Finance Act 2004

2004 CHAPTER 12

PART 1

EXCISE DUTIES

Tobacco products duty

1 Rates of tobacco products duty

(1) For the Table of rates of duty in Schedule 1 to the Tobacco Products Duty Act 1979 (c. 7) substitute—

TABLE

1. Cigarettes	An amount equal to 22 per cent of the retail price plus £99.80 per thousand cigarettes.
2. Cigars	£145.35 per kilogram.
3. Hand-rolling tobacco	£104.47 per kilogram.
4. Other smoking tobacco and chewing tobacco	£63.90 per kilogram.

(2) This section shall be deemed to have come into force at 6 o'clock in the evening of 17th March 2004.

Alcoholic liquor duties

2 Rate of duty on beer

(1) In section 36(1AA)(a) of the Alcoholic Liquor Duties Act 1979 (c. 4) (rate of duty on beer) for "£12.22" substitute "£12.59".

(2) This section shall be deemed to have come into force at midnight on 21st March 2004.

3 Rates of duty on wine and made-wine

(1) For Part 1 of the Table of rates of duty in Schedule 1 to the Alcoholic Liquor Duties Act 1979 (rates of duty on wine and made-wine) substitute—

"**PART 1**

WINE AND MADE-WINE OF A STRENGTH NOT EXCEEDING 22 PER CENT

Description of wine or made-wine	*Rates of duty per hectolitre*
	£
Wine or made-wine of a strength not exceeding 4 per cent	50.38
Wine or made-wine of a strength exceeding 4 per cent but not exceeding 5.5 per cent	69.27
Wine or made-wine of a strength exceeding 5.5 per cent but not exceeding 15 per cent and not sparkling	163.47
Sparkling wine or sparkling made-wine of a strength exceeding 5.5 per cent but less than 8.5 per cent	166.70
Sparkling wine or sparkling made-wine of a strength of 8.5 per cent or of a strength exceeding 8.5 per cent but not exceeding 15 per cent	220.54
Wine or made-wine of a strength exceeding 15 per cent but not exceeding 22 per cent	217.95"

(2) This section shall be deemed to have come into force at midnight on 21st March 2004.

4 Duty stamps for spirits etc

(1) At the beginning of Part 6 of the Alcoholic Liquor Duties Act 1979 (c. 4) (general control provisions) under the heading "*Sale of dutiable alcoholic liquors*" insert—

"**64A Retail containers of certain alcoholic liquors to be stamped**

Schedule 2A to this Act (duty stamps) has effect.".

(2) Before Schedule 3 to that Act insert the Schedule 2A set out in Schedule 1 to this Act.

(3) In section 12(2) of the Finance Act 1994 (c. 9) (defaults engaging Commissioners' power to assess excise duty to the best of their judgement) after paragraph (c) insert—

"(ca) any failure by any person to comply with a requirement to which he is made subject by or under Schedule 2A to the Alcoholic Liquor Duties Act 1979 (duty stamps);".

(4) In section 14(1) of that Act (reviewable decisions) after paragraph (bc) insert—

"(bd) any decision by the Commissioners as to whether or not any person is entitled to any repayment or credit by virtue of regulations under paragraph 4(2)(h) of Schedule 2A to the Alcoholic Liquor Duties Act 1979 (duty stamps), or the amount of the repayment or credit to which any person is so entitled;

(be) any decision by the Commissioners made by virtue of regulations under paragraph 4(2)(i) of that Schedule that some or all of a payment made, or security provided, is forfeit, or the amount which is so forfeit;".

(5) The amendments made by this section have effect in relation to retail containers containing alcoholic liquor if the excise duty point for the alcoholic liquor falls on or after such day as the Treasury may by order made by statutory instrument appoint.

(6) An order under subsection (5) may contain such supplemental and transitional provision and savings as the Treasury think fit in connection with the coming into effect of those amendments.

(7) In subsection (5) "excise duty point" has the meaning given by section 1 of the Finance (No. 2) Act 1992 (c. 48).

Hydrocarbon oil etc duties

5 Rates

(1) In section 6 of the Hydrocarbon Oil Duties Act 1979 (c. 5) (hydrocarbon oil: rates of duty)—

(a) in subsection (1A)(a) (ultra low sulphur petrol) for "£0.4710" substitute "£0.4902",

(b) in subsection (1A)(b) (other light oil) for "£0.5620" substitute "£0.5790",

(c) in subsection (1A)(c) (ultra low sulphur diesel) for "£0.4710" substitute "£0.4902", and

(d) in subsection (1A)(d) (other heavy oil) for "£0.5327" substitute "£0.5487".

(2) In section 6AA(3) of that Act (biodiesel: rate of duty) for "£0.2710" substitute "£0.2852".

(3) In section 11(1) of that Act (rebate on heavy oil)—

(a) in paragraph (a) (fuel oil) for "£0.0382" substitute "£0.0624",

(b) in paragraph (b) (gas oil: general) for "£0.0422" substitute "£0.0664", and

(c) in paragraph (ba) (ultra low sulphur diesel) for "£0.0422" substitute "£0.0664".

(4) In section 13A(1) of that Act (rebate on unleaded petrol) for "£0.0601" substitute "£0.0620".

(5) In section 14(1) of that Act (rebate on light oil for use as furnace fuel) for "£0.0382" substitute "£0.0624".

(6) This section shall come into force on 1st September 2004.

6 Road fuel gas

(1) At the end of section 5 of the Hydrocarbon Oil Duties Act 1979 (road fuel gas) (which becomes subsection (1)) add—

"(2) In this Act "natural road fuel gas" is road fuel gas with a methane content of not less than 80%."

(2) For section 8(3) of that Act (rate of duty on road fuel gas) substitute—

"(3) The rate of the duty under this section shall be—

(a) in the case of natural road fuel gas, £0.1110 a kilogram, and

(b) in any other case, £0.1303 a kilogram."

(3) After section 21(2) of that Act (regulations) insert—

"(2A) In the case of regulations made for the purposes mentioned in subsection (1)(c) above, different regulations may be made for different classes of road fuel gas."

(4) This section shall come into force on 1st September 2004.

7 Sulphur-free fuel

(1) For section 1(3A) and (3B) of the Hydrocarbon Oil Duties Act 1979 (descriptions of hydrocarbon oil: ultra low sulphur petrol and unleaded petrol) substitute—

"(3A) "Ultra low sulphur petrol" means unleaded petrol—

(a) the sulphur content of which does not exceed 0.005 per cent. by weight,

(b) the aromatics content of which does not exceed 35 per cent. by volume, and

(c) which is not sulphur-free petrol.

(3B) "Sulphur-free petrol" means unleaded petrol the sulphur content of which does not exceed 0.001 per cent. by weight (or is nil).

(3C) "Unleaded petrol" means petrol that contains not more than 0.013 grams of lead per litre of petrol; and petrol is "leaded petrol" if it is not unleaded petrol."

(2) For section 1(6) of that Act (ultra low sulphur diesel) substitute—

"(6) "Ultra low sulphur diesel" means gas oil—

(a) the sulphur content of which does not exceed 0.005 per cent. by weight,

(b) the density of which does not exceed 835 kilograms per cubic metre at a temperature of 15°C,

(c) of which not less than 95 per cent. by volume distils at a temperature not exceeding 345°C, and

(d) which is not sulphur-free diesel.

(7) "Sulphur-free diesel" means gas oil the sulphur content of which does not exceed 0.001 per cent. by weight (or is nil)."

(3) In section 1(1) of that Act for "Subsections (2) to (6)" substitute "Subsections (2) to (7)".

(4) For section 2A(1) of that Act (power to amend definitions) substitute—

"(1) The Treasury may by order made by statutory instrument amend the definition for the purposes of this Act of—

(a) sulphur-free diesel;

(b) sulphur-free petrol;

(c) ultra low sulphur diesel;

(d) ultra low sulphur petrol;

(e) unleaded petrol and leaded petrol."

(5) In section 6(1A) of that Act (rates of duty)—

(a) after paragraph (a) insert—

"(aa) £0.4852 a litre in the case of sulphur-free petrol;",

(b) in paragraph (b) after "other than ultra low sulphur petrol" insert "and sulphur-free petrol",

(c) after paragraph (c) insert—

"(ca) £0.4852 a litre in the case of sulphur-free diesel;", and

(d) in paragraph (d) after "other than ultra low sulphur diesel" insert "and sulphur-free diesel".

(6) In section 13AA(6) of that Act (restrictions on use of rebated kerosene) after "which is not ultra low sulphur diesel" insert "or sulphur-free diesel".

(7) In section 13A(1) of that Act (rebate on unleaded petrol) after ", other than ultra low sulphur petrol" insert "and sulphur-free petrol".

(8) In section 27 of that Act (interpretation)—

(a) after the definition of "road vehicle" insert—

""sulphur-free diesel" has the meaning given by section 1(7) above;

"sulphur-free petrol" has the meaning given by section 1(3B) above;", and

(b) in the definition of "unleaded petrol" and "leaded petrol" for "section 1(3B) above." substitute "section 1(3C) above."

(9) This section shall come into force on 1st September 2004.

8 Definition of "fuel oil"

Before section 2A(2) of the Hydrocarbon Oil Duties Act 1979 (c. 5) (power to amend definitions) insert—

"(1C) The Treasury may by order made by statutory instrument amend the definition for the purposes of section 11 of "fuel oil"."

9 Mixing of rebated oil

(1) For section 20AAA of the Hydrocarbon Oil Duties Act 1979 (mixing of rebated oil) substitute—

"**20AAA Mixing of rebated oil**

(1) A duty of excise shall be charged on a mixture which is—

(a) produced by mixing fully rebated heavy oil with heavy oil which is not fully rebated, and

(b) supplied for use as fuel for any engine, motor or other machinery.

(2) A duty of excise shall be charged on a mixture which is—

(a) produced by mixing partially rebated heavy oil with heavy oil which is not partially rebated, and

(b) supplied for use as fuel for any engine, motor or other machinery;

but a mixture on which duty is charged under subsection (1) shall not be charged under this subsection.

(3) A duty of excise shall be charged on a mixture which is produced by mixing—

(a) fully or partially rebated heavy oil, with

(b) biodiesel or a substance containing biodiesel.

(4) The rate of duty on a mixture under subsection (1) or (2) shall be—

(a) in the case of a mixture supplied for use as fuel for a road vehicle, the rate of duty specified in section 6(1A)(d) (general rate for heavy oil), and

(b) in any other case, equivalent to the rate of rebate specified in section 11(1)(b) (general rate for gas oil).

(5) The rate of duty on a mixture under subsection (3) shall be the rate of duty specified in section 6(1A)(d).

(6) For the purposes of this section—

(a) oil is fully rebated if a rebate has been allowed in respect of it under section 11(1)(c) (general rebate for heavy oil),

(b) oil is partially rebated if a rebate has been allowed in respect of it under any other provision of section 11 or under section 13AA, and

(c) a reference to mixing is a reference to non-approved mixing (within the meaning given by section 20A(5)).

(7) The person liable to pay duty charged under this section on supply or production of a mixture is the person supplying or producing the mixture.

(8) Where duty under a provision of this Act has been paid on an ingredient of a mixture, the duty charged under this section shall be reduced by the amount of any duty that the Commissioners are satisfied has been paid on the ingredient (but not to a negative amount).

(9) The Commissioners may exempt a person from liability to pay duty under any provision of this Act in respect of production or supply of a mixture of a kind described in subsection (1)(a), (2)(a) or (3) if satisfied that—

(a) the liability was incurred accidentally, and

(b) in the circumstances the person should be exempted."

(2) In section 20AAB of that Act (mixing of rebated oil: supplementary)—

(a) for subsections (1) and (2) substitute—

"(1) A person who supplies or produces a mixture on which duty is charged under section 20AAA above must notify the Commissioners of the supply or production—

(a) in advance, or

(b) within the period of seven days beginning with the date of supply or production.", and

(b) in subsection (3) omit "or (2)".

(3) Schedule 2A to that Act shall cease to have effect.

(4) This section—

(a) in so far as it imposes or relates to the charge specified in section 20AAA(1) or (2) of that Act (as substituted by subsection (1) above), shall have effect in relation to anything supplied on or after the date on which this Act is passed,

(b) in so far as it imposes or relates to the charge specified in section 20AAA(3) of that Act (as substituted by subsection (1) above), shall have effect in relation to anything produced on or after the date on which this Act is passed, and

(c) in so far as it causes sections 20AAA and 20AAB(1) and (2) of, and Schedule 2A to, that Act to cease to have effect in their present form, shall come into force on the day on which this Act is passed.

(5) But no duty shall be charged on the supply of a mixture under section 20AAA(1) or (2) of that Act (as substituted by subsection (1) above) if duty was charged on the production of the mixture under section 20AAA as it had effect before the date on which this Act is passed.

10 Bioethanol

(1) After section 2AA of the Hydrocarbon Oil Duties Act 1979 (c. 5) (biodiesel) insert—

"**2AB Bioethanol**

(1) In this Act "bioethanol" means a liquid fuel—

(a) consisting of ethanol produced from biomass, and

(b) capable of being used for the same purposes as light oil.

