an annuity—

- (a) the annuity shall be charged to tax under Schedule E and section 203 shall apply accordingly;
- (b) the annuity shall not be charged to tax under Case III of Schedule D.”

- (2) This section shall apply in relation to payments which are made under annuities on or after the day on which this Act is passed.

### *Authorised unit trusts*

## 111 Rate of corporation tax

- (1) In section 468E of the Taxes Act 1988 (authorised unit trusts: corporation tax), for subsection (2) (deemed rate of corporation tax) there shall be substituted—

“(2) The rate of corporation tax—

- (a) for the financial year 1993, shall be deemed to be 22.5 per cent; and
- (b) subject to subsection (3) below and section 468EE, for any other financial year shall be deemed to be the rate at which income tax at the basic rate is charged for the year of assessment which begins on 6th April in the financial year concerned.”

- (2) After that section there shall be inserted—

### “468EE Corporation tax: cases where lower rate applies

- (1) Where this subsection applies, the rate of corporation tax for the financial year shall be deemed to be the rate at which income tax at the lower rate is charged for the year of assessment which begins on 6th April in that financial year.

- (2) Subsection (1) above only applies—

- (a) for the financial year 1994 and subsequent financial years; and
- (b) where, on a claim made within the period of twelve months from the end of the accounting period which or part of which falls in the financial year concerned, it is shown to the satisfaction of the inspector that throughout that accounting period the condition in subsection (3) below is fulfilled by the investments subject to the trusts of the authorised unit trust.

- (3) The condition in this subsection is fulfilled by the investments if the market value of such of those investments as are qualifying investments does not exceed 60 per cent. of the market value of all those investments.

- (4) For the purposes of subsection (3) above “qualifying investments” means any of the following investments—

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- (a) any money placed at interest;
  - (b) any security—
    - (i) including 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, but
    - (ii) excluding shares in a company;
  - (c) any shares in a building society; and
  - (d) an entitlement to a share in the investments subject to the trusts of another authorised unit trust, unless, throughout the relevant period, the condition in subsection (5) below is fulfilled by the investments subject to the trusts of that other authorised unit trust.
- (5) The condition in this subsection is fulfilled by the investments if the market value of such of the investments as fall within paragraphs (a) to (c) of subsection (4) above does not exceed 60 per cent. of the market value of all those investments.
- (6) In subsection (4)(d) above “the relevant period” means the accounting period in relation to which by virtue of subsection (2)(b) above the question whether the entitlement is a “qualifying investment” falls to be determined.
- (7) For the purposes of this section “investment” does not include cash awaiting investment.
- (8) The Treasury may by order amend this section so as to extend or restrict the meaning of qualifying investments for the purposes of subsection (3) above.
- (9) An order under subsection (8) above may contain such transitional provision as the Treasury think necessary or expedient.”

## **112 Distributions of authorised unit trusts**

Schedule 14 to this Act (distributions of authorised unit trusts) shall have effect.

## **113 Umbrella schemes**

- (1) In section 468 of the Taxes Act 1988 (authorised unit trusts), in subsection (6) (definitions) at the beginning there shall be inserted “Subject to subsections (7) to (9) below”.
- (2) After that subsection there shall be added—
- “(7) Each of the parts of an umbrella scheme shall be regarded for the purposes of this Chapter as an authorised unit trust and the scheme as a whole shall not be so regarded.
  - (8) In this section, “umbrella scheme” means a unit trust scheme—
    - (a) which provides arrangements for separate pooling of the contributions of the participants and the profits or income out of which payments are to be made to them;
    - (b) under which the participants are entitled to exchange rights in one pool for rights in another; and



- (c) in the case of which an order under section 78 of the Financial Services Act 1986 is in force;  
and any reference to a part of an umbrella scheme is a reference to such of the arrangements as relate to a separate pool.
- (9) In relation to a part of an umbrella scheme, any reference—
- (a) to investments subject to the trusts of an authorised unit trust, shall have effect as a reference to such of the investments as under the arrangements form part of the separate pool to which the part of the umbrella scheme relates; and
  - (b) to a unit holder, shall have effect as a reference to a person for the time being having rights in that separate pool.”
- (3) In section 469 of the Taxes Act 1988 (other unit trusts)—
- (a) in subsection (1)(a) (application of section) for the words “that is not an authorised unit trust” there shall be substituted “that is neither an authorised unit trust nor an umbrella scheme”; and
  - (b) after subsection (6) there shall be inserted—  

“(6A) In this section “umbrella scheme” has the same meaning as in section 468.”
- (4) Subject to what follows, the amendments made by subsections (1) to (3) above shall have effect on and after 1st April 1994 in relation to unit trust schemes and their participants.
- (5) Nothing in those amendments shall have effect before the relevant date in relation to a unit trust scheme which immediately before 1st April 1994 falls within the definition of an umbrella scheme contained in those amendments.
- (6) In this section “the relevant date”, means, in relation to a unit trust scheme, the day after the end of the last distribution period of the scheme which commences before 1st April 1994.
- (7) On and after the relevant date, the amendments made by subsections (1) to (3) above shall have effect in relation to a scheme—
- (a) to which subsection (5) above applies, and
  - (b) which immediately before the relevant date falls within the definition of an umbrella scheme contained in those amendments,
- subject to subsections (8) to (10) below.
- (8) The amendments made by subsections (1) to (3) above shall not prevent the trustees of the scheme on and after the relevant date—
- (a) making a claim under section 239(3) of the Taxes Act 1988 (carry back of surplus advance corporation tax) in respect of accounting periods of the scheme ending before the relevant date; or
  - (b) continuing anything which immediately before that date was in the process of being done for the purposes of tax in relation to such accounting periods.
- (9) Where immediately before the relevant date the trustees of the scheme are entitled to carry forward an excess under—
- (a) section 75(3) of the Taxes Act 1988 (carry forward of management expenses and sums treated as management expenses), or

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- (b) section 241 of that Act (carry forward of franked investment income), then, on the relevant date, that right shall be translated into a right in each successor company to carry forward a proportionate part of that excess.
- (10) Where immediately before the relevant date the trustees of the scheme have an amount of surplus advance corporation tax which—
- (a) has not been dealt with under subsection (3) of section 239 of the Taxes Act 1988, and
  - (b) is due to be treated under subsection (4) of that section as if it were advance corporation tax paid by them in their next accounting period,
- then, on and after the relevant date, a proportionate part of that amount shall be treated as paid under subsection (4) of that section by each successor company in its first accounting period.
- (11) In subsections (9) and (10) above “successor company” means, in relation to a scheme, each part of the scheme which on the relevant date becomes an authorised unit trust.

*Exchange gains and losses*

**114 Assets and liabilities**

- (1) In section 154 of the Finance Act 1993 (definitions connected with assets) the following subsections shall be inserted after subsection (5)—
- “(5A) The question whether a company becomes unconditionally entitled at a particular time to an asset falling within section 153(1)(a) above shall be determined without reference to the fact that there is or is not a later time when, or before which, the whole or any part of the debt is required to be paid.
- (5B) Where an asset falling within section 153(1)(a) above consists of a right to interest—
- (a) a company becomes unconditionally entitled to the asset at the time when or (as the case may be) before which the interest is required to be paid to the company, and
  - (b) subsection (5A) above shall not apply.”
- (2) In that section the following subsections shall be inserted after subsection (13)—
- “(13A) In a case where—
- (a) a company would (apart from this subsection) become entitled to an asset at a particular time (the earlier time) by virtue of subsections (1) to (11) above,
  - (b) the asset falls within section 153(1)(a) above and the debt concerned is a debt on a security, or the asset is a share,
  - (c) the time at which the company, in drawing up its accounts, regards itself as becoming entitled to the asset is a time (the later time) later than the earlier time, and
  - (d) the accounts are drawn up in accordance with normal accountancy practice,
- the company shall be taken to become entitled to the asset at the later time and not at the earlier time.

(13B) In a case where—

- (a) a company would (apart from this subsection) cease to be entitled to an asset at a particular time (the earlier time) by virtue of subsections (1) to (11) above,
- (b) the asset falls within section 153(1)(a) above and the debt concerned is a debt on a security, or the asset is a share,
- (c) the time at which the company, in drawing up its accounts, regards itself as ceasing to be entitled to the asset is a time (the later time) later than the earlier time, and
- (d) the accounts are drawn up in accordance with normal accountancy practice,

the company shall be taken to cease to be entitled to the asset at the later time and not at the earlier time.”

(3) In section 155 of that Act (definitions connected with liabilities) the following subsections shall be inserted after subsection (4)—

“(4A) The question whether a company becomes unconditionally subject at a particular time to a liability falling within section 153(2)(a) above shall be determined without reference to the fact that there is or is not a later time when, or before which, the whole or any part of the debt is required to be paid.

(4B) Where a liability falling within section 153(2)(a) above consists of a duty to pay interest—

- (a) a company becomes unconditionally subject to the liability at the time when or (as the case may be) before which the company is required to pay the interest, and
- (b) subsection (4A) above shall not apply.”

## **115 Currency contracts: net payments**

(1) In section 126 of the Finance Act 1993 (accrual on currency contracts) the following subsection shall be inserted after subsection (1)—

“(1A) In deciding whether a contract falls within subsection (1) above it is immaterial that the rights and duties there mentioned may be exercised and discharged by a payment made to or, as the case may require, by the qualifying company of an amount (in whatever currency) designed to represent any difference in value at the specified time between the two payments referred to in that subsection.”

(2) In section 146 of that Act (early termination of currency contract) the following subsection shall be inserted after subsection (1)—

“(1A) This section also applies where—

- (a) a qualifying company ceases to be entitled to rights and subject to duties under a currency contract, and
- (b) it so ceases by virtue of the making of a payment to or by the company of an amount (in whatever currency) designed to represent any difference in value at the specified time between the two payments referred to in section 126(1) above.”

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- (3) In section 164(2) of that Act (definition of currency contract for purposes of the Chapter) after “(1)” there shall be inserted “and (1A)”.

