

SCHEDULES

SCHEDULE 22

Section 123.

PREVENTION OF EXPLOITATION OF SCHEDULE 20 TO FINANCE ACT 1994

PART I

CASES I AND II OF SCHEDULE D

Increase of profits or gains of transitional period

- 1 (1) This paragraph applies where, in the case of a trade, profession or vocation carried on by any person—
- (a) paragraph 2(2) of Schedule 20 to the Finance Act 1994 applies without the modification made by paragraph 2(3) of that Schedule; and
 - (b) any amount which is included in the profits or gains of the transitional period would not have been so included if—
 - (i) any relevant change made by that person had not been made; or
 - (ii) any relevant transaction entered into by that person had not been entered into.
- (2) Subject to sub-paragraph (3) below, the said paragraph 2(2) shall have effect as if the reference to the appropriate percentage of the aggregate of the amounts there mentioned were a reference to the aggregate of—
- (a) that percentage of each of those amounts; and
 - (b) 1.25 times the complementary percentage of each of the amounts falling within sub-paragraph (1)(b) above.
- (3) Sub-paragraph (2) above does not apply where—
- (a) the aggregate of the amounts falling within sub-paragraph (1)(b) above is less than such amount as may be prescribed by regulations made by the Board;
 - (b) the proportion which the aggregate of those amounts bears to the aggregate of the amounts mentioned in the said paragraph 2(2) is less than such proportion as may be so prescribed; or
 - (c) the appropriate percentage of the turnover for the transitional period is less than such amount as may be so prescribed;
- and regulations under this sub-paragraph may make as respects trades or professions carried on by persons in partnership provision different from that made as respects trades, professions or vocations carried on by individuals.
- (4) In this paragraph—
- “the appropriate percentage” means the following expressed as a percentage, that is, 365 divided by the number of days in the transitional period;

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“the complementary percentage” means the difference between 100 per cent. and the appropriate percentage;

“the transitional period” means the basis period for the year 1996-97 and the relevant period (within the meaning of paragraph 2 of Schedule 20 to the Finance Act 1994) taken together.

- 2 (1) This paragraph applies where, in the case of a trade or profession carried on by persons in partnership—
- (a) paragraph 2(2) of Schedule 20 to the Finance Act 1994 applies without the modification made by paragraph 2(3) of that Schedule;
 - (b) a claim is made under section 353 of the Taxes Act 1988 (relief for interest: general provision) in respect of interest on a loan to defray money contributed or advanced by a partner to the partnership; and
 - (c) sub-paragraph (2) below applies to any of the money so contributed or advanced.
- (2) This sub-paragraph applies to money so contributed or advanced unless it was contributed or advanced wholly or mainly—
- (a) for bona fide commercial reasons; or
 - (b) for a purpose other than the reduction of the partnership’s borrowings for a relevant period.
- (3) Subject to sub-paragraph (4) below, the amount eligible for relief under the said section 353 in respect of interest paid by the partner in respect of the transitional period on money to which sub-paragraph (2) above applies shall not exceed the appropriate percentage of that interest.
- (4) Sub-paragraph (3) above does not apply where—
- (a) the loan was made before 1st April 1994; or
 - (b) the aggregate amount of interest paid as mentioned in that sub-paragraph is less than such amount as may be prescribed by regulations made by the Board.
- (5) Where relief under the said section 353 in respect of interest on any loan (“the original loan”) is restricted by sub-paragraph (3) above, relief under that section in respect of interest on any other loan used to defray money applied in paying off the original loan shall be restricted to the same extent as if that other loan were the original loan.
- (6) In this paragraph—
- “the appropriate percentage” and “the transitional period” have the same meanings as in paragraph 1 above;
- “relevant period” means a period the whole or part of which falls within the transitional period.