(2) In subsection (1)—

(a) "liquid" does not include any substance that is gaseous at a temperature of 15°C and under a pressure of 1013.25 millibars, and

(b) "biomass" means vegetable and animal substances constituting the biodegradable fraction of—

(i) products, wastes and residues from agriculture, forestry and related activities, or

(ii) industrial and municipal waste.

(3) A substance shall be treated as falling within subsection (1)(a) if it—

(a) is denatured alcohol for the purposes of section 5 of the Finance Act 1995 (c. 4), and

(b) would fall within subsection (1)(a) above (without reliance on this subsection) but for the presence of a component introduced—

(i) for the purpose of rendering the substance denatured alcohol, and

(ii) in the minimum proportion necessary for that purpose."

(2) After section 2A(1A) of that Act (power to amend definitions: biodiesel) insert—

"(1B) The Treasury may by order made by statutory instrument amend the definition for the purposes of this Act of "bioethanol"."

(3) After section 6AC of that Act (biodiesel: application of provisions relating to hydrocarbon oil) insert—

"**6AD Excise duty on bioethanol**

(1) A duty of excise shall be charged on the setting aside for a chargeable use by any person, or (where it has not already been charged under this section) on the chargeable use by any person, of bioethanol.

(2) In subsection (1) "chargeable use" means use—

(a) as fuel for any engine, motor or other machinery,

(b) as an additive or extender in any substance so used, or

(c) for the production of bioethanol blend.

(3) The rate of duty under this section shall be £0.2852 a litre.

6AE Excise duty on blends of bioethanol and hydrocarbon oil

(1) A duty of excise shall be charged on bioethanol blend—

(a) imported into the United Kingdom, or

(b) produced in the United Kingdom and delivered for home use from a refinery or other premises used for the production of hydrocarbon oil or from any bonded storage for hydrocarbon oil, not being bioethanol blend chargeable with duty under paragraph (a) above.

(2) In this Act "bioethanol blend" means any mixture that is produced by mixing—

(a) bioethanol, and

(b) hydrocarbon oil not charged with excise duty.

(3) The rate at which the duty shall be charged on any bioethanol blend shall be a composite rate representing—

(a) in respect of the proportion of the blend that is hydrocarbon oil, the rate that would be applicable to the blend if it consisted entirely of hydrocarbon oil of the description that went into producing the blend, and

(b) in respect of the proportion of the blend that is bioethanol, the rate that would be applicable to the blend if it consisted entirely of bioethanol.

(4) A reference in subsection (3) to a proportion is to a proportion by volume to the nearest 0.001%.

(5) If the Commissioners are not satisfied as to the proportion of bioethanol in any bioethanol blend, the rate of duty chargeable shall be the rate that would be applicable to the blend if it consisted entirely of hydrocarbon oil of the description that went into producing the blend.

(6) Where imported bioethanol blend is removed to a refinery, the duty chargeable under subsection (1) above shall, instead of being charged at the time of the importation of the blend, be charged on the delivery of any goods from the refinery for home use and shall be the same as that which would be payable on the importation of like goods.

6AF Application to bioethanol and bioethanol blend of provisions relating to hydrocarbon oil

(1) The Commissioners may by regulations provide for—

(a) references in this Act, or specified references in this Act, to hydrocarbon oil to be construed as including references to—

(i) bioethanol;

(ii) bioethanol blend;

(b) references in this Act, or specified references in this Act, to duty on hydrocarbon oil to be construed as including references to duty under—

(i) section 6AD above;

(ii) section 6AE above;

(c) bioethanol, or bioethanol blend, to be treated for the purposes of such of the following provisions of this Act as may be specified as if it fell within a specified description of hydrocarbon oil.

(2) Where the effect of provision made under subsection (1) above is to extend any power to make regulations, provision made in exercise of the power as extended may be contained in the same statutory instrument as the provision extending the power.

(3) In this section "specified" means specified by regulations under this section.

(4) Regulations under this section may make different provision for different cases.

(5) Paragraph (b) of subsection (1) above shall not be taken as prejudicing the generality of paragraph (a) of that subsection."

(4) In section 6A(1) of that Act (fuel substitutes) for "which is not hydrocarbon oil, biodiesel or bioblend" substitute "which is not—

(a) hydrocarbon oil,

(b) biodiesel,

(c) bioblend,

(d) bioethanol, or

(e) bioethanol blend."

(5) At the end of section 11(6) of that Act (rebate on heavy oil: exception) add "or bioethanol blend".

(6) At the end of section 13AA of that Act (restrictions on use of rebated kerosene) add—

"(7) Nothing in this section has the effect of allowing a rebate on bioblend or bioethanol blend."

(7) In section 14 of that Act (rebate on light oil for use as furnace fuel) after subsection (1) insert—

"(1A) No rebate shall be allowed under this section in respect of bioethanol blend."

(8) In section 22 of that Act (prohibition on use of petrol substitutes on which duty has not been paid)—

(a) after subsection (1AA) insert—

"(1AB) Where any person—

(a) puts any bioethanol to a chargeable use (within the meaning of section 6AD above), and

(b) knows or has reasonable cause to believe that there is duty charged under section 6AD above on that bioethanol which has not been paid and is not lawfully deferred,

his putting the bioethanol to that use shall attract a penalty under section 9 of the Finance Act 1994 (c. 9) (civil penalties), and any goods in respect of which a person contravenes this section shall be liable to forfeiture.", and

(b) in subsection (1A) for "subsection (1) or (1AA) above." substitute "subsection (1), (1AA) or (1AB) above."

(9) In section 27(1) of that Act (interpretation) after the definition of "biodiesel" insert—

""bioethanol" has the meaning given by section 2AB above;

"bioethanol blend" has the meaning given by section 6AE(2) above;".

(10) This section shall come into force on 1st January 2005.

(11) But no duty shall be charged under section 6AD or 6AE of that Act (inserted by subsection (3) above) in respect of the chargeable use of any goods, or the setting aside of any goods for a chargeable use, if before 1st January 2005—

(a) the goods were used or set aside for a chargeable use within the meaning of section 6A of that Act, and

(b) a duty of excise was charged under that section on that use or setting aside.

11 Biodiesel

(1) In section 6AA(2) of the Hydrocarbon Oil Duties Act 1979 (c. 5) (excise duty on biodiesel) after paragraph (b) add—

"(c) for the production of bioblend."

(2) This section shall come into force on 1st January 2005.

12 Fuel substitutes

(1) For section 6A(2)(b) of the Hydrocarbon Oil Duties Act 1979 (fuel substitutes: additives and extenders) substitute—

"(b) as an additive or extender in any substance so used."

(2) This section shall have effect in relation to anything done on or after the date on which this Act is passed.

13 Warehousing

After section 23B of the Hydrocarbon Oil Duties Act 1979 (regulation of traders in controlled oil) insert—

"**23C Warehousing**

(1) For the purposes of Part VIII of the Customs and Excise Management Act 1979 (c. 2) (warehousing) the substances specified in subsection (4) shall be treated as if they were chargeable with duty (and therefore within the scope of section 92(1)(a) or (c) of that Act) whether or not duty is in fact chargeable.

(2) The Commissioners may make regulations under section 93 of that Act (warehousing regulations) that relate to a substance specified in subsection (4).

(3) In respect of a substance specified in subsection (4) which has been or is to be deposited in an excise warehouse by virtue of subsection (2), the Commissioners may—

(a) treat the substance, or make provision by regulations for treating the substance, as if duty were chargeable in relation to it by virtue of a specified enactment;

(b) make any regulations, or do any other thing, of a kind that they could make or do (whether or not by virtue of a provision of Part VIII of that Act) in respect of a substance deposited in an excise warehouse under Part VIII of that Act.

(4) The substances referred to in subsection (1) are—

(a) petroleum gas,

(b) animal fat set aside for use as motor fuel or heating fuel,

(c) vegetable fat set aside for use as motor fuel or heating fuel,

(d) non-synthetic methanol set aside for use as motor fuel or heating fuel,

(e) biodiesel,

(f) a mixture of two or more substances specified in paragraphs (a) to (e), and

(g) any other substance specified for the purposes of this section in regulations made by the Commissioners.

(5) In subsection (4)—

(a) "petroleum gas" means any hydrocarbon which—

(i) is gaseous at a temperature of 15°C and under a pressure of 1013.25 millibars, and

(ii) is not natural gas (as defined in paragraph (b) below),

(b) "natural gas" means gas with a methane content of not less than 80%,

(c) "animal fat" means a triglyceride of animal origin,

(d) "vegetable fat" means a triglyceride of vegetable origin, and

(e) "non-synthetic methanol" means methyl alcohol of non-synthetic origin.

(6) Regulations under subsection (4)(g)—

(a) may make provision only if the Commissioners think it necessary or expedient for a purpose connected with Council Directive 92/12/EEC on the general arrangements for products subject to excise duty and on the holding, movement and monitoring of such products,

(b) may, in particular, make provision by reference to that Directive or any other Community instrument, and

(c) may, in particular, make provision by reference to the purpose for which a substance is intended to be used."

14 Treatment of certain energy products

(1) Section 10 of the Finance Act 1993 (c. 34) (application of Hydrocarbon Oil Duties Act 1979 to certain substances) shall be amended as follows.

(2) In subsection (1) for "mineral oil" substitute "energy product".

(3) In subsection (2)—

(a) after "as the equivalent of hydrocarbon oil" insert "or road fuel gas", and

(b) for "as if it fell within such description of hydrocarbon oil" substitute "as if it fell within such class or description of substance".

(4) In subsection (3)—

(a) for "a mineral oil" substitute "an energy product", and

(b) for "hydrocarbon oil of the description" substitute "the substance".

(5) For subsection (4) substitute—

"(4) In this section "energy product" means a substance which—

(a) is an energy product for the purposes of Council Directive 2003/96/EC restructuring the Community framework for the taxation of energy products and electricity, and

(b) is not (apart from as a result of this section) hydrocarbon oil or road fuel gas within the meaning of the 1979 Act."

(6) For subsection (6) substitute—

"(6) Where a duty of excise is charged on a substance under a provision of the 1979 Act by virtue of an order under this section, no duty shall be charged on the substance under any other provision of that Act."

(7) For the heading substitute "Extension of Hydrocarbon Oil Duties Act 1979 to energy products".

Betting and gaming duties

15 General betting duty: pool betting

(1) The Betting and Gaming Duties Act 1981 (c. 63) shall be amended as follows.

(2) For section 4 (pool betting, the Tote, &c.) substitute—

"**4 Pool betting on horse and dog races**

(1) General betting duty shall be charged on pool betting which—

(a) relates only to horse racing or dog racing, and

(b) is not on-course betting.

(2) But subsection (1) does not apply to pool betting if—

(a) the promoter is outside the United Kingdom, and

(b) it is conducted otherwise than by means of a totalisator situated in the United Kingdom.

(3) The amount of duty charged under subsection (1) in respect of bets made by means of facilities provided by a person in an accounting period shall be 15 per cent. of the amount of his net stake receipts for the period."

(3) In section 5(7) (net stake receipts) and section 5B(4) (liability to pay) for "section 4(1) to (3)" substitute "section 4(1)".

(4) In section 7B (conditions for charging pool betting duty)—

(a) in subsection (2)(b) omit "the bet is made otherwise than by means of a totalisator and", and

(b) for subsection (3)(a) and (b) substitute—

"(a) made wholly in relation to horse racing or dog racing,".

(5) In section 9(2)(a) (prohibitions for protection of revenue)—

(a) at the end of sub-paragraph (i) add "or", and

(b) in sub-paragraph (ii) for "in the case of bets made otherwise than by means of a totalisator," substitute "in any case,".

(6) In section 10(2) (definition of pool betting) for the definition of "totalisator odds" substitute—

""totalisator odds" means the odds paid on bets made—

(a) by means of a totalisator, and

(b) at the scene of the event to which the bets relate."

(7) In section 12(4) (interpretation)—

(a) for the definition of "bookmaker" substitute—

""bookmaker" means a person who—

(a) carries on the business of receiving or negotiating bets or conducting pool betting operations (whether as principal or agent and whether regularly or not), or

(b) holds himself out or permits himself to be held out, in the course of a business, as a person within paragraph (a);";

(b) for the definition of "on-course bet" substitute—

""on-course bet" has the meaning given by subsection (4A);", and

(c) omit the definition of "sponsored pool betting".

(8) After section 12(4) insert—

"(4A) A bet is an on-course bet for the purposes of this Part of this Act if it—

(a) is made by a person present at a horse or dog race meeting or by a bookmaker,

(b) is not made through an agent of an individual making the bet or though an intermediary, and

(c) is made—

(i) with a bookmaker present at the meeting, or

(ii) by means of a totalisator situated in the United Kingdom, using facilities provided at the meeting by or by arrangement with the person operating the totalisator."

(9) In paragraph 10(1) of Schedule 1 (betting duties: power of entry) omit the words ", or that facilities for sponsored pool betting on those events are being or are to be provided,".

(10) The amendments made by this section have effect in relation to accounting periods ending on or after the date of the passing of this Act.

16 Rates of gaming duty

(1) For the Table in section 11(2) of the Finance Act 1997 (c. 16) (rates of gaming duty) substitute—

TABLE

Part of gross gaming yield	*Rate*
The first £516,500	2.5 per cent.
The next £1,146,500	12.5 per cent.
The next £1,146,500	20 per cent.
The next £2,007,500	30 per cent.
The remainder	40 per cent.