## 116 Currency contracts: matching

- (1) Schedule 15 to the Finance Act 1993 (alternative calculation) shall be amended as follows.
- (2) The following shall be inserted after paragraph 4—

### *“Currency contracts: matching*

- 4A (1) Regulations may provide that where—
- (a) as regards a contract an initial exchange gain or initial exchange loss accrues to a company for an accrual period under section 126(5) of this Act or would so accrue apart from regulations under this Schedule,
  - (b) the relevant duty is eligible to be matched on any day in the accrual period with an asset held by the company, and such other conditions as may be prescribed are fulfilled, and
  - (c) an election is made in accordance with the regulations to match the duty with the asset on any such day and the election has effect by virtue of the regulations,
- the amount of the gain or loss shall be found in accordance with the alternative method of calculation.
- (2) Regulations may also provide that as regards any day in respect of which an election has effect the accrued amount shall be ascertained in accordance with prescribed rules.
- (3) The reference in sub-paragraph (1) above to the relevant duty is to the duty to which, under the contract, the company becomes subject as regards the second currency (within the meaning given by section 126 of this Act).
- (4) Where regulations are made under this paragraph, sub-paragraphs (3) to (12) of paragraph 4 above shall apply as they apply where regulations are made under that paragraph; but in the application of those sub-paragraphs by virtue of this sub-paragraph—
- (a) the references to a liability in sub-paragraphs (3), (4), (9) and (11) shall be construed as references to a duty,
  - (b) the references to liabilities in sub-paragraphs (3) and (4) shall be construed as references to duties, and
  - (c) the reference in sub-paragraph (11)(a) to sub-paragraph (1) of paragraph 4 shall be construed as a reference to sub-paragraph (1) above.”
- (3) The following paragraph shall be inserted after paragraph 5—
- “5A (1) This paragraph applies where regulations under both paragraph 2 and paragraph 4A above apply—
- (a) as regards the same contract, and
  - (b) for the same accrual period.

- (2) Regulations may provide that, as regards any day falling within the period and identified in accordance with prescribed rules, the accrued amount shall be ascertained in accordance with rules prescribed under this paragraph (rather than provisions made under either of those paragraphs).”
- (4) In paragraph 6—
- (a) for “paragraphs 2 to 5 above” there shall be substituted “the relevant paragraphs”;
- (b) at the end there shall be inserted “; and the relevant paragraphs are paragraphs 2, 3, 4 and 5 above.”
- (5) In paragraph 7 for “5” there shall be substituted “5A”.

### *Capital allowances*

#### **117 Expenditure on machinery or plant**

- (1) At the end of section 83 of the Capital Allowances Act 1990 (interpretation of Part II, which relates to machinery and plant) there shall be added—
- “(7) Schedule AA1 (which excludes certain expenditure from the expression “expenditure on the provision of machinery or plant”) shall have effect.” and before Schedule A1 to that Act there shall be inserted—

#### “SCHEDULE AA1

##### EXCLUSIONS FROM EXPENDITURE ON MACHINERY OR PLANT

#### *Buildings*

- 1 (1) For the purposes of this Act expenditure on the provision of machinery or plant does not include any expenditure on the provision of a building.
- (2) For the purposes of this Schedule “building” includes any asset in the building—
- (a) which is incorporated into the building, or
- (b) which, by reason of being moveable or otherwise, is not so incorporated, but is of a kind normally incorporated into buildings;
- and in particular includes any asset in or in connection with the building included in any of the items in column 1 or column 2 of the following Table (“Table 1”).
- (3) Sub-paragraph (1) above does not affect the question whether expenditure on the provision of—
- (a) any asset falling within column 2 of Table 1,
- (b) any cold store,
- (c) any caravan provided mainly for holiday lettings,
- (d) any building provided for testing aircraft engines run within the building, or

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(e) any moveable building intended to be moved in the course of the trade,

is for the purposes of this Act expenditure on the provision of machinery or plant.

(4) Table 1 is to be read subject to the notes following it.

Table 1

<i>Assets included in the expression 'building'</i>	<i>Assets so included, but expenditure on which is unaffected by the Schedule</i>
A. Walls, floors, ceilings, doors, gates, shutters, windows and stairs.	1. Electrical, cold water, gas and sewerage systems— (a) provided mainly to meet the particular requirements of the trade, or (b) provided mainly to serve particular machinery or plant used for the purposes of the trade. 2. Space or water heating systems; powered systems of ventilation, air cooling or air purification; and any ceiling or floor comprised in such systems.
B. Mains services, and systems, of water, electricity and gas.	3. Manufacturing or processing equipment; storage equipment, including cold rooms; display equipment; and counters, checkouts and similar equipment. 4. Cookers, washing machines, dishwashers, refrigerators and similar equipment; washbasins, sinks, baths, showers, sanitary ware and similar equipment; and furniture and furnishings.
C. Waste disposal systems.	5. Lifts, hoists, escalators and moving walkways. 6. Sound insulation provided mainly to meet the particular requirements of the trade.
D. Sewerage and drainage systems.	7. Computer, telecommunication and surveillance systems (including their wiring or other links). 8. Refrigeration or cooling equipment.
E. Shafts or other structures in which lifts, hoists, escalators and moving walkways are installed.	9. Sprinkler equipment and other equipment for extinguishing or containing fire; fire alarm systems.

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<i>Assets included in the expression 'building'</i>	<i>Assets so included, but expenditure on which is unaffected by the Schedule</i>
F. Fire safety systems.	10. Burglar alarm systems. 11. Any machinery (including devices for providing motive power) not within any other item in this column. 12. Strong rooms in bank or building society premises; safes. 13. Partition walls, where moveable and intended to be moved in the course of the trade. 14. Decorative assets provided for the enjoyment of the public in the hotel, restaurant or similar trades 15. Advertising hoardings; and signs, displays and similar assets. 16. Swimming pools (including diving boards, slides and structures on which such boards or slides are mounted).

*Notes:*

- 1 An asset does not fall within column 2 if its principal purpose is to insulate or enclose the interior of the building or provide an interior wall, a floor or a ceiling which (in each case) is intended to remain permanently in place.
- 2 “Electrical systems” include lighting systems.

*Structures, assets and works*

- 2 (1) For the purposes of this Act expenditure on the provision of machinery or plant does not include any expenditure on—
  - (a) the provision of structures or other assets to which this paragraph applies, or
  - (b) any works involving the alteration of land.
- (2) This paragraph applies to any structure or other asset which falls within column 1 of the following Table (“Table 2”).
- (3) Sub-paragraph (1) above does not affect the question whether—
  - (a) any expenditure falling within column 2 of Table 2, or
  - (b) any expenditure on the provision of any asset of a description within any of the items in column 2 of Table 1,is for the purposes of this Act expenditure on the provision of machinery or plant.
- (4) Table 2 is to be read subject to the notes following it.

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Table 2

<i>(1)</i> <i>Structures and assets</i>	<i>(2)</i> <i>Expenditure which is unaffected by the Schedule</i>
A. Any tunnel, bridge, viaduct, aqueduct, embankment or cutting.	1. Expenditure on the alteration of land for the purpose only of installing machinery or plant.
B. Any way or hard standing, such as a pavement, road, railway or tramway, a park for vehicles or containers, or an airstrip or runway.	2. Expenditure on the provision of dry docks. 3. Expenditure on the provision of any jetty or similar structure provided mainly to carry machinery or plant.
C. Any inland navigation, including a canal or basin or a navigable river.	4. Expenditure on the provision of pipelines, or underground ducts or tunnels with a primary purpose of carrying utility conduits. 5. Expenditure on the provision of towers provided to support floodlights.
D. Any dam, reservoir or barrage (including any sluices, gates, generators and other equipment associated with it).	6. Expenditure on the provision of any reservoir incorporated into a water treatment works or on the provision of any service reservoir of treated water for supply within any housing estate or other particular locality.
E. Any dock.	7. Expenditure on the provision of silos provided for temporary storage or on the provision of storage tanks. 8. Expenditure on the provision of slurry pits or silage clamps.
F. Any dike, sea wall, weir or drainage ditch.	9. Expenditure on the provision of fish tanks or fish ponds.
G. Any structure not within any other item in this column.	10. Expenditure on the provision of rails, sleepers and ballast for a railway or tramway. 11. Expenditure on the provision of structures and other assets for providing the setting for any ride at an amusement park or exhibition. 12. Expenditure on the provision of fixed zoo cages.



*Notes:*

- 1 “Dock” includes—
  - (a) any harbour, wharf, pier, marina or jetty, and
  - (b) any other structure in or at which vessels may be kept or merchandise or passengers may be shipped or unshipped.
- 2 An industrial structure, that is, anything (other than a building) which is or is to be an industrial building or structure as defined in section 18, is not within item G in column 1; and that section, as it applies for the purposes of this note, shall have effect as if—
  - (a) in subsection (1)(b), after “electricity” there were inserted “gas”,
  - (b) after that paragraph there were inserted—
    - “(ba) for the purposes of a trade which consists in the provision of telecommunication, television or radio services; or”, and
  - (c) in subsection (9), after the definition of “foreign plantation”, there were inserted—

““gas undertaking” means an undertaking for the extraction, production, processing or distribution of gas”.

*Land*

- 3 (1) For the purposes of this Act expenditure on the provision of machinery or plant does not include expenditure on the acquisition of any interest in land.
- (2) This paragraph does not apply for the purposes of Part II to any asset which is so installed or otherwise fixed in or to any description of land as to become, in law, part of that land.

*General exemptions*

- 4 Paragraphs 1(1) and 2(1) above do not apply to any expenditure to which section 67, 67A, 68, 69, 70 or 71 applies.

*Interpretation*

- 5 (1) In this Schedule—
  - (a) “structure” means a fixed structure of any kind, other than a building, and
  - (b) references to the provision of any building, structure or other asset include references to its construction or acquisition.
- (2) Nothing in this Schedule affects the question whether expenditure on the provision of any glasshouse which is constructed so that the required environment (that is, air, heat, light, irrigation and temperature) for growing plants is provided automatically by means of devices which are an integral part of its structure is, for the purposes of this Act, expenditure on the provision of machinery or plant.

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- (3) The definition of “land” in Schedule 1 to the Interpretation Act 1978, in its application for the purposes of this Schedule, shall have effect with the omission of the words “buildings and other structures”; and, subject to that, “interest in land” in paragraph 3 above has the same meaning as in Chapter VI of Part II.”
- (2) This section shall have effect in relation to expenditure incurred on or after 30th November 1993 unless—
- (a) it is incurred before 6th April 1996 in pursuance of a contract entered into before 30th November 1993, or
  - (b) it is incurred before 6th April 1996 in pursuance of a contract entered into, for the purpose of securing that the obligations under a contract entered into before 30th November 1993 are complied with, on or after 30th November 1993.