Increase of profits or gains of transitional overlap period

- 3 (1) This paragraph applies where, in the case of a trade, profession or vocation carried on by any person—
- (a) paragraph 2(4) of Schedule 20 to the Finance Act 1994 applies; and
 - (b) any amount which is included in the transitional overlap profit would not have been so included if—
 - (i) any relevant change made by that person had not been made; or

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- (ii) any relevant transaction entered into by that person had not been entered into.
- (2) Subject to sub-paragraph (3) below, the said paragraph 2(4) shall have effect as if the reference to the transitional overlap profit were a reference to the amount (if any) by which that profit exceeds 1.25 times the aggregate of the amounts falling within sub-paragraph (1)(b) above.
- (3) Sub-paragraph (3) of paragraph 1 above shall apply for the purposes of this paragraph as it applies for the purposes of that paragraph but subject to the following modifications, namely—
- (a) the reference to the aggregate of the amounts mentioned in the said paragraph 2(2) shall have effect as a reference to the transitional overlap profit; and
 - (b) the reference to the appropriate percentage of the turnover for the transitional period shall have effect as a reference to the appropriate percentage of the turnover for the transitional overlap period.
- (4) In this paragraph—
- “the appropriate percentage” means the following expressed as a percentage, that is, 365 divided by the number of days in the transitional overlap period;
- “the transitional overlap period” means the period beginning immediately after the end of—
- (a) the basis period for the year 1996-97; or
 - (b) in the case of a trade or profession carried on by any person in partnership with other persons, the basis period of the partnership for that year,
- and (in either case) ending with 5th April 1997;
- “the transitional overlap profit” means the amount mentioned in the said paragraph 2(4).
- 4 (1) This paragraph applies where, in the case of a trade or profession carried on by any person in partnership with other persons—
- (a) that person (“the retiring partner”) ceases to carry on the trade or profession at any time in the transitional overlap period; and
 - (b) if he had not so ceased, paragraph 3(2) above would have applied in relation to him.
- (2) The retiring partner shall for the year 1996-97 be chargeable to income tax under Case I or II of Schedule D on 1.25 times the aggregate of the amounts which would have fallen within paragraph 3(1)(b) above.
- (3) In this paragraph “the transitional overlap period” has the same meaning as in paragraph 3 above.
- 5 (1) This paragraph applies where, in the case of a trade or profession carried on by any person in partnership with other persons—
- (a) paragraph 2(4) of Schedule 20 to the Finance Act 1994 applies with or without the modification made by paragraph 3(2) above;
 - (b) a claim is made under section 353 of the Taxes Act 1988 (relief for interest: general provision) in respect of interest on a loan to defray money contributed or advanced by him (“the partner”) to the partnership; and

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- (c) sub-paragraph (2) below applies to any of the money so contributed or advanced.
- (2) This sub-paragraph applies to money so contributed or advanced unless it was contributed or advanced wholly or mainly—
 - (a) for bona fide commercial reasons; or
 - (b) for a purpose other than the reduction of the partnership's borrowings for a relevant period.
- (3) Subject to sub-paragraph (4) below, the said paragraph 2(4) shall have effect as if the reference to the transitional overlap profit were a reference to the difference between that profit and the amount of interest paid by the partner in respect of the transitional overlap period on money to which sub-paragraph (2) above applies.
- (4) Sub-paragraph (3) above does not apply where—
 - (a) the loan was made before 1st April 1994; or
 - (b) the aggregate amount of interest paid as mentioned in that sub-paragraph is less than such amount as may be prescribed by regulations made by the Board.
- (5) In this paragraph—
 - “relevant period” means a period the whole or part of which falls within the transitional overlap period;
 - “the transitional overlap period” has the same meaning as in paragraph 3 above;
 - “the transitional overlap profit” means the amount mentioned in the said paragraph 2(4) (whether having effect with or without the modification made by paragraph 3(2) above).