(2) This section has effect in relation to accounting periods beginning on or after 1st April 2004.

Amusement machine licence duty

17 Amusement machine licence duty: rates

(1) In section 23 of the Betting and Gaming Duties Act 1981 (c. 63) (amount of duty payable on amusement machine licence) for the Table in subsection (2) substitute—

TABLE

(1) *Period (in months) for which licence granted*	*(2)* *Category* *A* £	*(3)* *Category* *B* £	*(4)* *Category* *C* £	*(5)* *Category* *D* £	*(6)* *Category* *E* £
1	30	80	85	170	230
2	50	155	165	330	445
3	75	225	245	480	650
4	95	295	315	625	845
5	120	355	380	755	1,020
6	140	410	445	875	1,185
7	160	465	500	990	1,340
8	185	515	555	1,095	1,480
9	205	560	600	1,190	1,610
10	225	600	645	1,275	1,725
11	240	635	680	1,350	1,825
12	250	665	715	1,415	1,915

(2) This section has effect in relation to any amusement machine licence for which an application is received by the Commissioners of Customs and Excise on or after 22nd March 2004.

Vehicle excise duty

18 Fee for payment of duty by credit card

(1) The Vehicle Excise and Registration Act 1994 (c. 22) is amended as follows.

(2) After section 19B insert—

"**19C Fee for payment of duty by credit card**

(1) This section applies where—

(a) a person applies for a vehicle licence or a trade licence, and

(b) the Secretary of State, or an authorised body, accepts a credit card payment in respect of the duty payable on the licence.

(2) Before issuing the licence, the Secretary of State, or the authorised body, shall require—

(a) the applicant, or

(b) a person acting on behalf of the applicant,

to pay to him, or it, such fee (if any) in respect of the acceptance of the credit card payment as may be prescribed by, or determined in accordance with, regulations.

(3) In cases of such descriptions as the Secretary of State may, with the consent of the Treasury, determine, the whole or a part of a fee paid under this section may be refunded.

(4) In this section—

"authorised body" means a body (other than a Northern Ireland department) which is authorised by the Secretary of State to act as his agent for the purpose of issuing licences;

"credit card" has such meaning as may be prescribed by regulations;

"regulations" means regulations made by the Secretary of State.".

(3) In section 58 (fees prescribed by regulations) in subsection (1) (fees prescribed by regulations under certain provisions to be of amount approved by Treasury) for "or 14(4)(b)" substitute ", 14(4)(b) or 19C(2)".

(4) This section has effect in relation to licences issued on or after such day as the Secretary of State may by order made by statutory instrument appoint.

PART 2

VALUE ADDED TAX

19 Disclosure of VAT avoidance schemes

(1) Schedule 2 (which relates to the disclosure of schemes for the avoidance of value added tax) has effect.

(2) Subsection (1) and that Schedule—

(a) come into force on the passing of this Act, so far as is necessary for enabling the making of any orders or regulations by virtue of that Schedule, and

(b) otherwise, come into force on such day as the Treasury may by order made by statutory instrument appoint.

20 Groups

(1) After section 43A of the Value Added Tax Act 1994 (c. 23) (groups: eligibility) insert—

"**43AA Power to alter eligibility for grouping**

(1) The Treasury may by order provide for section 43A to have effect with specified modifications in relation to a specified class of person.

(2) An order under subsection (1) may, in particular—

(a) make provision by reference to generally accepted accounting practice;

(b) define generally accepted accounting practice for that purpose by reference to a specified document or instrument (and may provide for the reference to be read as including a reference to any later document or instrument that amends or replaces the first);

(c) adopt any statutory or other definition of generally accepted accounting practice (with or without modification);

(d) make provision by reference to what would be required or permitted by generally accepted accounting practice if accounts, or accounts of a specified kind, were prepared for a person.

(3) An order under subsection (1) may also, in particular, make provision by reference to—

(a) the nature of a person;

(b) past or intended future activities of a person;

(c) the relationship between a number of persons;

(d) the effect of including a person within a group or of excluding a person from a group.

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

(a) make provision which applies generally or only in specified circumstances;

(b) make different provision for different circumstances;

(c) include supplementary, incidental, consequential or transitional provision."

(2) After section 43C of that Act insert—

"**43D Groups: duplication**

(1) A body corporate may not be treated as a member of more than one group at a time.

(2) A body which is a member of one group is not eligible by virtue of section 43A to be treated as a member of another group.

(3) If—

(a) an application under section 43B(1) would have effect from a time in accordance with section 43B(4), but

(b) at that time one or more of the bodies specified in the application is a member of a group (other than that to which the application relates),

the application shall have effect from that time, but with the exclusion of the body or bodies mentioned in paragraph (b).

(4) If—

(a) an application under section 43B(2)(a) would have effect from a time in accordance with section 43B(4), but

(b) at that time the body specified in the application is a member of a group (other than that to which the application relates),

the application shall have no effect.

(5) Where a body is a subject of two or more applications under section 43B(1) or (2)(a) that have not been granted or refused, the applications shall have no effect."

(3) In section 43(1) of that Act (effect of treatment as group) for "sections 43A to 43C" substitute "sections 43A to 43D".

(4) In section 43B(1), (2)(a), (5)(a) and (5)(b) and section 43C(3)(b) of that Act (groups: applications for membership and termination of membership) for "under section 43A(1)" substitute "by virtue of section 43A".

(5) In section 97(4) of that Act (orders, &c.: affirmative resolution) after paragraph (c) insert—

"(ca) an order under section 43AA(1) if as a result of the order any bodies would cease to be eligible to be treated as members of a group;".

21 Reverse charge on gas and electricity supplied by persons outside UK

(1) After section 9 of the Value Added Tax Act 1994 (c. 23) insert—

"**9A Reverse charge on gas and electricity supplied by persons outside the United Kingdom**

(1) This section applies if relevant goods are supplied—

(a) by a person who is outside the United Kingdom,

(b) to a person who is registered under this Act,

for the purposes of any business carried on by the recipient.

(2) The same consequences follow under this Act (and particularly so much as charges VAT on a supply and entitles a taxable person to credit for input tax) as if—

(a) the recipient had himself supplied the relevant goods in the course or furtherance of his business, and

(b) that supply were a taxable supply.

(3) But supplies which are treated as made by the recipient under subsection (2) are not to be taken into account as supplies made by him when determining any allowance of input tax in his case under section 26(1).

(4) In applying subsection (2) the supply of relevant goods treated as made by the recipient shall be assumed to have been made at a time to be determined in accordance with regulations prescribing rules for attributing a time of supply in cases to which this section applies.

(5) "Relevant goods" means gas supplied through the natural gas distribution network, and electricity.

(6) Whether a person is outside the United Kingdom is to be determined in accordance with an order made by the Treasury."

(2) This section has effect in relation to supplies made on or after 1st January 2005.

22 Use of stock in trade cars for consideration less than market value

(1) The Value Added Tax Act 1994 (c. 23) is amended as follows.

(2) In Schedule 6 (valuation: special cases) after paragraph 1 (supply to connected person at less than market value etc) insert—

"1A (1) Where—

(a) the value of a supply made by a taxable person for a consideration is (apart from this sub-paragraph) less than its open market value,

(b) the taxable person is a motor manufacturer or motor dealer,

(c) the person to whom the supply is made is—

(i) an employee of the taxable person,

(ii) a person who, under the terms of his employment, provides services to the taxable person, or

(iii) a relative of a person falling within sub-paragraph (i) or (ii) above,

(d) the supply is a supply of services by virtue of sub-paragraph (4) of paragraph 5 of Schedule 4 (business goods put to private use etc),

(e) the goods mentioned in that sub-paragraph consist of a motor car (whether or not any particular motor car) that forms part of the stock in trade of the taxable person, and

(f) the supply is not one to which paragraph 1 above applies,

the Commissioners may direct that the value of the supply shall be taken to be its open market value.

(2) A direction under this paragraph shall be given by notice in writing to the person making the supply, but no direction may be given more than 3 years after the time of the supply.

(3) A direction given to a person under this paragraph in respect of a supply made by him may include a direction that the value of any supply—

(a) which is made by him after the giving of the notice, or after such later date as may be specified in the notice, and

(b) as to which the conditions in paragraphs (a) to (f) of sub-paragraph (1) above are satisfied,

shall be taken to be its open market value.

(4) In this paragraph—

"motor car" means any motor vehicle of a kind normally used on public roads which has three or more wheels and either—

(a) is constructed or adapted solely or mainly for the carriage of passengers, or

(b) has to the rear of the driver's seat roofed accommodation which is fitted with side windows or which is constructed or adapted for the fitting of side windows,

but does not include any vehicle excluded by sub-paragraph (5) below;

"motor dealer" means a person whose business consists in whole or in part of obtaining supplies of, or acquiring from another member State or importing, new or second-hand motor

cars for resale with a view to making an overall profit on the sale of them (whether or not a profit is made on each sale);

"motor manufacturer" means a person whose business consists in whole or in part of producing motor cars including producing motor cars by conversion of a vehicle (whether a motor car or not);

"relative" means husband, wife, brother, sister, ancestor or lineal descendant;

"stock in trade" means new or second-hand motor cars (other than second-hand motor cars which are not qualifying motor cars within sub-paragraph (6) below) which are—

(a) produced by a motor manufacturer or, as the case may require, supplied to or acquired from another member State or imported by a motor dealer, for the purpose of resale, and

(b) intended to be sold—

(i) by a motor manufacturer within 12 months of their production, or

(ii) by a motor dealer within 12 months of their supply, acquisition from another member State or importation, as the case may require,

and such motor cars shall not cease to be stock in trade where they are temporarily put to a use in the motor manufacturer's or, as the case may be, the motor dealer's business which involves making them available for private use.

(5) The vehicles excluded by this sub-paragraph are—

(a) vehicles capable of accommodating only one person;

(b) vehicles which meet the requirements of Schedule 6 to the Road Vehicles (Construction and Use) Regulations 1986 and are capable of carrying twelve or more seated persons;

(c) vehicles of not less than three tonnes unladen weight (as defined in the Table to regulation 3(2) of the Road Vehicles (Construction and Use) Regulations 1986);

(d) vehicles constructed to carry a payload (the difference between—

(i) a vehicle's kerb weight (as defined in the Table to regulation 3(2) of the Road Vehicles (Construction and Use) Regulations 1986), and

(ii) its maximum gross weight (as defined in that Table)),

of one tonne or more;

(e) caravans, ambulances and prison vans;

(f) vehicles constructed for a special purpose other than the carriage of persons and having no other accommodation for carrying persons than such as is incidental to that purpose.

(6) For the purposes of this paragraph a motor car is a "qualifying motor car" if—

(a) it has never been supplied, acquired from another member State, or imported in circumstances in which the VAT on that supply, acquisition or importation was wholly excluded from credit as input tax by virtue of an order under section 25(7) (as at 17th

March 2004 see article 7 of the Value Added Tax (Input Tax) Order 1992); or

(b) a taxable person has elected under such an order for it to be treated as such.

(7) The Treasury may by order amend any of the definitions in this paragraph.".

(3) In section 83(v) (appeal to tribunal with respect to any direction under paragraph 1 or 2 of Schedule 6 etc) after "paragraph 1" insert ", 1A".

(4) In section 97 (orders, rules and regulations) in subsection (4) (orders to which the House of Commons affirmative procedure in subsection (3) applies) after paragraph (e) insert—

"(f) an order under paragraph 1A(7) of Schedule 6;".

(5) The amendment made by subsection (2) applies in relation to any use or availability for use on or after the appointed day (whatever the date of the directions mentioned in paragraph 5(4) of Schedule 4 to the Value Added Tax Act 1994 (c. 23)).

(6) In subsection (5) "the appointed day" means such day as the Treasury may by order made by statutory instrument appoint.

PART 3

INCOME TAX, CORPORATION TAX AND CAPITAL GAINS TAX

CHAPTER 1

INCOME TAX AND CORPORATION TAX CHARGE AND RATE BANDS

Income tax

23 Charge and rates for 2004-05

Income tax shall be charged for the year 2004-05, and for that year—

(a) the starting rate shall be 10%;

(b) the basic rate shall be 22%;

(c) the higher rate shall be 40%.

24 Personal allowances for those aged 65 or more

(1) For the year 2004-05—

(a) the amount specified in section 257(2) of the Taxes Act 1988 (claimant aged 65 or more) shall be £6,830; and

(b) the amount specified in section 257(3) of that Act (claimant aged 75 or more) shall be £6,950.

(2) Accordingly, section 257C(1) of that Act (indexation), so far as it relates to the amounts so specified, does not apply for that year.

Corporation tax

25 Charge and main rate for financial year 2005

Corporation tax shall be charged for the financial year 2005 at the rate of 30%.

26 Small companies' rate and fraction for financial year 2004

For the financial year 2004—

(a) the small companies' rate shall be 19%, and

(b) the fraction mentioned in section 13(2) of the Taxes Act 1988 (marginal relief for small companies) shall be 11/400ths.

27 Corporation tax starting rate and fraction for financial year 2004

For the financial year 2004—

(a) the corporation tax starting rate shall be 0%, and

(b) the fraction mentioned in section 13AA of the Taxes Act 1988 (marginal relief for small companies) shall be 19/400ths.