### **118 Expenditure on machinery or plant: notification**

- (1) A first year allowance shall not be made under—
- (a) section 22 of the Capital Allowances Act 1990 (first-year allowances in respect of expenditure on machinery or plant), or
  - (b) section 41 of the Finance Act 1971 (provision corresponding to section 22 applicable to earlier chargeable periods),
- for any chargeable period (whenever ending) unless the relevant condition is fulfilled with respect to that period.
- (2) For the purposes of—
- (a) section 25(1) of the 1990 Act (meaning of qualifying expenditure for the purposes of writing-down allowances for expenditure on machinery or plant), and
  - (b) section 44(4) of the 1971 Act (provision corresponding to section 25(1) applicable to earlier chargeable periods),
- no expenditure may form part of a person’s qualifying expenditure for any chargeable period (whenever ending) unless the relevant condition is fulfilled with respect to that period.
- (3) The relevant condition is fulfilled with respect to a chargeable period ending on or after 30th November 1993 if notice of the expenditure is given to the inspector, in such form as the Board may require, not later than two years after the end of that period.
- (4) The relevant condition is fulfilled with respect to a chargeable period ending before 30th November 1993 if—
- (a) the expenditure was included in a computation which—
    - (i) was required to be made for any tax purpose,
    - (ii) was given before that date to an inspector, and
    - (iii) was not contained in a document prepared primarily for a purpose which was not a tax purpose; or
  - (b) notice of the expenditure is given to the inspector, in such form as the Board may require, not later than three years after the end of that period; or
  - (c) if the chargeable period ends on or after 1st December 1990, notice of the expenditure is so given before the passing of this Act.

- (5) If in a particular case it appears to the Board appropriate to do so, having regard to all the circumstances of the case (including in particular any unforeseeable circumstances which have delayed the giving of any notice or computation), they may extend the period within which for the purposes of subsection (3) or (4) above any notice or computation is to be given to the inspector.
- (6) For the purposes of the provisions mentioned in subsection (2) above expenditure which has not formed part of a person's qualifying expenditure for a previous chargeable period may not form part of his qualifying expenditure for a subsequent chargeable period unless the machinery or plant on which the expenditure was incurred belongs to that person at some time in that subsequent period or its basis period.
- (7) No relief shall be given under section 33 or 42 of the Taxes Management Act 1970 in respect of a claim of error or mistake to the extent that the error or mistake consists of or arises from a failure to fulfil the relevant condition in relation to a chargeable period.
- (8) In this section "the 1990 Act" means the Capital Allowances Act 1990 and "the 1971 Act" means the Finance Act 1971; and expressions used in subsections (1) to (6) above have the same meaning as in the 1990 Act or (as the case may be) the 1971 Act.
- (9) Any such adjustment as is appropriate in consequence of this section may be made (whether by way of discharge or repayment of tax, the making of an assessment or otherwise).

## **119 Transactions between connected persons**

- (1) Section 158(2) of the Capital Allowances Act 1990 (election exercisable in the case of transactions between connected persons, etc.) shall be assumed always to have had effect subject to the amendments made by section 117(2) and (3) of the Finance Act 1993 (transactions between connected persons: qualifying hotels, commercial buildings and scientific research expenditure).
- (2) Paragraph 4(2) of Schedule 7 to the Capital Allowances Act 1968 (provision corresponding to section 158(2)) shall be assumed always to have had effect subject to amendments corresponding to those made to section 158(2) of the 1990 Act by section 117(2) and (3) of the Finance Act 1993.

## **120 Balancing charge on realisation of capital value**

- (1) The Capital Allowances Act 1990 shall be amended as follows:
- (2) In section 4 (balancing adjustments)—
  - (a) in subsection (1) (events giving rise to an adjustment), after "or" at the end of paragraph (d) there is inserted—

“(dd) any capital value is realised (within the meaning of section 4A), or”, and for “subsection (2)” there is substituted “subsections (2) and (9A)”, and
  - (b) after subsection (9) there is inserted—

“(9A) No balancing allowance shall be made by reason of any event falling within subsection (1)(dd) above; and (subject to that) in relation to such an event—

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- (a) this Part and (so far as relating to it) Part VIII shall have effect as if references to sale, insurance, salvage or compensation moneys were references to the capital value realised, and
- (b) subsections (5) to (7) and (9) above shall have effect as if immediately after the event the capital expenditure were reduced by the amount of the capital value realised”.

(3) After that section there is inserted—

**“4A Realisation of capital value**

- (1) Where any capital expenditure has been incurred on the construction of a building or structure and, while the building or structure is an industrial building or structure or after it has ceased to be one—
  - (a) an amount of capital value is paid which is attributable to an interest in land (the “subordinate interest”) to which the relevant interest in the building or structure is or will be subject, and
  - (b) the payment is made not more than seven years after the agreement relating to the capital expenditure was entered into or (if the agreement was conditional) the time when the agreement became unconditional,
 capital value of that amount is realised for the purposes of this Part on making the payment.
- (2) For the purposes of this section, capital value is attributable to the subordinate interest if—
  - (a) it is paid in consideration of the grant of the subordinate interest,
  - (b) it is paid in lieu of any rent payable by the person entitled to the subordinate interest or paid in consideration of the assignment of such rent, or
  - (c) it is paid in consideration of the surrender of the subordinate interest or the variation or waiver of any of the terms on which it was granted.
- (3) For the purposes of this section, “capital value”—
  - (a) means any capital sum and includes what would have been a capital sum if it had taken the form of a money payment, and “payment” and “paid” shall be interpreted accordingly, but
  - (b) does not include so much of any sum as corresponds to any amount of rent or profits falling to be computed by reference to that sum under section 34 of the principal Act (premium, etc. treated as rent or Schedule D profits).
- (4) Where—
  - (a) no premium is given in consideration of the grant of the subordinate interest or any premium given is less than the amount which would have been given by way of premium if the transaction had been at arm’s length, and
  - (b) no commercial rent is payable in respect of the subordinate interest,
 subsection (2) above shall have effect as if the amount referred to in paragraph (a) above (and not any premium actually given) were paid on and in consideration of the grant of the interest.

- (5) Where—
- (a) any rent payable in respect of the subordinate interest is assigned, the subordinate interest is surrendered or any of the terms on which the subordinate interest was granted are varied or waived, but
  - (b) no value is given in consideration of the event concerned, or any value given in consideration of the event concerned is less than the amount that would have been given if the transaction had been at arm's length,
- subsection (2) above shall have effect as if that amount (and not any value actually given) were paid on and in consideration of the event concerned.
- (6) Where any value given in lieu of any rent payable by the person entitled to the subordinate interest is less than the amount that would have been given if the transaction had been at arm's length, subsection (2) above shall have effect as if that amount (and not any value actually given) had been paid.
- (7) This section shall apply with the omission of subsection (1)(b) above in any case where—
- (a) arrangements under which the person entitled to the relevant interest acquired it include provision in respect of the subsequent sale of the relevant interest, the subsequent grant out of the relevant interest of an interest in land or any other event on which capital value attributable to the subordinate interest would be, or be treated as, paid, and
  - (b) either the provision concerned requires such a sale, grant or other event to occur or such a sale, grant or other event is substantially more likely to occur than if the provision had not been made;
- and the reference to arrangements in paragraph (a) above includes any arrangements made in connection with the acquisition of the relevant interest.
- (8) This section does not apply to the grant of any interest in land to which an election under section 11 applies.
- (9) In this section “interest in land” means—
- (a) a leasehold estate in the land (whether in the nature of a head-lease, sub-lease or under-lease),
  - (b) an easement or servitude, and
  - (c) a licence to occupy land;
- and references to granting an interest in land include agreeing to grant any interest falling within paragraphs (a) to (c) above.
- (10) In this section “commercial rent” means such rent as may reasonably be expected to have been required in respect of the subordinate interest (having regard to any premium given in consideration of the grant of the interest) if the transaction had been at arm's length.
- (11) For the purposes of this section, where—
- (a) an agreement is made to pay in respect of any event an amount of capital value which would be attributable to the subordinate interest, and
  - (b) the agreement is made or (if the agreement is conditional) becomes unconditional before the expiry of the period of seven years referred to in subsection (1)(b) above, but the event occurs, or any payment in consideration of the event is made, afterwards,

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the event or payment shall be treated as occurring or made before the expiry of the period.

- (12) For the purposes of this section, an agreement relates to any capital expenditure referred to in subsection (1) above if—
- (a) it is the agreement under which the expenditure was incurred, or
  - (b) where the expenditure is deemed for the purposes of sections 1 to 8 to have been incurred by a person who acquired the relevant interest, it is the agreement under which he acquired the relevant interest.
- (13) In the application of this section to Scotland—
- (a) references to assignment shall be read as references to assignation, and
  - (b) references to a leasehold estate in land shall be read as references to a lease of land.”
- (4) In section 5 (restriction of balancing allowance where interest has been sold subject to subordinate interest), after subsection (2) there is inserted—
- “(2A) Where the net proceeds to the relevant person of the sale fall to be increased or determined under subsection (2) above, those proceeds as so increased or determined shall be taken to be reduced by the amount of any capital value realised before the sale”.
- (5) In section 6 (buildings, etc. in enterprise zones), in subsection (4), after “4(1)” there is inserted “4A(1)”.
- (6) In section 8 (writing off expenditure)—
- (a) after subsection (12A) there is inserted—
 

“(12B) Where any event occurs to which section 4(1)(dd) applies, there shall be treated as written off as at the time of the event an amount equal to the capital value realised”, and
  - (b) in subsection (13), for “(12A)” there is substituted “(12B)”.
- (7) Subject to subsection (8) below, this section applies—
- (a) where capital expenditure has been incurred under a relevant contract, or
  - (b) where capital expenditure is deemed for the purposes of sections 1 to 8 to have been incurred by a person who under a relevant contract acquires the relevant interest;
- and “relevant contract” means a contract entered into on or after 13th January 1994 or a conditional contract entered into before that date which becomes unconditional after 25th February 1994.
- (8) This section applies to capital expenditure on the construction of a building or structure only if the expenditure, or, in the case of expenditure falling within subsection (7)(b) above, the actual expenditure on the construction of the building or structure to which the expenditure so falling relates, is incurred, or is incurred under a contract entered into, at a time when the site of the building or structure is wholly or mainly in an enterprise zone, being a time not more than 10 years after the site was first included in the zone.

## **121 Used buildings etc. in enterprise zones**

(1) Where—

- (a) the relevant interest in a building or structure is sold on a date falling after the expiry of the period of two years beginning with the date on which the building or structure was first used, and
- (b) that period ends, and the date on which the relevant interest is sold falls, within the period beginning with 13th January 1994 and ending with 31st August 1994,

paragraphs (c) and (d) of section 10B(1) of the Capital Allowances Act 1990 (purchaser of building etc. in enterprise zone within two years of first use eligible for allowances) shall have effect as if the period there referred to were the period beginning with the date on which the building or structure was first used and ending with 31st August 1994.