PART II

CASES III, IV AND V OF SCHEDULE D

Increase of trade etc. profits or gains arising in 1995-96 and 1996-97

- 6 (1) This paragraph applies where, in the case of any income derived by any person from the carrying on by him of a trade, profession or vocation—
 - (a) paragraph 6(2)(a) of Schedule 20 to the Finance Act 1994 applies; and
 - (b) any amount which is included in the income arising within the years 1995-96 and 1996-97 would not have been so included if—
 - (i) any relevant change made by that person had not been made; or
 - (ii) any relevant transaction entered into by that person had not been entered into.
- (2) Subject to sub-paragraph (3) below, the said paragraph 6(2)(a) shall have effect as if the reference to 50 per cent. of the aggregate of the amounts there mentioned were a reference to the aggregate of—
 - (a) 50 per cent. of each of those amounts; and
 - (b) 62.5 per cent. of each of the amounts falling within sub-paragraph (1)(b) above.

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- (3) Sub-paragraph (3) of paragraph 1 above shall apply for the purposes of this paragraph as it applies for the purposes of that paragraph but subject to the following modifications, namely—
- (a) the reference to the said paragraph 2(2) shall have effect as a reference to the said paragraph 6(2)(a); and
 - (b) the reference to the appropriate percentage of the turnover of the transitional period shall have effect as a reference to 50 per cent. of the turnover of the years 1995-96 and 1996-97.

Increase of trade etc. profits or gains arising in transitional overlap period

- 7 (1) This paragraph applies where, in the case of any income derived by any person from the carrying on by him of a trade, profession or vocation—
- (a) paragraph 6(4) of Schedule 20 to the Finance Act 1994 applies; and
 - (b) any amount which is included in the transitional overlap profit would not have been so included if—
 - (i) any relevant change made by that person had not been made; or
 - (ii) any relevant transaction entered into by that person had not been entered into.
- (2) Subject to sub-paragraph (3) below, the said paragraph 6(4) shall have effect as if the reference to the transitional overlap profit were a reference to the amount (if any) by which that profit exceeds 1.25 times the aggregate of the amounts falling within sub-paragraph (1)(b) above.
- (3) Sub-paragraph (3) of paragraph 1 above shall apply for the purposes of this paragraph as it applies for the purposes of that paragraph but subject to the following modifications, namely—
- (a) the reference to the aggregate of the amounts mentioned in the said paragraph 2(2) shall have effect as a reference to the transitional overlap profit; and
 - (b) the reference to the appropriate percentage of the turnover for the transitional period shall have effect as a reference to the appropriate percentage of the turnover for the transitional overlap period.
- (4) In this paragraph—
- “the appropriate percentage” means the following expressed as a percentage, that is, 365 divided by the number of days in the transitional overlap period;
 - “the transitional overlap period” means the period beginning immediately after the end of—
 - (a) the basis period for the year 1996-97; or
 - (b) in the case of any income derived by any person from the carrying on by him of a trade or profession in partnership with other persons, the basis period of the partnership for that year,and (in either case) ending with 5th April 1997;
 - “the transitional overlap profit” means the amount mentioned in the said paragraph 6(4).
- 8 (1) This paragraph applies where, in the case of any income derived by any person from the carrying on by him of a trade or profession in partnership with other persons—

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- (a) that person (“the retiring partner”) ceases to carry on the trade or profession at any time in the transitional overlap period; and
 - (b) if he had not so ceased, paragraph 7(2) above would have applied in relation to him.
- (2) The retiring partner shall for the year 1996-97 be chargeable to income tax under Case IV or V of Schedule D on 1.25 times the aggregate of the amounts which would have fallen within paragraph 7(1)(b) above.
- (3) In this paragraph “the transitional overlap period” has the same meaning as in paragraph 7 above.