28 The non-corporate distribution rate

(1) In Part 1 of the Taxes Act 1988 (the charge to tax), after section 13AA (the starting rate of corporation tax) insert—

"**13AB The non-corporate distribution rate**

(1) This section applies where in any accounting period—

(a) a company makes (or is treated as making) one or more non-corporate distributions, and

(b) the company's underlying rate of corporation tax is less than the non-corporate distribution rate.

(2) The rate of tax to be applied in calculating the corporation tax chargeable on the company's basic profits for the accounting period is—

(a) in relation to so much of the company's basic profits as is matched with a non-corporate distribution, the non-corporate distribution rate, and

(b) in relation to the remainder of the company's basic profits, the company's underlying rate of corporation tax.

(3) The "non-corporate distribution rate" is such rate as Parliament may from time to time determine.

(4) Schedule A2 to this Act makes provision supplementing this section, in particular—

(a) defining "non-corporate distribution" and a company's "underlying rate of corporation tax",

(b) as to the matching of a company's profits and non-corporate distributions, and

(c) providing for non-corporate distributions to be allocated to other companies in certain circumstances.".

(2) After Schedule A1 to the Taxes Act 1988 insert as Schedule A2 the Schedule set out in Schedule 3 to this Act.

(3) In section 468(1A) of the Taxes Act 1988 (authorised unit trusts), for "and 13AA" substitute ", 13AA and 13AB".

(4) Section 13AB of and Schedule A2 to the Taxes Act 1988 have effect in relation to distributions made on or after 1st April 2004.

(5) For the purposes of applying the provisions of that section and Schedule to a distribution made in an accounting period beginning before 1st April 2004 and ending on or after that date—

(a) the parts of the accounting period falling in different financial years shall be treated as separate accounting periods, and

(b) the profits of the period shall be apportioned between the parts on a time basis according to their respective lengths unless it appears that that method would work unreasonably or unjustly in which case such other method shall be used as appears just and reasonable.

(6) The non-corporate distribution rate for the financial year 2004 is 19%.

Trusts

29 Special rates of tax applicable to trusts

(1) Section 686 of the Taxes Act 1988 (accumulation and discretionary trusts: special rates of tax) is amended as follows.

(2) In subsection (1A) (which sets certain rates of tax in relation to any year of assessment for which income tax is charged)—

(a) in paragraph (a) (which sets the Schedule F trust rate at 25 per cent) for "25 per cent" substitute "32.5 per cent", and

(b) in paragraph (b) (which sets the rate applicable to trusts at 34 per cent) for "34 per cent" substitute "40 per cent".

(3) The amendments made by subsection (2) have effect in relation to the year 2004-05 and subsequent years of assessment.

(4) Schedule 4 to this Act (which makes amendments relating to the rate applicable to trusts) shall have effect.

CHAPTER 2

CORPORATION TAX: GENERAL

Transfer pricing

30 Provision not at arm's length: transactions between UK taxpayers etc

(1) Schedule 28AA to the Taxes Act 1988 (provision not at arm's length) is amended as follows.

(2) In paragraph 5 (advantage in relation to United Kingdom taxation)—

(a) in sub-paragraph (1) omit "(but subject to sub-paragraph (2) below)";

(b) omit sub-paragraphs (2) to (6); and

(c) at the end of the paragraph insert—

"(7) In determining for the purposes of sub-paragraph (1) above the amount that would be taken for tax purposes to be the amount of the profits or losses for a year of assessment in the case of a person who is not resident in the United Kingdom, there shall be left out of account any income of that person which is—

(a) excluded income for the purposes of section 128 of the Finance Act 1995 (limit on income chargeable on non-residents: income tax), or

(b) income to which section 151 of the Finance Act 2003 applies (non-resident companies: extent of charge to income tax).".

(3) Paragraph 6 (elimination of double counting) is amended as follows.

(4) For sub-paragraph (1) (application of paragraph) substitute—

"(1) This paragraph applies where—

(a) only one of the affected persons ("the advantaged person") is a person on whom a potential advantage in relation to United Kingdom taxation is conferred by the actual provision; and

(b) the other affected person ("the disadvantaged person") is within the charge to income tax or corporation tax in respect of profits arising from the relevant activities.".

(5) In sub-paragraph (2) (application, on a claim, of arm's length provision to disadvantaged person)—

(a) in the opening words (subjection to paragraph 7 etc)—

(i) for "paragraph", where first occurring, substitute "paragraphs", and

(ii) after "7" insert "and 8";

(b) in paragraph (a) (computation on basis of arm's length provision), for "the disadvantaged person shall be entitled to have his profits and losses computed" substitute "the profits and losses of the disadvantaged person shall be computed".

(6) After paragraph 7 insert—

"Balancing payments between affected persons: no charge to, or relief from, tax

7A (1) This paragraph applies where—

(a) the circumstances are as described in paragraph 6(1) above,

(b) one or more payments (the "balancing payments") are made to the advantaged person by the disadvantaged person, and

(c) the sole or main reason for making those payments is that paragraph 1(2) above applies.

(2) To the extent that the balancing payments do not in the aggregate exceed the amount of the available compensating adjustment, those payments—

(a) shall not be taken into account in computing profits or losses of either of the affected persons for the purposes of income tax or corporation tax, and

(b) shall not for any of the purposes of the Corporation Tax Acts be regarded as distributions or charges on income.

(3) In this paragraph "the available compensating adjustment" means the difference between PL1 and PL2 where—

PL1 is the profits and losses of the disadvantaged person computed for tax purposes on the basis of the actual provision, and

PL2 is the profits and losses of the disadvantaged person as they fall (or would fall) to be computed for tax purposes on a claim under paragraph 6 above,

for this purpose taking PL1 or PL2 as a positive amount if it is an amount of profits and as a negative amount if it is an amount of losses.".

(7) In paragraph 11 (special provision for companies carrying on ring fence trades) in sub-paragraph (3) (Schedule to have effect as if ring fence trade and other activities were carried on by separate persons etc)—

(a) at the end of paragraph (c) insert "and";

(b) omit paragraph (e) (Schedule to have effect as if paragraphs 5 to 7 were omitted).

(8) In paragraph 12 (appeals) in sub-paragraph (3)(b) for "each of whom is a person in relation to whom the condition set out in paragraph 5(3) above is satisfied" substitute "each of whom is within the charge to income tax or corporation tax in respect of profits arising from the relevant activities".

(9) Schedule 5 to this Act (which makes amendments to other enactments in relation to transactions not at arm's length) has effect.

31 Exemptions for dormant companies and small and medium-sized enterprises

(1) Schedule 28AA to the Taxes Act 1988 (provision not at arm's length) is amended as follows.

(2) In paragraph 1 (basic rule on transfer pricing etc) in sub-paragraph (2) (profits and losses to be computed as if the arm's length provision had been made) after "Subject to paragraphs" insert "5A, 5B,".

(3) After paragraph 5 insert—

"Exemption for dormant companies

5A (1) Paragraph 1(2) above does not apply in computing for any chargeable period the profits and losses of a potentially advantaged person if that person is a company which satisfies the condition in sub-paragraph (2) below.

(2) The condition is that—

(a) the company was dormant throughout the pre-qualifying period, and

(b) apart from paragraph 1 above, the company has continued to be dormant at all times since the end of the pre-qualifying period.

(3) In sub-paragraph (2) above "the pre-qualifying period" means—

(a) if there is an accounting period of the company that ends on 31st March 2004, that accounting period, or

(b) if there is no such accounting period, the period of 3 months ending with that date.

(4) In this paragraph "dormant" has the same meaning as in section 249AA of the Companies Act 1985 (see subsections (4) to (7) of that section).".

(4) After paragraph 5A insert—

"Exemption for small or medium-sized enterprises

5B (1) Paragraph 1(2) above does not apply in computing for any chargeable period the profits and losses of a potentially advantaged person if that person is a small or medium-sized enterprise for that chargeable period (see paragraph 5D below).

(2) Exceptions to sub-paragraph (1) above are provided—

(a) in the case of a small enterprise, by sub-paragraphs (3) and (4) below, and

(b) in the case of a medium-sized enterprise, by sub-paragraphs (3) and (4) and paragraph 5C below.

(3) The first exception is where the small or medium-sized enterprise elects for sub-paragraph (1) above not to apply in relation to the chargeable period.

Any such election is irrevocable.

(4) The second exception is where, at the time when the actual provision is or was made or imposed,—

(a) the other affected person, or

(b) a party to a relevant transaction (see sub-paragraph (5) below),

is a resident (see sub-paragraph (6) below) of a non-qualifying territory (whether or not that person is also a resident of a qualifying territory).

(5) For the purposes of sub-paragraph (4) above, a "party to a relevant transaction" is a person who, in a case where the actual provision is or

was imposed by means of a series of transactions, is or was a party to one or more of those transactions.

(6) In this paragraph "resident", in relation to a territory,—

(a) means a person who, under the laws of that territory, is liable to tax there by reason of his domicile, residence or place of management, but

(b) does not include a person who is liable to tax in that territory in respect only of income from sources in that territory or capital situated there.

(7) The definitions of "qualifying territory" and "non-qualifying territory" are in paragraph 5E below.

Additional provisions for medium-sized enterprises

5C (1) Paragraph 5B(1) above does not apply as respects any provision made or imposed if—

(a) the potentially advantaged person in question is a medium-sized enterprise for the chargeable period in question, and

(b) the Board gives that person a notice under this sub-paragraph (a "transfer pricing notice") requiring him to compute the profits and losses of that chargeable period in accordance with paragraph 1(2) above in the case of that provision.

(2) A transfer pricing notice may be given in respect of —

(a) any provision specified, or of a description specified, in the notice, or

(b) every provision in relation to which the assumption in paragraph 1(2) above would fall to be made apart from paragraph 5B(1) above.

(3) A transfer pricing notice may be given only after a notice of enquiry has been given to the potentially advantaged person in respect of his tax return for the chargeable period.

(4) A transfer pricing notice must identify the officer of the Board to whom any notice of appeal under this paragraph is to be given.

(5) A person to whom a transfer pricing notice is given may appeal against the decision to give the notice, but only on the grounds that the condition in sub-paragraph (1)(a) above is not satisfied.

(6) Any such appeal must be brought by giving written notice of appeal to the officer of the Board identified for the purpose in the transfer pricing notice in accordance with sub-paragraph (4) above.

(7) The notice of appeal must be given before the end of the period of 30 days beginning with the day on which the transfer pricing notice is given.

(8) A person to whom a transfer pricing notice is given may amend his tax return for the purpose of complying with the notice at any time before the end of the period of 90 days beginning with—

(a) the day on which the notice is given, or

(b) if he appeals against the notice, the day on which the appeal is finally determined or abandoned.

(9) Where a transfer pricing notice is given in the case of any tax return, no closure notice may be given in relation to that tax return until—

(a) the end of the period of 90 days specified in sub-paragraph (8) above, or

(b) the earlier amendment of the tax return for the purpose of complying with the notice.

(10) So far as relating to any provision made or imposed by or in relation to a person—

(a) who is a medium-sized enterprise for a chargeable period,

(b) who does not make an election under paragraph 5B(3) above for that period, and

(c) who is not excepted from paragraph 5B(1) above by virtue of paragraph 5B(4) above in relation to that provision for that period,

the tax return required to be made for that period is a return that disregards paragraph 1(2) above.

(11) Sub-paragraph (10) above does not prevent a tax return for a period becoming incorrect if, in the case of any provision made or imposed,—

(a) a transfer pricing notice is given which has effect in relation to that provision for that period,

(b) the return is not amended in accordance with sub-paragraph (8) above for the purpose of complying with the notice, and

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

(12) In this paragraph—

"closure notice" means a notice under—

(a) section 28A or 28B of the Management Act, or

(b) paragraph 32 of Schedule 18 to the Finance Act 1998;

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

"notice of enquiry" means a notice under—

(a) section 9A or 12AC of the Management Act, or

(b) paragraph 24 of Schedule 18 to the Finance Act 1998;

"tax return" means—

(a) a return under section 8, 8A or 12AA of the Management Act, or

(b) a company tax return.

Meaning of "small enterprise" and "medium-sized enterprise"

5D (1) In this Schedule—

(a) "small enterprise" means a small enterprise as defined in the Annex to the Commission Recommendation,

(b) "medium-sized enterprise" means an enterprise which—

(i) falls within the category of micro, small and medium-sized enterprises as defined in that Annex, and

(ii) is not a small enterprise as defined in that Annex,

but for these purposes that Annex has effect with the modifications set out in sub-paragraphs (3) to (6) of this paragraph.

(2) In this paragraph—

"the Annex" means the Annex to the Commission Recommendation;

"the Commission Recommendation" means Commission Recommendation 2003/361/EC of 6th May 2003 (concerning the definition of micro, small and medium-sized enterprises).

(3) Where any enterprise is in liquidation or administration, the rights of the liquidator or administrator (in that capacity) shall be left out of account when applying Article 3(3)(b) of the Annex in determining for the purposes of this Schedule whether—

(a) that enterprise, or

(b) any other enterprise (including that of the liquidator or administrator),

is a small or medium-sized enterprise.

(4) Article 3 of the Annex shall have effect with the omission of paragraph 5 (declaration in good faith where control cannot be determined etc).