(2) Expressions used in this section and in Part I of the Capital Allowances Act 1990 have the same meaning as in that Part.

### *Securities*

## **122 Sale and repurchase of securities: deemed manufactured payments**

After section 737 of the Taxes Act 1988 there shall be inserted the following sections—

### *“Sale and repurchase of securities: deemed manufactured payments*

737A (1) This section applies where on or after the appointed day a person (the transferor) agrees to sell any securities, and under the same or any related agreement the transferor or another person connected with him—

- (a) is required to buy back the securities, or
- (b) acquires an option, which he subsequently exercises, to buy back the securities;

but this section does not apply unless the conditions set out in subsection (2) below are fulfilled.

(2) The conditions are that—

- (a) as a result of the transaction, a dividend which becomes payable in respect of the securities is receivable otherwise than by the transferor,
- (b) the dividend is not, by virtue of any other provision of the Tax Acts, treated as income of the transferor,
- (c) there is no requirement under any agreement mentioned in subsection (1) above for a person to pay to the transferor on or before the relevant date an amount representative of the dividend, and
- (d) it is reasonable to assume that, in arriving at the repurchase price of the securities, account was taken of the fact that the dividend is receivable otherwise than by the transferor.

(3) For the purposes of subsection (2) above the relevant date is the date when the repurchase price of the securities becomes due.

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- (4) Where it is a person connected with the transferor who is required to buy back the securities, or who acquires the option to buy them back, references in the following provisions of this section to the transferor shall be construed as references to the connected person.
- (5) Where this section applies, section 737 and Schedule 23A and dividend manufacturing regulations shall apply as if—
- (a) the relevant person were required, under the arrangements for the transfer of the securities, to pay to the transferor an amount representative of the dividend mentioned in subsection (2)(a) above,
  - (b) a payment were made by that person to the transferor in discharge of that requirement, and
  - (c) the payment were made on the date when the repurchase price of the securities becomes due.
- (6) In subsection (5) above “the relevant person” means—
- (a) where subsection (1)(a) above applies, the person from whom the transferor is required to buy back the securities;
  - (b) where subsection (1)(b) above applies, the person from whom the transferor has the right to buy back the securities;
- and in that subsection “dividend manufacturing regulations” means regulations under Schedule 23A (whenever made).

*Interpretation of section 737A*

- 737B (1) In section 737A and this section “securities” means United Kingdom equities, United Kingdom securities or overseas securities; and—
- (a) where the securities mentioned in section 737A(1) are United Kingdom securities, references in section 737A to a dividend shall be construed as references to a periodical payment of interest;
  - (b) where the securities mentioned in section 737A(1) are overseas securities, references in section 737A to a dividend shall be construed as references to an overseas dividend.
- (2) In this section “United Kingdom equities”, “United Kingdom securities”, “overseas securities” and “overseas dividend” have the meanings given by paragraph 1(1) of Schedule 23A.
- (3) For the purposes of section 737A agreements are related if each is entered into in pursuance of the same arrangement (regardless of the date on which either agreement is entered into).
- (4) In section 737A “the repurchase price of the securities” means—
- (a) where subsection (1)(a) of that section applies, the amount which, under any agreement mentioned in section 737A(1), the transferor or connected person is required to pay for the securities bought back, or
  - (b) where subsection (1)(b) of that section applies, the amount which under any such agreement the transferor or connected person is required, if he exercises the option, to pay for the securities bought back.



- (5) In section 737A and subsection (4) above references to buying back securities include references to buying similar securities.
- (6) For the purposes of subsection (5) above securities are 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 “interest” here includes dividends.
- (7) For the purposes of section 737A and subsection (4) above—
  - (a) a person who is connected with the transferor and is required to buy securities sold by the transferor shall be treated as being required to buy the securities back notwithstanding that it was not he who sold them, and
  - (b) a person who is connected with the transferor and acquires an option to buy securities sold by the transferor shall be treated as acquiring an option to buy the securities back notwithstanding that it was not he who sold them.
- (8) Section 839 shall apply for the purposes of section 737A and this section.
- (9) In section 737A “the appointed day” means such day as the Treasury may by order appoint, and different days may be appointed in relation to—
  - (a) United Kingdom equities,
  - (b) United Kingdom securities, and
  - (c) overseas securities.

*Deemed manufactured payments: further provisions*

- 737C (1) This section applies where section 737A applies.
- (2) Subsection (3) below applies where—
    - (a) the dividend mentioned in section 737A(2)(a) is a dividend on United Kingdom equities, and
    - (b) by virtue of section 737A(5), section 737 and paragraph 2 of Schedule 23A apply, or paragraph 2 of Schedule 23A applies, in relation to the payment which is treated under section 737A(5) as having been made;and in subsection (3) below “the deemed manufactured dividend” means that payment.
  - (3) Where this subsection applies—
    - (a) the amount of the deemed manufactured dividend shall be taken to be an amount equal to the amount of the dividend mentioned in section 737A(2)(a);
    - (b) the repurchase price of the securities shall be treated, for the purposes of the Tax Acts other than section 737A and of the 1992 Act, as increased by an amount equal to the gross amount of the deemed manufactured dividend.
  - (4) In subsection (3) above the reference to the gross amount of the deemed manufactured dividend is to the aggregate of—

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- (a) the amount of the deemed manufactured dividend, and
  - (b) the amount of the tax credit that would have been issued in respect of the deemed manufactured dividend had the deemed manufactured dividend in fact been a dividend on the United Kingdom equities.
- (5) Subsection (6) below applies where—
  - (a) the dividend mentioned in section 737A(2)(a) is a periodical payment of interest on United Kingdom securities, and
  - (b) by virtue of section 737A(5), section 737 applies in relation to the payment which is treated under section 737A(5) as having been made;and in subsection (6) below “the deemed manufactured interest” means the payment referred to in paragraph (b) above.
- (6) Where this subsection applies, the amount of the deemed manufactured interest shall be taken to be an amount equal to the gross amount of the periodical payment referred to in subsection (5)(a) above reduced by an amount equal to income tax thereon at the basic rate for the year of assessment in which that periodical payment is made.
- (7) Subsection (8) below applies where—
  - (a) the dividend mentioned in section 737A(2)(a) is a periodical payment of interest on United Kingdom securities, and
  - (b) by virtue of section 737A(5), paragraph 3 of Schedule 23A applies in relation to the payment which is treated under section 737A(5) as having been made (whether or not section 737 also applies in relation to that payment);and in subsection (8) below “the deemed manufactured interest” means the payment referred to in paragraph (b) above.
- (8) Where this subsection applies—
  - (a) the gross amount of the deemed manufactured interest shall be taken to be the amount found under paragraph 3(4) of Schedule 23A;
  - (b) any deduction which, by v 3 of Schedule 23A, is required to be made out of the gross amount of the deemed manufactured interest shall be deemed to have been made.
- (9) Where subsections (6) and (8) above apply, or where subsection (8) above applies, the repurchase price of the securities shall be treated, for the purposes of the Tax Acts other than section 737A and of the 1992 Act, as increased by the gross amount of the deemed manufactured interest.
- (10) Subsection (11) below applies where—
  - (a) the dividend mentioned in section 737A(2)(a) is an overseas dividend, and
  - (b) by virtue of section 737A(5), paragraph 4 of Schedule 23A applies in relation to the payment which is treated under section 737A(5) as having been made;and in subsection (11) below “the deemed manufactured overseas dividend” means that payment.
- (11) Where this subsection applies—

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- (a) the gross amount of the deemed manufactured overseas dividend shall be taken to be the amount found under paragraph 4(5)(b) and (c) of Schedule 23A;
- (b) any deduction which, by virtue of paragraph 4 of Schedule 23A, is required to be made out of the gross amount of the deemed manufactured overseas dividend shall be deemed to have been made;
- (c) the repurchase price of the securities shall be treated, for the purposes of the Tax Acts other than section 737A and of the 1992 Act, as increased by the gross amount of the deemed manufactured overseas dividend.

(12) In this section—

- (a) “United Kingdom equities”, “United Kingdom securities” and “overseas dividend” have the meanings given by paragraph 1(1) of Schedule 23A;
- (b) “the repurchase price of the securities” shall be construed in accordance with section 737B(4).”

## **123 Manufactured payments**

- (1) In section 715 of the Taxes Act 1988 (exceptions from provisions about deemed sums and reliefs under the accrued income scheme) in subsection (6) (exceptions in certain cases where section 737 has effect) after “section 737” there shall be inserted “or paragraph 3 or 4 of Schedule 23A”.
- (2) In Schedule 23A to the Taxes Act 1988 (manufactured dividends and interest) paragraph 5 (dividends and interest passing through the market) shall be amended as mentioned in subsections (3) to (5) below.
- (3) In sub-paragraph (2) (dividend which manufactured payment represents not to be treated as income of the payment manufacturer) the word “and” at the end of paragraph (b) shall be omitted and at the end of paragraph (c) there shall be inserted “and
  - (d) relief shall not be given under any provision of the Tax Acts to the payment manufacturer in respect of the manufactured payment.”
- (4) In sub-paragraph (4) (dividend which subsequent manufactured payment represents not to be treated as income of the subsequent manufacturer) the word “and” at the end of paragraph (b) shall be omitted and at the end of paragraph (c) there shall be inserted “and
  - (d) relief shall not be given under any provision of the Tax Acts to the payment manufacturer or any subsequent manufacturer in respect of the manufactured payment or any subsequent manufactured payment.”
- (5) After sub-paragraph (6) there shall be inserted—
  - “(7) In this paragraph “relief” means relief by way of—
    - (a) deduction in computing profits or gains; or
    - (b) deduction or set off against income or total profits.”

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- (6) Subsection (1) above shall apply where any of the contracts mentioned in section 715(6) of the Taxes Act 1988 is made on or after 30th November 1993.
- (7) Subsections (2) to (5) above shall apply in relation to payments made on or after 30th November 1993.

#### **124 Overseas dividend manufacturers: limitation of double taxation relief**

The following sub-paragraph shall be inserted after sub-paragraph (7) of paragraph 4 of Schedule 23A to the Taxes Act 1988—

- “(7A) Dividend manufacturing regulations may provide that where a person who is an overseas dividend manufacturer is entitled to relief under Part XVIII (or would be apart from provision made under this sub-paragraph) and the circumstances are such as may be prescribed—
- (a) his entitlement shall be extinguished, or
  - (b) if the regulations so provide, the amount of the relief shall be reduced to such extent as may be found in accordance with prescribed rules.”