Increase of interest arising in 1995-96 and 1996-97

- 9 (1) This paragraph applies where, in the case of any interest arising to any person from any source—
- (a) paragraph 4(2) or 6(2)(a) of Schedule 20 to the Finance Act 1994 applies; and
 - (b) any amount which is included in the interest arising within the years 1995-96 and 1996-97 would not have been so included if any relevant arrangements made between that person and another had not been made.
- (2) Subject to sub-paragraph (3) below, the said paragraph 4(2) or 6(2)(a) shall have effect as if the reference to 50 per cent. of the aggregate of the amounts there mentioned were a reference to the aggregate of—
- (a) 50 per cent. of each of those amounts; and
 - (b) 62.5 per cent. of each of the amounts falling within sub-paragraph (1)(b) above.
- (3) Sub-paragraph (2) above does not apply where—
- (a) the aggregate of the amounts falling within sub-paragraph (1)(b) above is less than such amount as may be prescribed by regulations made by the Board; or
 - (b) the proportion which the aggregate of those amounts bears to the aggregate of the amounts mentioned in the said paragraph 4(2) or 6(2)(a) is less than such proportion as may be so prescribed.

Increase of other income arising in 1995-96 and 1996-97

- 10 (1) This paragraph applies where, in the case of any income (other than income falling within paragraph 6 or 9 above) arising to any person from any source—
- (a) paragraph 4(2) or 6(2)(a) of Schedule 20 to the Finance Act 1994 applies; and
 - (b) any amount which is included in the income arising within the years 1995-96 and 1996-97 would not have been so included if—
 - (i) any relevant arrangements made between that person and another had not been made; or
 - (ii) any relevant transaction entered into by that person had not been entered into.

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- (2) Subject to sub-paragraph (3) below, the said paragraph 4(2) or 6(2)(a) shall have effect as if the reference to 50 per cent. of the aggregate of the amounts there mentioned were a reference to the aggregate of—
- (a) 50 per cent. of each of those amounts; and
 - (b) 62.5 per cent. of each of the amounts falling within sub-paragraph (1)(b) above.
- (3) Sub-paragraph (3) of paragraph 9 above shall apply for the purposes of this paragraph as it applies for the purposes of that paragraph.

PART III

PROCEDURAL AND OTHER PROVISIONS

Time limits for purposes of paragraphs 1, 2, 4, 6 and 8 to 10

- 11 (1) Nothing in subsection (2) or (3) of section 29 of the Management Act (as substituted by section 191 of the Finance Act 1994) shall prevent an assessment being made under subsection (1) of that section in any case where—
- (a) the loss of tax there mentioned is attributable to any failure to give effect to any of paragraphs 1, 2, 4, 6 and 8 to 10 above; and
 - (b) at the time when the assessment is made, the condition mentioned in sub-paragraph (3) below is fulfilled.
- (2) Nothing in subsection (3) or (4) of section 30B of the Management Act (amendment of partnership statement where loss of tax discovered) shall prevent an amendment being made under subsection (1) of that section in any case where—
- (a) the omission, deficiency or excess there mentioned is attributable to any failure to give effect to any of paragraphs 1, 2, 4, 6 and 8 to 10 above; and
 - (b) at the time when the amendment is made, the condition mentioned in sub-paragraph (3) below is fulfilled.
- (3) The condition referred to in sub-paragraphs (1) and (2) above is that either—
- (a) an assessment under section 9 of the Management Act or, as the case may require, a partnership statement under section 12AB of that Act has been made for the year 1997-98 and that assessment or statement is still capable of being amended; or
 - (b) no such assessment or, as the case may require, statement has been so made.

Advance notice for purposes of paragraphs 3, 5 and 7

- 12 (1) An officer of the Board shall not so amend an assessment made under section 9 of the Management Act (returns to include self-assessment) as to give effect to paragraph 3, 5 or 7 above unless a notice stating—
- (a) in the case of paragraph 3 or 7 above, the aggregate of the amounts falling within sub-paragraph (1)(b) of that paragraph; and
 - (b) in the case of paragraph 5 above, the aggregate amount of interest paid as mentioned in sub-paragraph (3) of that paragraph,
- is given by such an officer at a time when the condition mentioned in sub-paragraph (2) below is fulfilled.