(5) The first sentence of Article 4(1) of the Annex shall have effect as if the data to apply to—

(a) the headcount of staff, and

(b) the financial amounts,

were the data relating to the chargeable period in paragraph 5B(1) above (instead of the period described in that sentence) and calculated on an annual basis.

(6) Article 4 of the Annex shall have effect with the omission of the following provisions—

(a) the second sentence of paragraph 1 (data to be taken into account from date of closure of accounts);

(b) paragraph 2 (no change of status unless ceilings exceeded for two consecutive periods);

(c) paragraph 3 (bona fide estimate in case of newly established enterprise).

Meaning of "qualifying territory" and "non-qualifying territory"

5E (1) In this Schedule—

"non-qualifying territory" means any territory which is not a qualifying territory;

"qualifying territory" means—

(a) the United Kingdom, or

(b) any territory as respects which Condition 1 or Condition 2 below is satisfied.

(2) Condition 1 is that—

(a) arrangements to which section 788 applies (double taxation relief by agreement with other territories) have been made in relation to the territory;

(b) those arrangements contain a non-discrimination provision (see sub-paragraphs (4) and (5) below); and

(c) the territory is not designated as a non-qualifying territory for the purposes of this sub-paragraph in regulations made by the Treasury.

(3) Condition 2 is that—

(a) arrangements to which section 788 applies have been made in relation to the territory; and

(b) the territory is designated as a qualifying territory for the purposes of this sub-paragraph in regulations made by the Treasury.

(4) For the purposes of this paragraph a "non-discrimination provision", in relation to any arrangement to which section 788 applies, is a provision to the effect that nationals of a state which is a party to those arrangements (a "contracting state") are not to be subject in any other contracting state to—

(a) any taxation, or

(b) any requirement connected with taxation,

which is other or more burdensome than the taxation and connected requirements to which nationals of that other state in the same circumstances (in particular with respect to residence) are or may be subjected.

(5) In this paragraph, "national", in relation to a contracting state, includes—

(a) any individual possessing the nationality or citizenship of the contracting state,

(b) any legal person, partnership or association deriving its status as such from the laws in force in that contracting state.

(6) A statutory instrument containing regulations under this paragraph shall not be made unless a draft of the instrument has been laid before, and approved by a resolution of, the House of Commons.".

(5) In paragraph 14(1) (general interpretation) insert each of the following definitions at the appropriate place—

""medium-sized enterprise" shall be construed in accordance with paragraph 5D above;";

""non-qualifying territory" has the meaning given by paragraph 5E above;";

""qualifying territory" has the meaning given by paragraph 5E above;";

""small enterprise" shall be construed in accordance with paragraph 5D above;".

32 Special applications of paragraph 6 of Schedule 28AA to the Taxes Act 1988

(1) Schedule 28AA to the Taxes Act 1988 (provision not at arm's length) is amended as follows.

(2) After paragraph 6 insert—

"Application of paragraph 6 in relation to transfers of trading stock etc

6A (1) Paragraph 6(2)(a) above does not affect the credits to be brought into account by the disadvantaged person in respect of—

(a) closing trading stock, or

(b) closing work in progress in a trade,

for accounting periods ending on or after the last day of the relevant accounting period of the advantaged person.

(2) For the purposes of sub-paragraph (1) above, the relevant accounting period of the advantaged person is the accounting period in which the actual provision was made or imposed.

(3) For the purposes of this paragraph "trading stock", in relation to any trade, has the same meaning as it has for the purposes of section 100 (valuation of trading stock at discontinuance of trade) (see subsection (2) of that section).".

(3) After paragraph 6A insert—

"Compensating adjustment where advantaged person is a controlled foreign company

6B (1) This paragraph applies in any case where—

(a) the actual provision is provision made or imposed in relation to a controlled foreign company,

(b) in determining for the purposes of Chapter 4 of Part 17 the amount of that company's chargeable profits for an accounting period, its profits and losses fall to be computed in accordance with paragraph 1(2) above in the case of that provision,

(c) the whole of those chargeable profits fall to be apportioned under section 747(3) to one or more companies resident in the United Kingdom, and

(d) tax is chargeable by virtue of section 747(4) in respect of the whole of those chargeable profits, as so apportioned to those companies.

(2) Where this paragraph applies, paragraph 6 above shall have effect as if the controlled foreign company were a person on whom a potential advantage in relation to United Kingdom taxation were conferred by the actual provision.

(3) In the application of paragraph 6 above by virtue of this paragraph—

(a) references to the advantaged person in sub-paragraphs (4)(a) and (b), (5)(a) and (b) and (6)(b) of that paragraph include a reference to any of the companies mentioned in sub-paragraph (1)(c) above, and

(b) references to corporation tax include a reference to tax chargeable by virtue of section 747(4).

(4) In this paragraph—

"controlled foreign company" has the same meaning as in Chapter 4 of Part 17;

"accounting period", in relation to a controlled foreign company, has the same meaning as in Chapter 4 of Part 17.".

(4) In paragraph 13 (saving for provisions relating to capital allowances and capital gains) at the beginning insert "(1) Subject to sub-paragraph (2) below," and at the end add—

"(2) Nothing in sub-paragraph (1) above applies to paragraph 6 above.".

Penalties: temporary relaxation

33 Provision not at arm's length: temporary relaxation of liability to penalty

(1) This section has effect in relation to—

(a) the years of assessment 2004-05 and 2005-06, and

(b) accounting periods beginning on or after 1st January 2004 and ending on or before 31st March 2006,

and in the following provisions of this section "relevant period" means any of those years of assessment or accounting periods.

(2) In this section "records relating to an arm's length provision" means such records as might have been requisite for the purpose of making and delivering a correct and complete return, so far as relating to the determination of the provision asserted to be the arm's length provision for the purposes of Schedule 28AA to the Taxes Act 1988 in a case where that Schedule applies.

(3) In relation to any relevant period, the following provisions (which provide for penalties for failure to keep and preserve records for purposes of returns)—

(a) section 12B(5) of the Taxes Management Act 1970 (c. 9), and

(b) paragraph 23 of Schedule 18 to the Finance Act 1998 (c. 36),

do not apply if the records which the person in question fails to keep or preserve are records relating to an arm's length provision.

(4) In the application of subsection (2) in relation to paragraph 23 of Schedule 18 to the Finance Act 1998—

(a) for "requisite" substitute "needed", and

(b) for "making and delivering" substitute "delivering".

(5) Where a person delivers an incorrect return for any relevant period, he shall not be regarded as doing so negligently for the purposes of—

(a) section 95 of the Taxes Management Act 1970, or

(b) paragraph 20 of Schedule 18 to the Finance Act 1998,

by reason only of his failure, or the failure of any other person, to keep or preserve records relating to an arm's length provision.

(6) For the purposes of section 95A of the Taxes Management Act 1970, where a partner delivers an incorrect partnership return for any relevant period—

(a) he shall not be regarded as doing so negligently, and

(b) his doing so shall not be regarded as attributable to negligent conduct on the part of any relevant partner,

by reason only of his failure, or the failure of any other person, to keep or preserve records relating to an arm's length provision.

(7) For the purposes of section 99 of the Taxes Management Act 1970 (penalty for assisting in preparation of incorrect documents) a person shall not be taken to know that a return is incorrect by reason only of his failure, or the failure of any other person, to keep or preserve records relating to an arm's length provision.

Thin capitalisation

34 Payments of excessive interest etc

(1) In section 209 of the Taxes Act 1988 (meaning of "distribution") the following provisions shall cease to have effect—

(a) in subsection (2), paragraph (da) (interest etc in respect of securities where issuing company is 75% subsidiary of holder etc and the interest represents an amount that would not have been paid but for a special relationship etc); and

(b) subsections (8A) to (8F) (application of section 808A(2) to (4) for purposes of paragraph (da) of subsection (2)).

(2) Schedule 28AA to the Taxes Act 1988 (provision not at arm's length) is amended as follows.

(3) After paragraph 1 insert—

"Provision in relation to securities: determination of arm's length provision

1A (1) This paragraph applies where—

(a) both of the affected persons are companies, and

(b) the actual provision is provision in relation to a security issued by one of those companies ("the issuing company").

(2) Paragraph 1(2)(a) above shall be construed as requiring account to be taken of all factors, including—

(a) the question whether the loan would have been made at all in the absence of the special relationship (see sub-paragraph (6) below),

(b) the amount which the loan would have been in the absence of the special relationship, and

(c) the rate of interest and other terms which would have been agreed in the absence of the special relationship,

but this is subject to the following provisions of this paragraph.

(3) In a case where—

(a) a company makes a loan to another company with which it has a special relationship, and

(b) it is not part of the first company's business to make loans generally,

the fact that it is not part of the first company's business to make loans generally shall be disregarded in construing sub-paragraph (2) above.

(4) Paragraph 1(2)(a) above shall be construed as requiring no account to be taken, in the determination of any of the matters mentioned in sub-paragraph (5) below, of (or of any inference capable of being drawn from) any guarantee provided by a company with which the issuing company has a participatory relationship (see sub-paragraphs (7) and (8) below).

(5) The matters are—

(a) the appropriate level or extent of the issuing company's overall indebtedness;

(b) whether it might be expected that the issuing company and a particular person would have become parties to a transaction involving the issue of a security by the issuing company or the making of a loan, or a loan of a particular amount, to the issuing company;

(c) the rate of interest and other terms that might be expected to be applicable in any particular case to such a transaction.

(6) In this paragraph "special relationship" means any relationship by virtue of which the condition in paragraph 1(1)(b) above is satisfied in the case of the affected persons.

(7) In this paragraph any reference to a guarantee includes a reference to a surety and to any other relationship, arrangements, connection or understanding (whether formal or informal) such that the person making the loan to the issuing company has a reasonable expectation that in the event of a default by the issuing company he will be paid by, or out of the assets of, one or more companies.

(8) For the purposes of this paragraph, the cases where one company has a "participatory relationship" with another are those where—

(a) one of them is directly or indirectly participating in the management, control or capital of the other; or

(b) the same person or persons is or are directly or indirectly participating in the management, control or capital of each of them.

(9) In this paragraph "security" includes securities not creating or evidencing a charge on assets.

(10) For the purposes of this paragraph—

(a) interest payable by a company on money advanced without the issue of a security for the advance, or

(b) other consideration given by a company for the use of money so advanced,

shall be treated as if payable or given in respect of a security issued for the advance by the company, and references in this paragraph to a security shall be construed accordingly.

Guarantees etc

1B (1) This paragraph applies where the actual provision is made or imposed by means of a series of transactions which include—

(a) the issuing of a security by a company which is one of the affected persons ("the issuing company"), and

(b) the provision of a guarantee by a company which is the other of those persons.

(2) Paragraph 1(2)(a) above shall be construed as requiring account to be taken of all factors, including—

(a) the question whether the guarantee would have been provided at all in the absence of the special relationship,

(b) the amount that would have been guaranteed in the absence of the special relationship, and

(c) the consideration for the guarantee and other terms which would have been agreed in the absence of the special relationship,

but this is subject to the following provisions of this paragraph.

(3) In a case where—

(a) a company provides a guarantee in respect of another company with which it has a special relationship, and

(b) it is not part of the first company's business to provide guarantees generally,

the fact that it is not part of the first company's business to provide guarantees generally shall be disregarded in construing sub-paragraph (2) above.

(4) Paragraph 1(2)(a) above shall be construed as requiring no account to be taken, in the determination of any of the matters mentioned in sub-paragraph (5) below, of (or of any inference capable of being drawn from) any guarantee provided by a company with which the issuing company has a participatory relationship.

(5) The matters are—

(a) the appropriate level or extent of the issuing company's overall indebtedness;

(b) whether it might be expected that the issuing company and a particular person would have become parties to a transaction involving the issue of a security by the issuing company or the making of a loan, or a loan of a particular amount, to the issuing company;

(c) the rate of interest and other terms that might be expected to be applicable in any particular case to such a transaction.

(6) The following provisions of paragraph 1A above also apply for the purposes of this paragraph—

(a) sub-paragraph (6) (meaning of special relationship);

(b) sub-paragraph (7) (construction of references to a guarantee);

(c) sub-paragraph (8) (meaning of participatory relationship);

(d) sub-paragraph (9) (meaning of security);

(e) sub-paragraph (10) (extended meaning of security).".

(4) In Schedule 9 to the Finance Act 1996 (c. 8) (loan relationships: special computational provisions) paragraph 11A (exchange gains and losses where loan not on arm's length terms) is amended as follows—

(a) in sub-paragraph (1)(a) for "section 209(2)(da) or (e)(vii)" substitute "section 209(2)(e)(vii)";

(b) in sub-paragraph (1)(b), before "Schedule 28AA" insert "paragraph 1 of";

(c) omit sub-paragraph (2)(a);

(d) in sub-paragraph (2)(b), before "Schedule 28AA" insert "paragraph 1 of";

(e) omit sub-paragraph (3)(a);

(f) in sub-paragraph (3)(b), omit "in a case falling within paragraph (b) of that sub-paragraph,";

(g) in sub-paragraph (5)(b), omit "the terms would have been the same, except that".

35 Elimination of double counting etc

(1) Schedule 28AA to the Taxes Act 1988 is amended as follows.

(2) In paragraph 6 (elimination of double counting) in sub-paragraph (2) (right of disadvantaged person to claim relief, subject to sub-paragraphs (3) to (6) and paragraph 7) before "7" insert "6C, 6D,".