#### *PAYE*

#### **125 Payment by intermediary**

After section 203A of the Taxes Act 1988 there shall be inserted—

##### **“203B PAYE: payment by intermediary**

- (1) Subject to subsection (2) below, where any payment of, or on account of, assessable income of an employee is made by an intermediary of the employer, the employer shall be treated, for the purposes of PAYE regulations, as making a payment of that income of an amount equal to the amount determined in accordance with subsection (3) below.
- (2) Subsection (1) above does not apply if the intermediary (whether or not he is a person to whom section 203 and PAYE regulations apply) deducts income tax from the payment he makes and accounts for it in accordance with PAYE regulations.
- (3) The amount referred to is—
  - (a) if the amount of the payment made by the intermediary is an amount to which the recipient is entitled after deduction of any income tax, the aggregate of the amount of that payment and the amount of any income tax due; and
  - (b) in any other case, the amount of the payment made by the intermediary.
- (4) For the purposes of this section, a payment of, or on account of, assessable income of an employee is made by an intermediary of the employer if it is made—
  - (a) by a person acting on behalf of the employer and at the expense of the employer or a person connected with him; or
  - (b) by trustees holding property for any persons who include or class of persons which includes the employee.

(5) Section 839 applies for the purposes of subsection (4) above.”

## **126 Employees working for persons other than their employers, etc**

(1) After section 203B of the Taxes Act 1988 (which is inserted by section 125 above) there shall be inserted—

### **“203C PAYE: employee of non-UK employer**

- (1) This subsection applies where—
  - (a) an employee during any period works for a person (“the relevant person”) who is not his employer;
  - (b) any payment of, or on account of, assessable income of the employee in respect of work done in that period is made by a person who is the employer or an intermediary of the employer;
  - (c) PAYE regulations do not apply to the person making the payment or, if he makes the payment as an intermediary of the employer, the employer; and
  - (d) income tax is not deducted or accounted for in accordance with the regulations by the person making the payment or, if he makes the payment as an intermediary of the employer, the employer.
- (2) Where subsection (1) above applies, the relevant person shall be treated, for the purposes of PAYE regulations, as making a payment of the assessable income of the employee of an amount equal to the amount determined in accordance with subsection (3) below.
- (3) The amount referred to is—
  - (a) if the amount of the payment actually made is an amount to which the recipient is entitled after deduction of any income tax, the aggregate of the amount of that payment and the amount of any income tax due; and
  - (b) in any other case, the amount of the payment actually made.
- (4) In this section and sections 203D and 203E “work”, in relation to an employee, means the performance of any duties of the office or employment of the employee and any reference to his working shall be construed accordingly.
- (5) Subsections (4) and (5) of section 203B apply for the purposes of this section as they apply for the purposes of that section.

### **203D PAYE: employee non-resident, etc**

- (1) This section applies in relation to an employee in a year of assessment only if—
  - (a) he is not resident or, if resident, not ordinarily resident in the United Kingdom; and
  - (b) he works or will work in the United Kingdom and also works or is likely to work outside the United Kingdom.
- (2) Where in relation to any year of assessment it appears to an officer of the Board that—

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- (a) some of the income of an employee to whom this section applies is assessable to income tax under Case II of Schedule E, but
- (b) an as yet unascertainable proportion of the income may prove not to be assessable,

the officer may, on an application made by the appropriate person, give a direction for determining a proportion of any payment made in that year of, or on account of, income of the employee which shall be treated for the purposes of PAYE regulations as a payment of assessable income of the employee.

- (3) In this section “the appropriate person” means—
  - (a) the person designated by the employer for the purposes of this section; or
  - (b) if no person is so designated, the employer.
- (4) An application for a direction under subsection (2) above shall provide such information as is available and is relevant to the giving of the direction.
- (5) A direction under subsection (2) above—
  - (a) shall specify the employee to whom and the year of assessment to which it relates;
  - (b) shall be given by notice to the appropriate person; and
  - (c) may be withdrawn by notice to the appropriate person from a date specified in the notice.
- (6) The date so specified may not be earlier than thirty days from the date on which the notice of the withdrawal is given.
- (7) Where—
  - (a) a direction under subsection (2) above has effect in relation to an employee to whom this section applies, and
  - (b) a payment of, or on account of, the income of the employee is made in the year of assessment to which the direction relates,

the proportion of the payment determined in accordance with the direction shall be treated for the purposes of PAYE regulations as a payment of assessable income of the employee.
- (8) Where in any year of assessment—
  - (a) no direction under subsection (2) above has effect in relation to an employee to whom this section applies, and
  - (b) any payment is made of, or on account of, the income of the employee,

the entire payment shall be treated for the purposes of PAYE regulations as a payment of assessable income of the employee.
- (9) Subsections (7) and (8) above are without prejudice to—
  - (a) any assessment in respect of the income of the employee in question; and
  - (b) any right to repayment of income tax overpaid and any obligation to pay income tax underpaid.

### **203E PAYE: mobile UK workforce**

- (1) This subsection applies where it appears to the Board that—

- (a) a person (“the relevant person”) has entered into or is likely to enter into an agreement that employees of another person (“the contractor”) shall in any period work for, but not as employees of, the relevant person;
  - (b) payments of, or on account of, assessable income of the employees in respect of work done in that period are likely to be made by or on behalf of the contractor; and
  - (c) PAYE regulations would apply on the making of such payments but it is likely that income tax will not be deducted or accounted for in accordance with the regulations.
- (2) Where subsection (1) above applies, the Board may give a direction that, if—
- (a) any employees of the contractor work in any period for, but not as employees of, the relevant person, and
  - (b) any payment is made by the relevant person in respect of work done by the employees in that period,
- income tax shall be deducted in accordance with the provisions of this section by the relevant person on making that payment.
- (3) A direction under subsection (2) above—
- (a) shall specify the relevant person and the contractor to whom it relates;
  - (b) shall be given by notice to the relevant person; and
  - (c) may at any time be withdrawn by notice to the relevant person.
- (4) The Board shall take such steps as are reasonably practicable to ensure that the contractor is supplied with a copy of any notice given under subsection (3) above which relates to him.
- (5) Where—
- (a) a direction under subsection (2) above has effect, and
  - (b) any employees of the contractor specified in the direction work for, but not as employees of, the relevant person so specified,
- income tax shall, subject to and in accordance with PAYE regulations, be deducted by the relevant person on making any payment in respect of that work as if so much of the payment as is attributable to work done by each employee were a payment of assessable income of that employee.”

## 127 Tradeable assets

After section 203E of the Taxes Act 1988 (which is inserted by section 126 above) there shall be inserted—

### “203F PAYE: tradeable assets

- (1) Where any assessable income of an employee is provided in the form of a tradeable asset, the employer shall be treated, for the purposes of PAYE regulations, as making a payment of that income of an amount equal to the amount specified in subsection (3) below.
- (2) For the purposes of subsection (1) above “tradeable asset” means—

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- (a) any asset capable of being sold or otherwise realised on a recognised investment exchange (within the meaning of the Financial Services Act 1986) or the London Bullion Market;
  - (b) any asset capable of being sold or otherwise realised on any market for the time being specified in PAYE regulations; and
  - (c) any other asset for which, at the time when the asset is provided, trading arrangements exist.
- (3) The amount referred to is—
- (a) in the case of an asset falling within subsection (2)(a) or (b) above, the amount for which it is capable of being sold or the amount for which it can be realised on the exchange or market in question; and
  - (b) in the case of an asset for which trading arrangements exist at the time when the asset is provided, the amount which is obtained under those arrangements.
- (4) For the purposes of subsection (2) above, “asset” does not include—
- (a) any payment actually made of, or on account of, assessable income;
  - (b) any non-cash voucher, credit-token or cash voucher (as defined in sections 141 to 143); or
  - (c) any description of property for the time being excluded from the scope of this section by PAYE regulations.
- (5) Subject to subsection (4) above, for the purposes of subsection (2) above “asset” includes any property and in particular any right or interest falling within any paragraph in Part I of Schedule 1 to the Financial Services Act 1986.”

## 128 Non-cash vouchers

After section 203F of the Taxes Act 1988 (which is inserted by section 127 above) there shall be inserted—

### “203G PAYE: non-cash vouchers

- (1) Where a non-cash voucher to which this section applies is received by an employee, the employer shall be treated, for the purposes of PAYE regulations, as making a payment of assessable income of the employee of an amount equal to the amount ascertained in accordance with section 141(1)(a).
- (2) This section applies to a non-cash voucher to which section 141(1) applies if—
  - (a) either of the two conditions set out below is fulfilled with respect to the voucher; and
  - (b) the voucher is not of a description for the time being excluded from the scope of this section by PAYE regulations.
- (3) The first condition is fulfilled with respect to a voucher if it is capable of being exchanged for goods—
  - (a) which, at the time when the voucher is provided, are capable of being sold or otherwise realised on an exchange or market falling within section 203F(2)(a) or (b); or
  - (b) for which, at the time when the voucher is provided, trading arrangements exist.



- (4) The second condition is fulfilled with respect to a voucher if, at the time when the voucher is provided, the voucher itself—
- (a) is capable of being sold or otherwise realised on an exchange or market falling within section 203F(2)(a) or (b); or
  - (b) is a voucher for which trading arrangements exist.”

## **129 Credit-tokens**

After section 203G of the Taxes Act 1988 (which is inserted by section 128 above) there shall be inserted—

### **“203H PAYE: credit-tokens**

- (1) Subject to subsection (3) below, on each occasion on which an employee uses a credit-token provided to him by reason of his employment to obtain—
- (a) money, or
  - (b) goods falling within subsection (2) below,
- the employer shall be treated, for the purposes of PAYE regulations, as making a payment of assessable income of the employee of an amount equal to the amount ascertained in accordance with section 142(1)(a).
- (2) Goods fall within this subsection if, at the time when they are obtained, they are goods—
- (a) which are capable of being sold or otherwise realised on an exchange or market falling within section 203F(2)(a) or (b); or
  - (b) for which trading arrangements exist.
- (3) PAYE regulations may make provision for excluding from the scope of this section any description of use of a credit-token.
- (4) In this section “credit-token” has the same meaning as in section 142.”

## **130 Cash vouchers**

After section 203H of the Taxes Act 1988 (which is inserted by section 129 above) there shall be inserted—

### **“203I PAYE: cash vouchers**

- (1) Subject to subsection (2) below, where a cash voucher to which section 143(1) applies is received by an employee, the employer shall be treated, for the purposes of PAYE regulations, as making a payment of assessable income of the employee of an amount equal to the amount ascertained in accordance with section 143(1)(a).
- (2) PAYE regulations may make provision for excluding from the scope of this section the provision of cash vouchers in such description of circumstances as may be specified in the regulations.”