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- (2) The condition referred to in sub-paragraph (1) above is that either—
 - (a) an assessment under section 9 of the Management Act has been made for the year 1998-99 and that assessment is still capable of being amended; or
 - (b) no such assessment has been so made.
- (3) Subject to sub-paragraph (4) below, a notice under sub-paragraph (1) above shall be conclusive of the matters stated in it.
- (4) An appeal may be brought against a notice under sub-paragraph (1) above at any time within the period of 30 days beginning with the date on which the notice is given.
- (5) Subject to sub-paragraph (6) below, the provisions of the Management Act relating to appeals shall have effect in relation to an appeal under sub-paragraph (4) above as they have effect in relation to an appeal against an assessment to tax.
- (6) On an appeal under sub-paragraph (4) above, section 50(6) to (8) of the Management Act (procedure on appeals) shall not apply but the Commissioners may—
 - (a) if it appears to them that the matters stated in the notice under sub-paragraph (1) above are correct, confirm the notice; or
 - (b) if it does not so appear to them, set aside or modify the notice accordingly.

Penalties not to apply in certain cases

- 13 (1) Where a relevant return (as originally made) states—
- (a) that paragraph 1, 3 or 4 above applies in the case of a trade, profession or vocation carried on by any person; or
 - (b) that paragraph 7 or 8 above applies in the case of any income derived by any person from the carrying on by him of a trade, profession or vocation,
- sub-paragraph (2) of that paragraph shall have effect, in its application to any amounts stated in the return (as so made) to fall within sub-paragraph (1)(b) of that paragraph or, in the case of paragraph 4 or 8 above, to be amounts which would have fallen within sub-paragraph (1)(b) of the preceding paragraph, as if the words “1.25 times” were omitted.
- (2) Where a relevant return (as originally made) states—
- (a) that paragraph 6 above applies in the case of any income derived by any person from the carrying on by him of a trade, profession or vocation; or
 - (b) that paragraph 9 or 10 above applies in the case of any income arising to any person from any source,
- sub-paragraph (2) of that paragraph shall have effect, in its application to any amounts stated in the return (as so made) to fall within sub-paragraph (1)(b) of that paragraph, as if for the words “62.5 per cent.” there were substituted the words “50 per cent”.
- (3) In this paragraph—
- “relevant return” means a return which, for the relevant year, is made under section 8, 8A or 12AA of the Management Act in respect of the trade, profession or vocation or, as the case may be, the source of the income;
 - “the relevant year” means—
 - (a) in relation to paragraph 1, 6, 9 or 10 above, the year 1996–97;
 - (b) in relation to paragraph 3, 4, 7 or 8 above, the year 1997–98.

PART IV

INTERPRETATION

Relevant changes for purposes of paragraphs 1, 3, 6 and 7

- 14 (1) Any accounting change or change of business practice is a relevant change for the purposes of paragraphs 1, 3, 6 and 7 above unless—
- (a) the change is made exclusively for bona fide commercial reasons; or
 - (b) the obtaining of a tax advantage is not the main benefit that could reasonably be expected to arise from the making of the change.
- (2) In this paragraph “accounting change”—
- (a) does not include any change of accounting date which brings the end of the basis period for the year 1996-97 closer to 5th April 1997; but
 - (b) subject to that, means any change of accounting date or other modification of an accounting policy or any substitution of one such policy for another.
- (3) In this paragraph “change of business practice” means any change in an established practice of trade, profession or vocation carried on by any person—
- (a) as to the timing of any of the following, namely—
 - (i) the supply of goods or services, the invoicing of customers or clients and the collection of outstanding debts; and
 - (ii) the obtaining of goods or services, the incurring of business expenses and the settlement of outstanding debts; or
 - (b) as to the obtaining or making of payments in advance or payments on account.