(3) After paragraph 6B (which is inserted by section 32) insert—

"Claims under paragraph 6 where paragraph 1A applies

6C (1) Where paragraph 1A above applies in relation to any provision, this paragraph has effect in relation to that provision.

(2) A claim under paragraph 6(2) above may be made in accordance with this paragraph.

For the purposes of this Schedule a "paragraph 6C claim" is a claim under paragraph 6(2) above made in accordance with this paragraph.

(3) A paragraph 6C claim may be made by—

(a) the disadvantaged person, or

(b) the advantaged person,

but any such claim made by the advantaged person shall be taken to be made on behalf of the disadvantaged person.

(4) A paragraph 6C claim may be made before or after a computation falling within paragraph 6(3)(a) above has been made.

(5) A paragraph 6C claim must be made either—

(a) at any time before the end of the period mentioned in paragraph 6(5)(a) above, or

(b) within the period mentioned in paragraph 6(5)(b) above,

but this is subject to section 111(3)(b) of the Finance Act 1998 (extension of period for making a claim).

(6) A paragraph 6C claim is not a claim within paragraph 57 or 58 of Schedule 18 to the Finance Act 1998 (company tax returns, assessments and related matters).

Accordingly, paragraph 59 of that Schedule (application of Schedule 1A to the Management Act) has effect in relation to a paragraph 6C claim.

(7) Where—

(a) a paragraph 6C claim is made before a computation falling within paragraph 6(3)(a) above has been made,

(b) such a computation is subsequently made, and

(c) the claim is not consistent with the computation,

the affected persons shall be treated as if (instead of the claim actually made) a claim had been made that was consistent with the computation.

(8) All such adjustments shall be made (whether by discharge or repayment of tax, the making of assessments or otherwise) as are required to give effect to sub-paragraph (7) above.

(9) Sub-paragraph (8) above has effect notwithstanding any limit on the time within which any adjustment may be made.

(10) Where—

(a) a paragraph 6C claim is made,

(b) a return is subsequently made by the advantaged person on the basis mentioned in paragraph 6(3)(a) above, and

(c) a relevant notice (within the meaning of paragraph 6 above) taking account of such a determination as is mentioned in paragraph 6(4)(b) above is subsequently given to the advantaged person,

sub-paragraph (11) below applies.

(11) Where this sub-paragraph applies, any such amendment of the paragraph 6C claim as may be appropriate in consequence of the determination contained in the relevant notice may be made by—

(a) the disadvantaged person, or

(b) the advantaged person,

but any such amendment made by the advantaged person shall be taken to be made on behalf of the disadvantaged person.

(12) Any such amendment must be made within the period mentioned in paragraph 6(5)(b) above.

But that is subject to section 111(3)(b) of the Finance Act 1998 (extension of period for making amendment).

Compensating adjustment for guarantor company etc where paragraph 1B applies

6D (1) This paragraph applies in any case where—

(a) a company ("the issuing company") has liabilities under a security issued by the company,

(b) those liabilities are to any extent the subject of a guarantee provided by a company ("the guarantor company"), and

(c) in computing the profits and losses of the issuing company for tax purposes, the amounts to be deducted in respect of interest or other amounts payable under the security fall to be reduced (whether or not to nil) under paragraph 1(2) above by virtue of paragraph 1B above.

(2) On the making of a claim in any such case, the guarantor company shall, to the extent of that reduction, be treated for all purposes of the Taxes Acts as if it (and not the issuing company)—

(a) had issued the security,

(b) owed the liabilities under it, and

(c) had paid any interest or other amounts paid under it by the issuing company,

and in computing the profits and losses of the guarantor company for those purposes amounts shall be brought into account accordingly.

This sub-paragraph is subject to the following provisions of this paragraph.

(3) Where the issuing company's liabilities under the security are the subject of two or more guarantees (whether or not provided by the same person) TD must not exceed TR, where—

TD is the total of the amounts brought into account by the guarantor companies by virtue of sub-paragraph (2) above, and

TR is the total amount of the reductions that fall within sub-paragraph (1)(c) above.

(4) In this paragraph "the loan provision" means the actual provision made or imposed between—

(a) the issuing company, and

(b) another company ("the lending company"),

which is provision in relation to the security.

(5) Where—

(a) the guarantor company makes a claim under sub-paragraph (2) above, and

(b) the lending company makes a claim under paragraph 6 above in respect of the loan provision,

sub-paragraphs (6) and (7) below apply.

(6) In determining, in a case where this sub-paragraph applies, the arm's length provision for the purposes of paragraph 6(2)(a) above in relation to the lending company's claim, additional amounts shall be brought into account as credits corresponding to the debits that fall to be brought into account by virtue of sub-paragraph (2) above in relation to the guarantor company.

(7) If, in a case where this sub-paragraph applies,—

(a) the lending company makes its claim under paragraph 6 above before the guarantor company makes its claim under sub-paragraph (2) above, and

(b) the computation on which the lending company's claim is based does not comply with sub-paragraph (6) above,

the guarantor company's claim shall be disallowed.

(8) A claim under sub-paragraph (2) above may be made by—

(a) the guarantor company,

(b) where there are two or more guarantor companies, those companies acting together, or

(c) the issuing company,

but any claim made by the issuing company shall be taken to be made on behalf of the guarantor company or companies.

(9) Sub-paragraphs (3) to (6) of paragraph 6 above (claims and time limits) shall apply in relation to a claim under sub-paragraph (2) above made by or on behalf of any person or persons as they apply in relation to a claim under that paragraph made by the disadvantaged person, but taking references in those sub-paragraphs—

(a) to the advantaged person, as references to the issuing company, and

(b) to the disadvantaged person, as references to the guarantor company or companies.

(10) The following provisions of paragraph 1A above also apply for the purposes of this paragraph—

(a) sub-paragraph (7) (construction of references to a guarantee);

(b) sub-paragraph (9) (meaning of security);

(c) sub-paragraph (10) (extended meaning of security).

(11) In this paragraph "the Taxes Acts" has the meaning given in section 118(1) of the Management Act.".

(4) After paragraph 6D insert—

"Certain interest not to be regarded as chargeable under Case III of Schedule D

6E Where—

(a) interest is paid by any person under the actual provision,

(b) paragraph 1(2) above applies in relation to the actual provision,

(c) the amount of interest that would have been payable under the arm's length provision is less than the amount of interest paid under the actual provision (or there would not have been any interest payable),

(d) the person receiving the interest makes a claim under paragraph 6 above or a paragraph 6C claim,

the interest paid under the actual provision, to the extent that it exceeds the amount of interest that would have been payable under the arm's length provision, shall not be regarded as chargeable under Case III of Schedule D.".

(5) In paragraph 14(1) (general interpretation) insert the following definition at the appropriate place—

""paragraph 6C claim" has the meaning given by paragraph 6C(2) above;".

36 Balancing payments and elections to pay tax instead

(1) Schedule 28AA to the Taxes Act 1988 is amended as follows.

(2) After paragraph 7A (which is inserted by section 30) insert—

"Securities: election to discharge tax liability instead of making balancing payments

7B (1) This paragraph applies in any case where—

(a) both of the affected persons are companies,

(b) the circumstances are as described in paragraph 6(1) above, and

(c) the actual provision is provision in relation to a security (the "relevant security").

(2) The disadvantaged person may make an election under this paragraph in respect of the relevant security if the condition in sub-paragraph (3) below is satisfied.

(3) The condition is that—

(a) the actual provision forms part of a capital market arrangement,

(b) the capital market arrangement involves the issue of a capital market investment,

(c) the securities that represent the capital market investment are issued wholly or mainly to independent persons (see sub-paragraph (9) below), and

(d) the total value of the capital market investments made under the capital market arrangement is at least £50 million.

(4) An election under this paragraph in respect of the relevant security is an election for the disadvantaged person—

(a) to make no balancing payment within paragraph 7A above to the advantaged person in respect of the application of paragraph 1(2) above in relation to the relevant security in a chargeable period by virtue of paragraph 1A above, but

(b) instead, to undertake sole responsibility for discharging the advantaged person's liability to tax for that period so far as resulting from the application of paragraph 1(2) above in relation to the relevant security by virtue of paragraph 1A above.

(5) Where an election under this paragraph has effect in relation to an accounting period of the advantaged person, the tax mentioned in sub-paragraph (4)(b) above—

(a) shall be recoverable from the disadvantaged person as if it were an amount of corporation tax due and owing from that person, and

(b) shall not be recoverable from the advantaged person.

(6) Any election under this paragraph in respect of the relevant security—

(a) must be made by being included (whether by amendment or otherwise) in the disadvantaged person's company tax return for the chargeable period in which the relevant security is issued,

(b) has effect in relation to each of the affected persons for the chargeable period in which the relevant security is issued and all subsequent chargeable periods, and

(c) is irrevocable.

For the purposes of this sub-paragraph a security issued in a chargeable period beginning before 1st April 2004 shall be treated as if it had been issued in the chargeable period beginning on that date.

(7) An election under this paragraph by a person is of no effect if the Board give that person a notice under this sub-paragraph refusing to accept the election.

(8) A notice under sub-paragraph (7) above may be given only after a notice of enquiry in respect of the company tax return containing the election has been given to the disadvantaged person.

(9) In this paragraph—

"capital market arrangement" has the same meaning as in section 72B(1) of the Insolvency Act 1986 (see paragraph 1 of Schedule 2A to that Act);

"capital market investment" has the same meaning as in section 72B(1) of the Insolvency Act 1986 (see paragraphs 2 and 3 of Schedule 2A to that Act);

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

"independent person" means a person—

(a) who is not the disadvantaged person, and

(b) who does not have a participatory relationship with either of the affected persons.

(10) The following provisions of paragraph 1A above also apply for the purposes of this paragraph—

(a) sub-paragraph (8) (meaning of participatory relationship);

(b) sub-paragraph (9) (meaning of security);

(c) sub-paragraph (10) (extended meaning of security).".

(3) After paragraph 7B insert—

"Balancing payments by guarantor to issuer: no charge to, or relief from, tax

7C (1) This paragraph applies in any case where—

(a) the circumstances are as described in paragraph 6D(1) above,

(b) one or more payments (the "balancing payments") are made by the guarantor company to the issuing company, and

(c) the sole or main reasons for making those payments are that paragraph 1(2) above applies by virtue of paragraph 1B above or that paragraph 6D above applies.

(2) To the extent that the balancing payments made by all the guarantor companies do not in the aggregate exceed the amount TR in paragraph 6D(3) above (total reductions within paragraph 6D(1)(c) above), those payments—

(a) shall not be taken into account in computing for the purposes of corporation tax the profits or losses of the guarantor company or companies or the issuing company, and

(b) shall not for any purpose of the Corporation Tax Acts be regarded as distributions or charges on income.".

(4) After paragraph 7C insert—

"Guarantees: election to discharge tax liability instead of making balancing payments

7D (1) This paragraph applies where the following conditions are satisfied—

(a) both of the affected persons are companies,

(b) the circumstances are as described in paragraph 6(1) above,

(c) the actual provision falls within paragraph 1B(1) above.

(2) Sub-paragraphs (2) to (8) of paragraph 7B above apply in a case where this paragraph applies as they apply in a case where that paragraph applies, but with the modifications in sub-paragraphs (3) and (4) below.

(3) The relevant security is the security in paragraph 1B(1)(a) above.

(4) In sub-paragraph (4) (nature of the election)—

(a) for "paragraph 7A above" substitute "paragraph 7C below";

(b) for "paragraph 1A", in both places, substitute "paragraph 1B".".

Transfer pricing and thin capitalisation: commencement

37 Commencement and transitional provisions

(1) In this section "the amending provisions" means—

(a) sections 30 to 32 (transfer pricing);

(b) sections 34 to 36 (thin capitalisation);

(c) Schedule 5 (provision not at arm's length: related amendments).

(2) The amendments made by those provisions have effect in relation to chargeable periods beginning on or after 1st April 2004 (whenever the actual provision, within the meaning of Schedule 28AA to the Taxes Act 1988, is or was made or imposed).

(3) Where an accounting period of a company begins before, and ends on or after, 1st April 2004, it shall be assumed for the purposes of the amending provisions, the amendments which they make and subsection (2) that that accounting period ("the straddling period") consists of two separate accounting periods—

(a) the first beginning with the straddling period and ending with 31st March 2004, and

(b) the second beginning with 1st April 2004 and ending with the straddling period,

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

(4) Where a period of account of any person within the charge to income tax begins before, and ends on or after, 6th April 2004, it shall be assumed for the purposes of the amending provisions, the amendments which they make and subsection (2) that that period ("the straddling period of account") consists of two separate periods of account—

(a) the first beginning with the straddling period of account and ending with 5th April 2004, and

(b) the second beginning with 6th April 2004 and ending with the straddling period of account,

and the person's profits and losses shall be computed accordingly for the purposes of income tax.

Expenses of companies with investment business and insurance companies

38 Expenses of management: companies with investment business

(1) For section 75 of the Taxes Act 1988 (expenses of management: investment companies) substitute—

"**75 Expenses of management: companies with investment business**

(1) In computing for the purposes of corporation tax the total profits for an accounting period of a company with investment business (see section 130) a deduction is to be allowed for any expenses of management of the company's investment business (see subsection (4) below) which are referable to that accounting period in accordance with section 75A.