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## 131 Supplementary

After section 203I of the Taxes Act 1988 (which is inserted by section 130 above) there shall be inserted—

### “203J S.203B to s.203I: accounting for tax

- (1) Where an employer makes a notional payment of assessable income of an employee, the obligation to deduct income tax shall have effect as an obligation on the employer to deduct income tax at such time as may be prescribed by PAYE regulations from any payment or payments he actually makes of, or on account of, such income of that employee.
- (2) For the purposes of this section—
  - (a) a notional payment is a payment treated as made by virtue of any of sections 203B, 203C and 203F to 203I, other than a payment whose amount is determined in accordance with section 203B(3)(a) or 203C(3)(a); and
  - (b) any reference to an employer includes a reference to a person who is treated as making a payment by virtue of section 203C(2).
- (3) Where, by reason of an insufficiency of payments actually made, the employer is unable to deduct the amount (or the full amount) of the income tax as required by virtue of subsection (1) above, the obligation to deduct income tax shall have effect as an obligation on the employer to account to the Board at such time as may be prescribed by PAYE regulations for an amount of income tax equal to the amount of income tax he is required, but is unable, to deduct.
- (4) PAYE regulations may make provision—
  - (a) with respect to the time when any notional payment (or description of notional payment) is made;
  - (b) applying (with or without modifications) any specified provisions of the regulations for the time being in force in relation to deductions from actual payments to amounts accounted for in respect of any notional payments;
  - (c) with respect to the collection and recovery of amounts accounted for in respect of notional payments.
- (5) Any amount which an employer deducts or for which he accounts as mentioned in subsections (1) and (3) above shall be treated as an amount paid by the employee in question in respect of his liability to income tax for such year of assessment as may be specified in PAYE regulations.

### 203K Trading arrangements

- (1) “Trading arrangements” in sections 203F to 203H shall be construed in accordance with this section.
- (2) Trading arrangements—
  - (a) for an asset, are arrangements for the purpose of enabling the person to whom the asset is provided to obtain an amount similar to the expense incurred in the provision of the asset;

- (b) for goods for which a non-cash voucher is capable of being exchanged, are arrangements for the purpose of enabling the person to whom the voucher is provided to obtain an amount similar to the expense incurred in the provision of the goods;
  - (c) for a non-cash voucher, are arrangements for the purpose of enabling the person to whom the voucher is provided to obtain an amount similar to the expense incurred as mentioned in section 141(1)(a);
  - (d) for goods obtained by the use of a credit-token, are arrangements for the purpose of enabling the person to whom the credit-token is provided to obtain an amount similar to the expense incurred in the provision of the goods.
- (3) For the purposes of subsection (2) above—
- (a) any reference to enabling a person to obtain an amount includes—
    - (i) a reference to enabling a class or description of persons which includes that person to obtain the amount; and
    - (ii) a reference to enabling an amount to be obtained by any means, including in particular by using an asset or goods as security for a loan or an advance; and
  - (b) an amount is similar to an expense incurred if it is greater than, equal to or not substantially less than that expense.
- (4) PAYE regulations may exclude any description of arrangements from being trading arrangements for the purposes of sections 203F to 203H.

#### **203L S.203B to s.203K: interpretation, etc**

- (1) In sections 203B to 203J “employee” means a person holding an office or employment under or with any other person, and (subject to section 203J(2)(b)) any reference to the employer is a reference to that other person.
- (2) In sections 203B to 203J “assessable” means assessable to income tax under Schedule E.
- (3) In sections 203B to 203K and this section “PAYE regulations” means regulations under section 203.
- (4) PAYE regulations made by virtue of any of sections 203B to 203K may—
  - (a) make different provision for different classes of case;
  - (b) contain such incidental, consequential and supplementary provision as appears to the Board to be expedient.”

#### **132 Payments etc. received free of tax**

After section 144 of the Taxes Act 1988 there shall be inserted—

##### **“144A Payments etc. received free of tax**

- (1) In any case where—
  - (a) an employer is treated, by virtue of any of sections 203B to 203I, as having made a payment of income of an employee which is assessable to income tax under Schedule E,

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- (b) the employer is required, by virtue of section 203J(3), to account for an amount of income tax (“the due amount”) in respect of that payment, and
- (c) the employee does not, before the end of the period of thirty days from the date on which the employer is treated as making that payment, make good the due amount to the employer,

the due amount shall be treated as income of the employee which arises on the date mentioned in paragraph (c) above and is assessable to income tax under Schedule E.

- (2) In this section any reference to an employer includes a reference to a person who is treated as making a payment by virtue of section 203C(2).”

### **133 PAYE regulations: past cases**

- (1) Regulation 4 of the 1993 Regulations (intermediate employers) is hereby revoked; but in relation to any time before its revocation it shall be deemed to have been validly made.
- (2) Regulation 3 of the 1973 Regulations (intermediate employers) shall, in relation to any time before its revocation, be deemed to have been validly made.
- (3) Where, at any time before the passing of this Act—
  - (a) a payment has been made of, or on account of, any income of an employee not resident or, if resident, not ordinarily resident in the United Kingdom,
  - (b) at the time when the payment was made it appeared that some of the income would be assessable to income tax under Case II of Schedule E, but that some of the income might prove not to be assessable to income tax under that Schedule, and
  - (c) the payment or any proportion of it was treated for the purposes of the 1993 Regulations or the 1973 Regulations as a payment to which the regulations applied,

then the treatment of that payment or that proportion of the payment as being a payment to which the regulations applied shall be deemed to have been lawful.

- (4) In this section—
  - (a) “employee” means a person holding an office or employment under or with any other person;
  - (b) “the 1993 Regulations” means the Income Tax (Employments) Regulations 1993; and
  - (c) “the 1973 Regulations” means the Income Tax (Employments) Regulations 1973.

### *Miscellaneous provisions about companies*

### **134 Controlled foreign companies**

- (1) In Schedule 25 to the Taxes Act 1988, Part I (acceptable distribution policy) shall be amended as follows.
- (2) In paragraph 2 (acceptable distribution policies for both trading and non-trading companies)—

- (a) in sub-paragraph (1)—
  - (i) for “sub-paragraph (2)” there is substituted “paragraph 2A”,
  - (ii) in paragraph (a), “or for some other period which, in whole or in part, falls within that accounting period” is omitted,
  - (iii) in paragraph (b), for “the period for which it is paid” there is substituted “that period”,
  - (iv) in paragraph (d) for “proportion” there is substituted “amount” and for “represents at least” there is substituted “is not less than”, and
  - (v) the words following paragraph (d) are omitted,
- (b) sub-paragraph (2) is omitted, and
- (c) for sub-paragraph (3) there is substituted—

“(3) For the purposes of this paragraph and paragraph 2A below, a dividend which is not paid for the period or periods the profits of which are, in relation to the dividend, the relevant profits for the purposes of section 799 shall be treated (subject to sub-paragraph (3A) below) as so paid.

(3A) For the purposes of this paragraph and paragraph 2A below—

- (a) where a dividend is paid for a period which is not an accounting period but falls wholly within an accounting period, it shall be treated as paid for that accounting period, and
- (b) where a dividend (“the actual dividend”) is paid for a period which falls within two or more accounting periods—
  - (i) it shall be treated as if it were a number of separate dividends each of which is paid for so much of the period as falls wholly within an accounting period, and
  - (ii) the necessary apportionment of the amount of the actual dividend shall be made to determine the amount of the separate dividends.”

(3) After that paragraph there is inserted—

“2A (1) Paragraph 2 above shall have effect in accordance with this paragraph to determine whether a controlled foreign company which is not a trading company pursues an acceptable distribution policy in respect of a particular accounting period (“the relevant accounting period”).

(2) Subject to sub-paragraph (4) below, where the distribution condition is satisfied in relation to the relevant accounting period, then, in addition to any dividend which falls within paragraph 2(1)(a) above apart from this paragraph—

- (a) any dividend which is paid for the accounting period (“the preceding period”) which immediately precedes the relevant accounting period and is not an excluded period shall be treated as falling within that paragraph, and
- (b) if the distribution condition is satisfied in relation to the preceding period, any dividend which is paid for the accounting period

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which immediately precedes the preceding period and is not an excluded period shall be treated as falling within that paragraph, and so on; and in this sub-paragraph “dividend” means a dividend not paid out of specified profits.

- (3) For the purposes of this paragraph, the distribution condition is satisfied in relation to any accounting period if—
- (a) a dividend or dividends are paid for the period to persons resident in the United Kingdom,
  - (b) the amount or, as the case may be, aggregate amount of any dividends falling within paragraph (a) above is not less than—
    - (i) the relevant profits for that period, or
    - (ii) where paragraph 2(4) or (5) above applies (with the modifications of paragraph 2 made by sub-paragraph (5) below), the appropriate portion of those profits, and
  - (c) any dividends falling within that paragraph are paid not later than the time by which any dividend paid for the relevant accounting period is required by paragraph 2(1)(b) above to be paid;
- or if there are no relevant profits for the period.
- (4) Where, by reason only of the fact that a company pursued an acceptable distribution policy in respect of any accounting period (“the earlier period”) earlier than the relevant accounting period, no direction could be given in respect of the earlier period under section 747(1), sub-paragraph (2) above shall apply to any dividend required to be taken into account for the purpose of showing that the company pursued an acceptable distribution policy in respect of the earlier period only to the extent (if any) to which that dividend was not required to be taken into account for that purpose.
- (5) The modifications of paragraph 2 above referred to in sub-paragraph (3) (b) above are that—
- (a) the references in sub-paragraphs (4) and (5) to the accounting period in question are to be read as references to the accounting period for which the dividend or dividends are paid,
  - (b) the references in those sub-paragraphs to sub-paragraph (1)(d) are to be read as references to sub-paragraph (3)(b) above, and
  - (c) the reference in the definition of “X” in sub-paragraph (6) to available profits is to be read as a reference to relevant profits.
- (6) Paragraph 2(1)(d) above shall have effect as if for “50 per cent. of the company’s available profits” there were substituted “90 per cent. of the company’s net chargeable profits”.
- (7) In paragraph 2(6) above, the definition of “X” shall have effect as if the reference to available profits were a reference to net chargeable profits.
- (8) For the purposes of this paragraph—
- (a) a period is an excluded period if it is an accounting period in respect of which a direction is given under section 747(1), and
  - (b) relevant profits for any accounting period are the profits which would be the relevant profits of that period for the purposes of section 799 if a dividend were actually paid for that period.”