Relevant transactions for purposes of paragraphs 1, 3, 6 and 7

- 15 Any self-cancelling transaction or transaction with a connected person is a relevant transaction for the purposes of paragraphs 1, 3, 6 and 7 above unless—
- (a) the transaction is entered into exclusively for bona fide commercial reasons; or
 - (b) the obtaining of a tax advantage is not the main benefit that could reasonably be expected to arise from the entering into of the transaction.
- 16 (1) An agreement by which the person by whom a trade, profession or vocation is carried on agrees to sell or transfer trading stock or work in progress is a self-cancelling transaction for the purposes of paragraph 15 above if by the same or any collateral agreement that person—
- (a) agrees to buy back or re-acquire the trading stock or work in progress; or
 - (b) acquires or grants an option, which is subsequently exercised, for him to buy back or re-acquire the trading stock or work in progress.
- (2) In sub-paragraph (1) above—
- “trading stock” has the same meaning as in section 100 of the Taxes Act 1988;
- “work in progress”, in relation to a profession or vocation, means—
- (a) any services performed in the ordinary course of the profession or vocation, the performance of which is wholly or partly completed at the time of the sale or transfer and for which it would be reasonable to

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expect that a charge would have been made on their completion if the sale or transfer had not been effected; and

(b) any article produced, and any such material as is used, in the performance of any such services,

and references in that sub-paragraph to the sale or transfer of work in progress shall include references to the sale or transfer of any benefits and rights which accrue, or might reasonably be expected to accrue, from the carrying out of the work.

- 17 (1) For the purposes of paragraph 15 above, any question whether the person by whom a trade, profession or vocation is carried on is connected with another person shall be determined in accordance with sub-paragraphs (2) to (5) below.
- (2) An individual carrying on a trade, profession or vocation is connected with another person if they are connected with each other within the meaning of section 839 of the Taxes Act 1988 (disregarding for this purpose the exception in subsection (4) of that section).
- (3) Persons carrying on a trade or profession in partnership are connected with an individual if he controls the partnership.
- (4) Persons carrying on a trade or profession in partnership are connected with a company if the company controls the partnership or the same person controls both the company and the partnership.
- (5) Persons carrying on a trade or profession in partnership are connected with persons carrying on another trade or profession in partnership if the same person controls both partnerships.
- (6) In this paragraph—
- (a) “control” shall be construed—
- (i) in relation to a company, in accordance with section 416 of the Taxes Act 1988;
- (ii) in relation to a partnership, in accordance with section 840 of that Act; and
- (b) any reference to a person controlling a company or partnership is a reference to his doing so either alone or with one or more persons connected with him.

Relevant arrangements for purposes of paragraph 9

- 18 (1) Any arrangements under which—
- (a) interest arises at irregular intervals during the years 1994-95 to 1997-98, or
- (b) there are artificial variations in the rate of interest applicable during those years,
- are relevant arrangements for the purposes of paragraph 9 above unless the obtaining of a tax advantage is not the main benefit that could reasonably be expected to arise from the making of the arrangements.
- (2) Any variations in the rate of interest applicable during the years 1994-95 to 1997-98 are artificial variations for the purposes of this paragraph unless they are based on variations in a variable rate of interest the values of which from time to time are regularly published.

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Relevant arrangements for purposes of paragraph 10

- 19 Any arrangements under which income arises at irregular intervals during the years 1994-95 to 1997-98 are relevant arrangements for the purposes of paragraph 10 above unless—
- (a) the arrangements are made exclusively for bona fide commercial reasons; or
 - (b) the obtaining of a tax advantage is not the main benefit that could reasonably be expected to arise from the making of the arrangements.

Relevant transactions for purposes of paragraph 10

- 20 (1) Any transaction with a connected person is a relevant transaction for the purposes of paragraph 10 above unless—
- (a) the transaction is entered into exclusively for bona fide commercial reasons; or
 - (b) the obtaining of a tax advantage is not the main benefit that could reasonably be expected to arise from the entering into of the transaction.
- (2) A person is connected with another person for the purposes of this paragraph if they are connected with each other within the meaning of section 839 of the Taxes Act 1988.

General

- 21 (1) In this Schedule “turnover”, in relation to a trade, profession or vocation, means the amounts derived from the provision of goods or services falling within its ordinary activities, after deduction of trade discounts and value added tax.
- (2) Obtaining a tax advantage shall not be regarded as a bona fide commercial reason for the purposes of this Schedule.