That is subject to the following provisions of this section.

(2) A deduction is not to be allowed under subsection (1) above for any expenses to the extent that those expenses are deductible in computing profits apart from this section.

(3) Expenses of a capital nature are not expenses of management for the purposes of this section except to the extent that they fall to be treated as expenses of management for those purposes by virtue of—

(a) subsection (7) below (capital allowances), or

(b) any provision of the Tax Acts, other than this section.

(4) For the purposes of this section, expenses of management are "expenses of management of the company's investment business" to the extent that—

(a) the expenses are in respect of so much of the company's business as consists in the making of investments, and

(b) the investments concerned are not held by the company for an unallowable purpose during the accounting period (see subsection (5) below),

and references in this section to the company's investment business shall be construed accordingly.

(5) For the purposes of subsection (4)(b) above, investments are held by a company for an unallowable purpose during an accounting period to the extent that they are held during the period—

(a) for a purpose that is not a business or other commercial purpose of the company, or

(b) for the purpose of activities in respect of which the company is not within the charge to corporation tax.

(6) For the purposes of subsection (1) above, there shall be deducted from the amount that would, apart from this subsection, be deductible under that subsection the amount of any income derived from a source not charged to tax—

(a) which the company has in the course of carrying on its investment business, and

(b) which, in a case where the company is not resident in the United Kingdom,—

(i) the company has in the course of carrying on that business through a permanent establishment in the United Kingdom, and

(ii) is such property or rights as are mentioned in section 11(2A)(b),

but which is not franked investment income.

(7) For the purposes of this section, there shall be added to a company's expenses of management referable to any accounting period the amount of any allowances falling to be made to the company for that period by virtue of section 15(1)(g) of the Capital Allowances Act (plant and machinery allowances) so far as effect cannot be given to them under section 253(2) of that Act.

(8) Subsection (9) below applies in any case where, in an accounting period of a company with investment business, the sum of—

(a) the expenses of management deductible under subsection (1) above, and

(b) any charges on income paid in the accounting period, to the extent that they are paid for the purposes of so much of the company's business as consists in the making of investments,

exceeds the amount of the profits from which those expenses and charges are deductible.

(9) In any such case—

(a) the excess shall be carried forward to the succeeding accounting period; and

(b) the amount so carried forward to the succeeding accounting period shall be treated for the purposes of this section (including any further application of this subsection) as if it were expenses of management deductible for that accounting period.

(10) Any apportionment falling to be made for the purposes of this section shall be made on a just and reasonable basis.".

(2) Section 130 of the Taxes Act 1988 (meaning of "investment company" for purposes of Part 4) is amended as follows.

(3) After "In this Part of this Act" insert the following definition "—

> "company with investment business" means any company whose business consists wholly or partly in the making of investments;".

(4) The sidenote to the section accordingly becomes "Meaning of "company with investment business" and "investment company" in Part 4".

(5) This section has effect in accordance with sections 42 and 43 (commencement and transitional provisions).

39 Accounting period to which expenses of management are referable

(1) After section 75 of the Taxes Act 1988 (which is inserted by section 38) insert—

"**75A Accounting period to which expenses of management are referable**

(1) This section has effect for the purpose of determining the accounting period to which expenses of management are referable for the purposes of section 75(1).

(2) Where—

(a) expenses of management are debited in accounts drawn up by a company for a period of account,

(b) the treatment of those expenses in those accounts is in accordance with generally accepted accounting practice, and

(c) the period of account coincides with an accounting period,

the expenses of management are referable to that accounting period.

(3) Where—

(a) expenses of management are debited in accounts drawn up by a company for a period of account, and

(b) the treatment of those expenses in those accounts is in accordance with generally accepted accounting practice, but

(c) the period of account does not coincide with an accounting period,

subsection (4) below applies.

(4) Where this subsection applies, the expenses of management—

(a) shall be apportioned between any accounting periods that fall within the period of account, and

(b) are referable to an accounting period to the extent that they are so apportioned to it.

(5) An apportionment under subsection (4) above shall be in accordance with section 834(4) (time basis) unless it appears that that method would work unreasonably or unjustly, in which case such other method shall be used as appears just and reasonable.

(6) Where—

(a) expenses of management are not referable to an accounting period by virtue of subsections (2) to (5) above, but

(b) accounts are drawn up by the company for a period of account, and

(c) if the expenses of management had been treated in those accounts in accordance with generally accepted accounting practice, they would fall to be debited in those accounts,

the expenses of management are referable to the accounting period to which they would have been referable in accordance with subsections (2) to (5) above if they had been so debited in those accounts.

(7) Where expenses of management are not referable to an accounting period by virtue of subsections (2) to (6) above, they are referable to the accounting period to which they would be referable in accordance with subsections (2) to (5) above on the assumptions in subsection (8) below.

(8) Those assumptions are—

(a) that for each accounting period that does not coincide with, or fall within, any period of account, there is a period of account that coincides with that accounting period, and

(b) that so much of the expenses of management as would fall to be debited in accordance with generally accepted accounting practice in accounts drawn up by the company for any such deemed period of account are so debited.

(9) This section is without prejudice to any other provision of the Corporation Tax Acts which provides for amounts to be treated for the purposes of section 75 as expenses of management referable to an accounting period.

(10) Any reference in this section to expenses of management being debited in accounts is a reference to those expenses being brought into account, in accordance with generally accepted accounting practice, as a debit—

(a) in the company's profit and loss account, or

(b) in a statement of total recognised gains and losses or other statement of items brought into account in computing the company's profits and losses for accounting purposes.

For this purpose "debit" means an amount which for accounting purposes reduces a profit, or increases a loss, for a period of account.".

(2) This section has effect in accordance with sections 42 and 43 (commencement and transitional provisions).

40 Expenses of insurance companies

(1) For section 76 of the Taxes Act 1988 (expenses of management of insurance companies) substitute—

"**76 Expenses of insurance companies**

(1) In computing for the purposes of corporation tax the profits for any accounting period of a company—

(a) which carries on life assurance business, and

(b) which is not charged to tax in respect of that business under Case I of Schedule D,

section 75 is not to apply in computing the profits of that business, but a deduction for expenses payable (the "expenses deduction") is to be allowed in accordance with the following provisions of this section.

See also subsection (14) below for the application of this section in relation to a company which carries on capital redemption business.

(2) The expenses deduction is to be made from so much of the income and gains of the accounting period referable to basic life assurance and general annuity business as remains after any deduction falling to be made by virtue of paragraph 4(2) of Schedule 11 to the Finance Act 1996 (non-trading deficits on loan relationships).

(3) For the purposes of this section "expenses payable" means expenses brought into account in line 12, 22 or 25 of Form 40 (the revenue account) in the periodical return of the company for a period of account, but does not include any of the amounts falling within subsection (4), (5) or (6) below.

(4) The amounts falling within this subsection are the following—

(a) reinsurance premiums,

(b) refunds of premiums,

(c) profit commissions and profit participations (however described),

(d) expenses or other amounts payable, to the extent that the company's purpose in incurring the liability to make the payment is not a business or other commercial purpose of the company.

For the purposes of paragraph (d) above, it is not one of the business or commercial purposes of a company to incur a liability to pay an amount of commission or other expenses which exceeds the amount which it could reasonably be expected to pay if the company were charged to tax under Case I of Schedule D in respect of its life assurance business.

(5) The amounts falling within this subsection are any amounts payable in connection with a policy or contract to—

(a) a policy holder or annuitant under the policy or contract (except where the policy holder is an insurance company),

(b) any other person who is entitled to receive benefits under the policy or contract,

(c) any person acting on behalf of a person falling within paragraph (a) or (b) above,

(d) the personal representatives of a deceased person who fell within paragraphs (a) to (c) above.

(6) The amounts falling within this subsection are expenses of a capital nature.

But this subsection does not apply in the case of an amount which, by virtue of any provision of the Tax Acts other than this section, falls to be treated for the purposes of this section as expenses payable which fall to be brought into account at Step 1 in subsection (7) below (the reference to Step 1 being express in the provision).

(7) The amount of the expenses deduction for an accounting period is found by taking the following steps—

Step 1

Find so much of the expenses payable as are—

(a) attributable to basic life assurance and general annuity business (see subsection (8) below), and

(b) referable to the accounting period (see subsection (9) below).

Step 2

Reduce each of the amounts found at Step 1 by excluding so much of the amount as is—

(a) deductible in computing income for the purposes of Schedule A,

(b) deductible by virtue of section 85(2B) of the Finance Act 1989, or

(c) deductible by virtue of section 121(3) in computing income from the letting of rights to work minerals in the United Kingdom.

Step 3

Find the amounts (so far as not included at Step 1) which fall to be treated for the purposes of this section as expenses payable for the accounting period by virtue of any of the following provisions—

section 432AB(3) (Schedule A loss or an overseas property business loss referable to basic life assurance and general annuity business);

section 437(1A) (relief for income element of new annuities);

section 587B(8)(b)(i) (relief for company carrying on life assurance business in relation to gifts of shares and securities);

paragraph 16(1) of Schedule 7 to the Finance Act 1991 (transitional relief for old annuities);

paragraph 4(4)(b) of Schedule 11 to the Finance Act 1996 (carried forward non-trading deficit on loan relationships produced by separate computation for basic life assurance and general annuity business);

section 256(2)(a) of the Capital Allowances Act (capital allowances on plant and machinery used in the management of life assurance business);

paragraph 23 of Schedule 22 to the Finance Act 2001 (150% relief in respect of the remediation expenditure on contaminated land owned by a company carrying on life assurance business and acquired to be a management asset);

paragraph 13(2) of Schedule 12 to the Finance Act 2002 (125% of relevant expenditure on R&D in the case of a life assurance company);

paragraph 23(2) of Schedule 13 to the Finance Act 2002 (150% of relevant expenditure on research into vaccines in the case of a life assurance company);

paragraph 36(3) of Schedule 29 to the Finance Act 2002 (relief for non-trading loss on intangible fixed assets).

Step 4

Give effect to the provisions specified in Step 3 by adding together—

(a) so much of the amounts found at Step 1 as remains after making any reductions at Step 2, and

(b) the amounts found at Step 3,

and then deduct the amount of any reversal (wherever brought into account) of an expense included at Step 1 in a previous period,

to give Subtotal 1.

Step 5

If the whole or any part of a loss arising to the company in respect of its life assurance business in the accounting period is set off under section 393A or 403(1)—

(a) find the amount ("amount L") that is equal to so much of the loss as, in the aggregate, is so set off,

(b) find the sum ("amount S") of the amounts by which any losses for that period under section 436 or 439B fall to be reduced under section 434A(2)(b),

(c) from amount L deduct amount S, to give the adjusted loss deduction,

then reduce Subtotal 1 by deducting from it the adjusted loss deduction,

to give Subtotal 2.

Step 6

Give effect to subsection (6) of section 86 of the Finance Act 1989 (spreading of acquisition expenses) by—

(a) finding the amount that is equal to six-sevenths of the adjusted amount of the acquisition expenses (within the meaning of that section) for the accounting period, and

(b) deducting that amount from Subtotal 2,

to give Subtotal 3.

Step 7

Add together the following amounts—

(a) Subtotal 3, and

(b) any amounts carried forward to the accounting period under subsection (12) or (13) below (unrelieved excesses from earlier accounting periods),

to give Subtotal 4.

Step 8

Give effect to subsections (8) and (9) of section 86 of the Finance Act 1989 (fraction of adjusted amount of acquisition expenses for earlier accounting periods) by adding together—

(a) Subtotal 4, and

(b) any amounts which are to be relieved under this section by virtue of those subsections,

to give the basic deduction.

Step 9

If—

(a) amount D1 (see subsection (10) below), exceeds

(b) amount R (see subsection (11) below),

deduct an amount equal to the excess from the basic deduction.

Step 10: the amount of the expenses deduction

The amount of the expenses deduction is so much of the basic deduction (see Step 8) as remains after making any deduction required at Step 9.

(8) For the purposes of Step 1, the expenses that are attributable to basic life assurance and general annuity business are the expenses which are attributable to that business in accordance with proper internal accounting practice.

In this subsection "proper internal accounting practice" means the practice of insurance companies in allocating all the expenses of the company to particular categories of business in accordance with any applicable requirements of—

(a) generally accepted accounting practice, or

(b) the Prudential Sourcebook (Insurers).

(9) The following rules have effect for determining for the purposes of Step 1 the expenses that are referable to an accounting period.

Rule A

Where a period of account coincides with an accounting period, the expenses brought into account for the period of account are the expenses referable to the accounting period.

Rule B

Where—

(a) two or more accounting periods fall within the same period of account, and

(b) that period of account is longer than 12 months,

section 834(4) (apportionment on time basis) is to apply.

Rule C

In any other case where two or more accounting periods fall within the same period of account, the expenses referable to any of those accounting periods are the expenses that would have been referable to that accounting period if—

(a) the accounting period had coincided with a period of account, and

(b) a separate periodical return had been made for that period of account,

and section 834(4) (apportionment on time basis) is not to apply.

Rule D

Rules A to C are subject to any provision of the Corporation Tax Acts which provides for an amount to be treated as expenses payable for, or referable to, a particular period.