- (4) In paragraph 3 of that Schedule (available profits)—
- (a) after sub-paragraph (4) there is inserted—
- “(4A) Subject to sub-paragraph (5) below, for the purposes of this Part of this Schedule, the net chargeable profits of a controlled foreign company for any accounting period are—
- (a) its chargeable profits for that period, less
- (b) the amount (if any) which, if a direction were given under section 747(1) in respect of the period, would be the company’s unrestricted creditable tax for that period;
- and for the purposes of this sub-paragraph “unrestricted creditable tax” in relation to a company’s accounting period means the amount which would be its creditable tax for that period if the reference in section 751(6)(a) to Part XVIII did not include section 797”, and
- (b) in sub-paragraph (5), after “available profits” there is inserted “or, where the company is not a trading company, the chargeable profits”.
- (5) This section shall apply to determine whether a controlled foreign company pursues an acceptable distribution policy in respect of accounting periods ending on or after 30th November 1993.

### **135 Prevention of avoidance of corporation tax**

- (1) In the Taxes Act 1988, immediately before section 768 there shall be inserted—

#### **“767A Change in company ownership: corporation tax**

- (1) Where it appears to the Board that—
- (a) there has been a change in the ownership of a company (“the tax-payer company”),
- (b) any corporation tax assessed on the tax-payer company for an accounting period beginning before the change remains unpaid at any time after the relevant date, and
- (c) any of the three conditions mentioned below is fulfilled,
- any person mentioned in subsection (2) below may be assessed by the Board and charged (in the name of the tax-payer company) to an amount of corporation tax in accordance with this section.
- (2) The persons are—
- (a) any person who at any time during the relevant period before the change in the ownership of the tax-payer company had control of it;
- (b) any company of which the person mentioned in paragraph (a) above has at any time had control within the period of three years before that change.
- (3) In subsection (2) above, “the relevant period” means—
- (a) the period of three years before the change in the ownership of the tax-payer company; or
- (b) if during the period of three years before that change (“the later change”) there was a change in the ownership of the tax-payer

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company (“the earlier change”), the period elapsing between the earlier change and the later change.

- (4) The first condition is that—
- (a) at any time during the period of three years before the change in the ownership of the tax-payer company the activities of a trade or business of that company cease or the scale of those activities become small or negligible; and
  - (b) there is no significant revival of those activities before that change occurs.
- (5) The second condition is that at any time after the change in the ownership of the tax-payer company, but under arrangements made before that change, the activities of a trade or business of that company cease or the scale of those activities become small or negligible.
- (6) The third condition is that—
- (a) at any time during the period of six years beginning three years before the change in the ownership of the tax-payer company there is a major change in the nature or conduct of a trade or business of that company;
  - (b) there is a transfer or there are transfers of assets of the tax-payer company to a person mentioned in subsection (7) below or to any person under arrangements which enable any of those assets or any assets representing those assets to be transferred to a person mentioned in subsection (7) below;
  - (c) that transfer occurs or those transfers occur during the period of three years before the change in the ownership of the tax-payer company or after that change but under arrangements made before that change; and
  - (d) the major change mentioned in paragraph (a) above is attributable to that transfer or those transfers.
- (7) The persons are—
- (a) any person mentioned in subsection (2)(a) above; and
  - (b) any person connected with him.
- (8) The amount of tax charged in an assessment made under this section must not exceed the amount of the tax which, at the time of that assessment, remains unpaid by the tax-payer company.
- (9) For the purposes of this section the relevant date is the date six months from the date on which the corporation tax is assessed as mentioned in subsection (1)(b) above.
- (10) Any assessment made under this section shall not be out of time if made within three years from the date on which the liability of the tax-payer company to corporation tax for the accounting period mentioned in subsection (1)(b) above is finally determined.

#### **767B Change of company ownership: supplementary**

- (1) In relation to corporation tax assessed under section 767A—



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- (a) section 86 of the Management Act (interest on overdue tax), in so far as it has effect in relation to accounting periods ending on or before 30th September 1993, and
- (b) section 87A of that Act (corresponding provision for corporation tax due for accounting periods ending after that date),

shall have effect as if the references in section 86 to the reckonable date and in section 87A to the date when the tax becomes due and payable were, respectively, references to the date which is the reckonable date in relation to the tax-payer company and the date when the tax became due and payable by the tax-payer company.

- (2) A payment in pursuance of an assessment under section 767A shall not be allowed as a deduction in computing any income, profits or losses for any tax purposes; but any person making such a payment shall be entitled to recover an amount equal to the payment from the tax-payer company.
  - (3) In subsection (2) above the reference to a payment in pursuance of an assessment includes a reference to a payment of interest under section 86 or 87A of the Management Act (as they have effect by virtue of subsection (1) above).
  - (4) For the purposes of section 767A, “control”, in relation to a company, shall be construed in accordance with section 416 as modified by subsections (5) and (6) below.
  - (5) In subsection (2)(a) for “the greater part of” there shall be substituted “50 per cent. of”.
  - (6) For subsection (3) there shall be substituted—

“(3) Where two or more persons together satisfy any of the conditions in subsection (2) above and do so by reason of having acted together to put themselves in a position where they will in fact satisfy the condition in question, each of those persons shall be treated as having control of the company.”
  - (7) In section 767A(6) “a major change in the nature or conduct of a trade or business” includes any change mentioned in any of paragraphs (a) to (d) of section 245(4); and also includes a change falling within any of those paragraphs which is achieved gradually as the result of a series of transfers.
  - (8) In section 767A(6) “transfer”, in relation to an asset, includes any disposal, letting or hiring of it, and any grant or transfer of any right, interest or licence in or over it, or the giving of any business facilities with respect to it.
  - (9) Section 839 shall apply for the purposes of section 767A(7).
  - (10) Subsection (9) of section 768 shall apply for the purposes of section 767A as it applies for the purposes of section 768.”
- (2) Section 769 (rules for ascertaining change of ownership of company) shall be amended as follows.
  - (3) In subsections (1), (2) and (5) for the words “sections 768”, in each place where they occur, there shall be substituted “sections 767A, 768”.
  - (4) After subsection (2) there shall be inserted—

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“(2A) Where—

- (a) persons, whether company members or not, possess extraordinary rights or powers under the articles of association or under any other document regulating the company, and
- (b) because of that fact ownership of the ordinary share capital may not be an appropriate test of whether there has been a change in the ownership of the company,

then, in considering whether there has been a change in the ownership of the company for the purposes of section 767A, holdings of all kinds of share capital, including preference shares, or of any particular category of share capital, or voting power or any other kind of special power may be taken into account instead of ordinary share capital.”

(5) After subsection (8) there shall be inserted—

“(9) Subsection (8) above shall not apply in relation to section 767A.”

(6) The amendments made by this section shall have effect in relation to any change in ownership occurring on or after 30th November 1993 other than a change occurring in pursuance of a contract entered into before that day.

### **136 Parts of trades: computations in different currencies**

(1) The following section shall be inserted after section 94 of the Finance Act 1993 (computations in different currencies for different parts of trades)—

#### **“94A Parts of trades: petroleum extraction companies**

(1) If a trade carried on by a petroleum extraction company is a ring fence trade—

- (a) subsection (1) of section 94 above shall not apply as regards the trade, but
- (b) regulations may make provision under that section as regards a case where in an accounting period the company carries on the trade and the condition mentioned in subsection (2) below is fulfilled.

(2) The condition is that—

- (a) part of the trade consists of activities which relate to oil and are carried on under the authority of a petroleum licence in the United Kingdom or a designated area, and
- (b) part of the trade consists of activities which relate to gas and are carried on under the authority of a petroleum licence in the United Kingdom or a designated area.

(3) For the purposes of this section—

- (a) a petroleum licence is a licence granted under the Petroleum (Production) Act 1934 or the Petroleum (Production) Act (Northern Ireland) 1964;
- (b) a petroleum extraction company is a company which carries on activities under the authority of such a licence;
- (c) a designated area is an area designated by Order in Council under section 1(7) of the Continental Shelf Act 1964.

- (4) For the purposes of this section “ring fence trade” means activities which—
- (a) fall within any of paragraphs (a) to (c) of subsection (1) of section 492 of the Taxes Act 1988 (oil extraction etc.), and
  - (b) constitute a separate trade (whether by virtue of that subsection or otherwise).
- (5) For the purposes of this section—
- (a) “oil” means such substance as falls within the meaning of oil contained in section 502(1) of the Taxes Act 1988 and is not gas;
  - (b) “gas” means such substance as falls within the meaning of oil contained in section 502(1) of the Taxes Act 1988 and is gas of which the largest component by volume, measured at a temperature of 15 degrees centigrade and a pressure of one atmosphere, is methane or ethane or a combination of those gases.”
- (2) In section 95(6) of the Finance Act 1993 (commencement of provisions about currency to be used for computations) for “94” there shall be substituted “94A”.

#### *Miscellaneous*

### **137 Enterprise investment scheme**

- (1) Schedule 15 to this Act shall have effect to revive Chapter III of Part VII of the Taxes Act 1988 (relief for investment in corporate trades) in relation to shares issued on or after 1st January 1994.
- (2) That Chapter shall have effect in relation to such shares with the amendments made by that Schedule; and, in relation to such shares, that Chapter as so amended shall apply for the year 1993-94 and subsequent years of assessment.
- (3) The Taxation of Chargeable Gains Act 1992 shall have effect with the amendments made by that Schedule.

### **138 Foreign income dividends**

Schedule 16 to this Act (which contains provisions about foreign income dividends) shall have effect.

### **139 Taxation of incapacity benefit**

- (1) For the year 1995-96 and subsequent years of assessment incapacity benefit, except—
  - (a) benefit payable for an initial period of incapacity, and
  - (b) so much of any benefit as is attributable in any case to an increase in respect of a child,shall be treated as income for the purposes of the Income Tax Acts and charged to income tax under Schedule E.
- (2) Subsection (1) above shall not apply to incapacity benefit to which a person is entitled for any day of incapacity for work falling in a period of incapacity for work which is treated for the purposes of that benefit as having begun before 13th April 1995 if the part of that period which is treated as having fallen before that date includes a day for which that person was entitled to invalidity benefit.

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- (3) Incapacity benefit shall for the purposes of this section be a benefit in relation to which section 41 of the Finance Act 1989 (year of assessment in which benefit to be charged) applies.
- (4) Enactments relating to the payment of incapacity benefit shall have effect subject to such provision as may be contained for the purposes of this section in regulations under section 203 of the Taxes Act 1988 (PAYE regulations).
- (5) In this section—
- “incapacity benefit” means any benefit which by virtue of provisions contained in the Social Security (Incapacity for Work) Act 1994 or any corresponding provisions made for Northern Ireland is to be known as incapacity benefit;
- “initial period of incapacity”, in relation to incapacity benefit, means any period for which that benefit is payable as short-term incapacity benefit at the rate which (apart from any increase or addition) is the lower of the rates applicable to short-term incapacity benefit; and
- “invalidity benefit” means invalidity benefit under Part II of the Social Security Contributions and Benefits Act 1992 or under Part II of the Social Security Contributions and Benefits (Northern Ireland) Act 1992.

#### **140 Restriction on deduction from income**

- (1) Section 808 of the Taxes Act 1988 (restriction on deduction of interest or dividends from trading income) shall be amended as follows—
- (a) for “a banking business, an insurance business or a business consisting wholly or partly in dealing in securities” there shall be substituted “a business”;
  - (b) for “or dividend” there shall be substituted “, dividend or royalties”;
  - (c) the words “In this section “securities” includes stocks and shares” shall be omitted.
- (2) This section shall apply where it is sought to exclude receipts from income or profits of an accounting period beginning on or after 30th November 1993.

#### **141 Expenditure involving crime**

- (1) Section 577A of the Taxes Act 1988 (certain expenditure involving crime not to be deducted and not to be included in expenses of management) shall be amended as follows.
- (2) After subsection (1) there shall be inserted—
- “(1A) In computing profits or gains chargeable to tax under Schedule A or Schedule D, no deduction shall be made for any expenditure incurred in making a payment induced by a demand constituting—
- (a) the commission in England or Wales of the offence of blackmail under section 21 of the Theft Act 1968,
  - (b) the commission in Northern Ireland of the offence of blackmail under section 20 of the Theft Act (Northern Ireland) 1969, or
  - (c) the commission in Scotland of the offence of extortion.”

- (3) In subsection (2) for “Such expenditure” there shall be substituted “Any expenditure mentioned in subsection (1) or (1A) above”.
- (4) This section shall apply in relation to expenditure incurred on or after 30th November 1993.

## **142 Mortgage interest payable under deduction of tax: qualifying lenders**

- (1) In section 376 of the Taxes Act 1988 (qualifying lenders)—
  - (a) in subsection (4)(p), for “prescribed under subsection (5) below” there shall be substituted “for the time being registered under section 376A below” and for “Treasury” there shall be substituted “Board”; and
  - (b) subsection (5) shall be omitted.
- (2) The following section shall be inserted in the Taxes Act 1988 after section 376—

### **“376A The register of qualifying lenders**

- (1) The Board shall maintain, and publish in such manner as they consider appropriate, a register for the purposes of section 376(4).
  - (2) If the Board are satisfied that an applicant for registration is entitled to be registered, they may register the applicant generally or in relation to any description of loan specified in the register, with effect from such date as may be so specified; and a body which is so registered shall become a qualifying lender in accordance with the terms of its registration.
  - (3) The registration of any body may be varied by the Board—
    - (a) where it is general, by providing for it to be in relation to a specified description of loan, or
    - (b) where it is in relation to a specified description of loan, by removing or varying the reference to that description of loan,and where they do so, they shall give the body written notice of the variation and of the date from which it is to have effect.
  - (4) If it appears to the Board at any time that a body which is registered under this section would not be entitled to be registered if it applied for registration at that time, the Board may by written notice given to the body cancel its registration with effect from such date as may be specified in the notice.
  - (5) The date specified in a notice under subsection (3) or (4) above shall not be earlier than the end of the period of 30 days beginning with the date on which the notice is served.
  - (6) Any body which is aggrieved by the failure of the Board to register it under this section, or by the variation or cancellation of its registration, may, by notice given to the Board before the end of the period of 30 days beginning with the date on which the body is notified of the Board’s 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.”
- (3) Any body which is, immediately before the date on which this Act is passed, a prescribed body for the purposes of section 376 of the Taxes Act 1988 (by virtue of

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an order made under subsection (5) of that section) shall be entitled to be entered in the register maintained under section 376A of that Act as a qualifying lender except that if it was, immediately before that date, a qualifying lender only in relation to such description of loan as was specified in the order, it shall be entitled to be entered in the register as a qualifying lender only in relation to that description of loan.

- (4) Until such time as the Board enter any such body in the register, that body shall be deemed to have been registered in accordance with its entitlement.

### **143 Premiums referred to pension business**

- (1) The Taxes Act 1988 shall be amended as follows.
- (2) In section 431(4) (insurance companies: premiums to be referred to pension business) in paragraph (d) (annuity contracts)—
- (a) the words “approved by the Board and” shall be omitted;
  - (b) after “as defined by section 612(1)” there shall be inserted “and falling within section 431AA”.
- (3) In section 431(4) in paragraph (e) (annuity contracts entered into in substitution)—
- (a) the words “approved by the Board” shall be omitted;
  - (b) after “paragraph (d) above” there shall be inserted “and by means of which relevant benefits as defined by section 612(1) and falling within section 431AA (but no other benefits) are secured”.
- (4) The following section shall be inserted after section 431—

#### **“431AA Relevant benefits for purposes of section 431(4)(d) and (e)**

- (1) Subsection (2) below applies where—
- (a) section 431(4)(d)(i) applies, or
  - (b) section 431(4)(e) applies and the contract within section 431(4)(d) was entered into for the purposes of a scheme falling within section 431(4)(d)(i).
- (2) In such a case, relevant benefits fall within this section if they correspond with benefits that could be provided by a scheme approved under Chapter I of Part XIV, and for this purpose—
- (a) a hypothetical scheme (rather than any particular scheme) is to be taken, and
  - (b) benefits provided by a scheme directly (rather than by means of an annuity contract) are to be taken.
- (3) Subsection (4) below applies where—
- (a) subsection 431(4)(d)(ii) applies, or
  - (b) section 431(4)(e) applies and the contract within section 431(4)(d) was entered into for the purposes of a scheme falling within section 431(4)(d)(ii).
- (4) In such a case, relevant benefits fall within this section if they correspond with benefits that could be provided by a scheme which is a relevant statutory scheme for the purposes of Chapter I of Part XIV, and for this purpose—

- (a) a hypothetical scheme (rather than any particular scheme) is to be taken, and
  - (b) benefits provided by a scheme directly (rather than by means of an annuity contract) are to be taken.
- (5) Subsection (6) below applies where—
- (a) section 431(4)(d)(iii) applies, or
  - (b) section 431(4)(e) applies and the contract within section 431(4)(d) was entered into for the purposes of a fund falling within section 431(4)(d)(iii).
- (6) In such a case, relevant benefits fall within this section if they correspond with benefits that could be provided by a fund to which section 608 applies, and for this purpose—
- (a) a hypothetical fund (rather than any particular fund) is to be taken, and
  - (b) benefits provided by a fund directly (rather than by means of an annuity contract) are to be taken.”
- (5) This section shall apply in relation to an annuity contract entered into on or after 1st July 1994; and in the case of an annuity contract entered into in substitution for another it is immaterial when that other was entered into.

#### **144 Debts released in voluntary arrangement: relief from tax**

- (1) In the Taxes Act 1988, in section 74 (general rules as to deductions not allowable), for paragraph (j) (debts not allowable except in certain circumstances) there shall be substituted—
- “(j) any debts except—
    - (i) a bad debt proved to be such;
    - (ii) a debt or part of a debt released by the creditor wholly and exclusively for the purposes of his trade, profession or vocation as part of a relevant arrangement or compromise; and
    - (iii) a doubtful debt to the extent estimated to be bad, meaning, in the case of the bankruptcy or insolvency of the debtor, the debt except to the extent that any amount may reasonably be expected to be received on the debt;”.
- (2) The provisions of that section shall become subsection (1) of that section and after that subsection there shall be inserted—
- “(2) In paragraph (j) of subsection (1) above “relevant arrangement or compromise” means—
    - (a) a voluntary arrangement which has taken effect under or by virtue of the Insolvency Act 1986 or the Insolvency (Northern Ireland) Order 1989; or
    - (b) a compromise or arrangement which has taken effect under section 425 of the Companies Act 1985 or Article 418 of the Companies (Northern Ireland) Order 1986.”
- (3) In the Taxes Act 1988—

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

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- (a) in section 94 (debts deducted and subsequently released) after the word “released” where it first occurs, and
  - (b) in section 103(4)(b) (debts deducted before, but released after, discontinuance of trade, etc.) after the word “released”,
- there shall be inserted “otherwise than as part of a relevant arrangement or compromise”.
- (4) The provisions of section 94 of the Taxes Act 1988 shall become subsection (1) of that section and after that subsection there shall be inserted—
- “(2) In subsection (1) above “relevant arrangement or compromise” has the same meaning as in section 74.”
- (5) After section 103(4) of the Taxes Act 1988 there shall be inserted—
- “(4A) In subsection (4)(b) above “relevant arrangement or compromise” has the same meaning as in section 74.”
- (6) Subsection (1) above shall have effect, for the purposes of determining (in computing the amount of profits or gains to be charged under Case I or Case II of Schedule D) whether any sum should be deducted in respect of any debt, in relation to debts—
- (a) proved to be bad,
  - (b) released as part of—
    - (i) a voluntary arrangement which has taken effect under or by virtue of the Insolvency Act 1986 or the Insolvency (Northern Ireland) Order 1989, or,
    - (ii) a compromise or arrangement which has taken effect under section 425 of the Companies Act 1985 or Article 418 of the Companies (Northern Ireland) Order 1986, and
  - (c) estimated to be bad,
- if the proof, release or estimation occurs on or after 30th November 1993.
- (7) Subsection (3) above shall have effect in relation to the release on or after 30th November 1993 of the whole or any part of any debt.

#### **145 Relief for business donations**

- (1) In sections 79(11) and 79A(7) of the Taxes Act 1988 (contributions to local enterprise agencies, training and enterprise councils and local enterprise companies made before 1st April 1995 to be deductible as expenses), for “1995” (in both places) there shall be substituted “2000”.
- (2) Section 79A of that Act shall be amended as follows.
- (3) In subsection (1), after “training and enterprise council” there shall be inserted “business link organisation” and in subsection (3) after “council” there shall be inserted “organisation”.
- (4) In subsection (5), before paragraph (a) there shall be inserted—
- “(aa) “business link organisation” means any person authorised by or on behalf of the Secretary of State to use a service mark (within the meaning of the Trade Marks (Amendment) Act 1984) designated by the Secretary of State for the purposes of this paragraph”.



- (5) In subsection (7), after “1st April 1990” there shall be inserted “or, in the case of a contribution to a business link organisation, 30th November 1993”.

**146 Minor corrections**

Schedule 17 to this Act (which corrects various mistakes made in or introduced into the Taxes Act 1988) shall have effect.