(10) The amount D1 in Step 9 is the amount that would be the profits of the company's life assurance business for the accounting period if—

(a) computed in accordance with the provisions applicable to Case I of Schedule D, and

(b) adjusted in respect of losses.

The adjustment in respect of losses is a deduction of the amount which, disregarding sections 434A(2) and 440B, would fall to be set off under section 393 against the company's income for that period if the company had

always been charged to tax under Case I of Schedule D in respect of its life assurance business.

(11) The amount R in Step 9 (which may be a negative amount) is found for the accounting period by—

(a) taking the company's relevant income, and

(b) deducting from it the relevant aggregate.

The "relevant income" is the sum of—

(a) the income and gains referable by virtue of section 432A to the company's basic life assurance and general annuity business;

(b) distributions received by the company from companies resident in the United Kingdom which are referable by virtue of section 432A to its basic life assurance and general annuity business;

(c) profits chargeable under Case VI of Schedule D under section 436, 439B or 441.

The "relevant aggregate" is the sum of—

(a) the basic deduction (see Step 8);

(b) any non-trading deficit on the company's loan relationships which is produced for the period in relation to the company's basic life assurance and general annuity business by a separate computation under paragraph 2 of Schedule 11 to the Finance Act 1996;

(c) any amount which in pursuance of a claim under paragraph 4(3) of that Schedule is carried back to the period and (in accordance with paragraph 4(5) of that Schedule) applied in reducing profits of the company for that period.

(12) Where for any accounting period—

(a) the amount of the expenses deduction (see Step 10), exceeds

(b) the amount from which that deduction is to be made (see subsection (2) above),

the excess is to be carried forward to the next accounting period and brought into account for that period in accordance with Step 7.

(13) Subject to paragraph 4(11) to (13) of Schedule 11 to the Finance Act 1996, where for any accounting period—

(a) the basic deduction (see Step 8), exceeds

(b) the expenses deduction (see Step 10),

the excess is to be carried forward to the next accounting period and brought into account for that period in accordance with Step 7.

(14) In this section any reference to—

(a) life assurance business, or

(b) basic life assurance and general annuity business,

includes a reference to capital redemption business.

(15) In this section—

"capital redemption business" means any capital redemption business, within the meaning of section 458, which is business to which that section applies;

"expenses payable" has the meaning given by subsection (3) above;

and other expressions have the same meaning as in Chapter 1 of Part 12.".

(2) This section has effect in accordance with sections 42 and 44 (commencement and transitional provisions).

41 Related amendments to other enactments

(1) The enactments mentioned in Schedule 6 to this Act shall have effect with the amendments specified in that Schedule.

(2) Subsection (1) has effect in accordance with sections 42, 43 and 44 (commencement and transitional provisions).

42 Commencement of sections 38 to 41

(1) The amendments made by sections 38 to 41 and Schedule 6 have effect for accounting periods beginning on or after 1st April 2004.

(2) This is subject to the transitional provisions in sections 43 and 44 and that Schedule.

43 Companies with investment business: transitional provisions

(1) Any amount which, apart from this subsection, would have fallen to be treated under the old section 75(3) as if it had been disbursed as expenses of management for the first new accounting period of a company shall instead be treated as if it were expenses of management deductible for that period by virtue of the new section 75(9).

(2) To the extent that any amount was deductible under subsection (1) of section 75 for an old accounting period, the amount shall not again be deductible under that subsection for a new accounting period.

(3) Subsection (2) is without prejudice to the old section 75(3) and the new section 75(9) (carry forward of unrelieved excess to later accounting period).

(4) To the extent that an amount—

(a) was not deductible under section 75(1) by an investment company for any old accounting period, but

(b) would have been deductible under the new section 75(1) for an old accounting period if the amendments made by sections 38 and 39 and Schedule 6 or any order under section 46 (so far as having effect in relation to the first new accounting period) had been in force in relation to that period,

the amount shall be deductible under section 75(1) for the first new accounting period of the company.

(5) Where there is an accounting period that begins before, and ends on or after, 1st April 2004 ("the commencement date"), it shall be assumed, for the purpose of determining the amounts that are deductible for that period under section 75(1) of the Taxes Act 1988, that that accounting period (the "straddling period") consists of two separate accounting periods—

(a) the first beginning with the straddling period and ending with the day preceding the commencement date, and

(b) the second beginning with the commencement date and ending with the straddling period,

but this is subject to subsection (6).

(6) In the case of an investment company, subsection (5) does not have effect for the purpose of determining the amounts that are deductible for the straddling period under section 75(1) by virtue of—

(a) subsection (3) of the old section 75, or

(b) any provision of the Corporation Tax Acts, apart from section 75 and this section.

(7) Where, for the purposes of section 768B or 768C of the Taxes Act 1988, there is a change in the ownership of a company during the straddling period, then for the purposes of the section in question (and Schedule 28A to that Act), before making any such division as is required by section 768B(4) or 768C(3) of that Act,—

(a) the straddling period shall be divided into two parts in accordance with subsection (5), and

(b) those parts shall be treated in accordance with that subsection as two separate accounting periods, but

(c) subsection (6) shall be disregarded,

and section 768B or 768C of, and Schedule 28A to, the Taxes Act 1988 shall have effect accordingly.

(8) In this section—

"the commencement date" shall be construed in accordance with subsection (5);

"investment company" has the same meaning as in Part 4 of the Taxes Act 1988 (see section 130 of that Act);

"new accounting period" means an accounting period beginning on or after the commencement date;

"old accounting period" means an accounting period beginning before the commencement date;

"the new section 75" means section 75 as it has effect in relation to a new accounting period;

"the old section 75" means section 75 as it has effect (apart from subsection (5) above) in relation to an old accounting period;

"section 75" means section 75 of the Taxes Act 1988.

44 Insurance companies: transitional provisions

(1) Step 7 has effect for the first new accounting period as if, in paragraph (b) of that Step, the reference to amounts carried forward under subsection (12) or (13) of the new section 76 (carry forward of unrelieved excess to later accounting period) included—

(a) a reference to amounts falling to be carried forward from the last old accounting period under section 75(3) by virtue of the old section 76(1) (including any amounts falling to be so carried forward by virtue of the old section 76(5)), and

(b) a reference to so much of any pool under subsection (6) of section 87 of the Finance Act 1989 (c. 26) (pre-1990 expenses) as remains after making any reduction required by paragraph (c) of that subsection for the last old accounting period.

(2) To the extent that an amount—

(a) was not deductible under the old section 76(1) by a company for any old accounting period, but

(b) would have fallen to be taken into account by the company in determining the expenses deduction to be made under the new section 76(1) for an old accounting period if the amendments made by section 40 and Schedule 6 had been in force in relation to that period,

the company's basic deduction (see Step 8) for the first new accounting period shall be increased by the addition of that amount.

(3) Where there is an accounting period that begins before, and ends on or after, 1st April 2004 ("the commencement date"), it shall be assumed, for the purpose of determining the deduction to be made under section 76(1), that that accounting period ("the straddling period") consists of two separate accounting periods—

(a) the first beginning with the straddling period and ending with the day preceding the commencement date ("the first notional period"), and

(b) the second beginning with the commencement date and ending with the straddling period ("the second notional period"),

and the deduction shall be determined in accordance with subsections (4) to (6).

(4) For the purpose of determining the deduction to be made under section 76(1) for the straddling period—

(a) first add together—

(i) such amounts falling within the old section 76(1) as were disbursed for the first notional period, but without deducting amounts falling within the old section 76(1)(aa), (a), (c), or (ca),

(ii) the amounts falling to be brought into account at Step 1, as reduced at Step 2, for the second notional period, and

(iii) amounts falling to be carried forward from the previous accounting period under the old section 75(3) by virtue of the old section 76(1) (including any amounts falling to be so carried forward by virtue of the old section 76(5)),

(b) then reduce the aggregate of those amounts (but not below nil), by deducting from that aggregate any amounts falling within the old section 76(1)(aa), (a), (c), or (ca) for the straddling period,

and that aggregate, as so reduced, is deductible in accordance with the old section 76(1)(e) but subject to the old section 76(2) to (2D).

(5) Subsection (3) does not have effect for the purpose of determining the amounts that are deductible for the straddling period under section 76(1) by virtue of any provision of the Corporation Tax Acts apart from—

(a) the old section 75(3),

(b) section 76, and

(c) this section,

(so that, in particular, the old section 86 has effect for the straddling period).

(6) No amount shall be brought into account in determining the deduction to be made under section 76(1) for the straddling period except as provided by subsections (4) and (5).

(7) Any reference in this section to a numbered Step is a reference to the Step so numbered in subsection (7) of the new section 76.

(8) In this section—

"the commencement date" shall be construed in accordance with subsection (3);

"new accounting period" means an accounting period beginning on or after the commencement date;

"old accounting period" means an accounting period beginning before the commencement date;

"the new section 76" means section 76 as it has effect in relation to a new accounting period;

"the old section 76" means section 76 as it has effect (apart from subsection (3) above) in relation to an old accounting period;

"section 75" means section 75 of the Taxes Act 1988;

"section 76" means section 76 of the Taxes Act 1988;

"the old section 86" means section 86 of the Finance Act 1989 (c. 26) as it has effect (apart from subsection (3) above) in relation to an old accounting period.

Amounts reversing expenses of management deducted

45 Amounts reversing expenses of management deducted: charge to tax

(1) After section 75A of the Taxes Act 1988 (inserted by section 39) insert—

"**75B Amounts reversing expenses of management deducted: charge to tax**

(1) This section applies in any case where the following conditions are satisfied—

(a) a credit is brought into account by a company in a period of account (the "reversal period") which ends on or after the commencement date,

(b) the credit reverses (in whole or in part) a debit brought into account in a previous period of account of the company (whenever ending),

(c) the debit (in whole or in part) represents expenses of management deductible under section 75(1) for an accounting period of the company ("the period of deductibility"),

(d) the expenses of management were so deductible for that period otherwise than by virtue of section 75(9) (carry forward of unrelieved excess),

(e) the period of deductibility ends before, or at the same time as, the reversal period,

(f) the reversal period does not coincide with an accounting period beginning before the commencement date.

(2) In any such case, subsection (4) or (5) below (as the case may be) shall apply in relation to the reversal amount.

(3) In this section "the reversal amount" means so much of the credit as—

(a) reverses so much of the debit as represents the expenses of management, and

(b) does not represent sums otherwise taken into account in determining for the purposes of corporation tax the profits and losses of the company for the relevant accounting period or any earlier accounting period.

For this purpose the relevant accounting period is the latest accounting period of the company that falls wholly or partly within the reversal period.

(4) If the reversal period coincides with an accounting period of the company beginning on or after the commencement date, the reversal amount shall be dealt with for that period in accordance with subsection (7) below.

(5) If the reversal period does not coincide with an accounting period of the company—

(a) the reversal amount shall be apportioned between any accounting periods that fall within the reversal period, and

(b) any amount so apportioned to an accounting period beginning on or after the commencement date shall be dealt with for that period in accordance with subsection (7) below.

(6) An apportionment under subsection (5) above shall be in accordance with section 834(4) (time basis) unless it appears that that method would work unreasonably or unjustly, in which case such other method shall be used as appears just and reasonable.

(7) Where an amount falls to be dealt with in accordance with this subsection for an accounting period—

(a) it shall, so far as possible, be applied in reducing or further reducing (but not below nil) the company's expenses of management deductible for that period otherwise than by virtue of section 75(9) (carry forward of unrelieved excess), and

(b) so much of the amount as cannot be so applied shall be regarded as income of the company chargeable under Case VI of Schedule D for that accounting period.

(8) In subsection (1) above "brought into account", in relation to a period of account of a company, means brought into account in accordance with generally accepted accounting practice in determining, for accounting purposes, profit and loss for that period of account.

(9) If (apart from this subsection) an accounting period does not coincide with, or fall within, any period of account, it shall be assumed for the purposes of this section that there is a period of account of the company that coincides with that accounting period.

(10) It shall be assumed for the purposes of this section that, in determining for accounting purposes profit and loss for any period of account of any company, amounts fall to be brought into account in accordance with generally accepted accounting practice.

(11) For the purposes of this section a credit reverses a debit in whole or in part in any case where the sum represented in whole or in part by the debit is paid and

then in whole or in part repaid (as well as in a case where the sum represented by the debit is never paid).

(12) In this section—

"the commencement date" means 1st April 2004;

"credit" means an amount which for accounting purposes increases or creates a profit, or reduces a loss, for a period of account;

"debit" means an amount which for accounting purposes reduces a profit, or increases or creates a loss, for a period of account.".

(2) Where any such previous period as is referred to in subsection (1)(d) of section 75B is an old accounting period, that section has effect so far as relating to that previous period as if the reference to section 75(9) were a reference to subsection (3) of the old section 75.

(3) In subsection (2), "old accounting period" and "the old section 75" have the same meaning as in section 43.

(4) In section 842 of the Taxes Act 1988 (investment trusts) after subsection (1AB) insert—

"(1AC) In determining the amount of a company's income for the purposes of subsection (1)(a) above, no account shall be taken of any amount that falls under section 75B(7)(b) to be regarded as income of the company chargeable under Case VI of Schedule D.".

Power to make consequential amendments

46 Power to make consequential amendments

(1) The Treasury may by order make such amendments, repeals or revocations in any enactment (including an enactment amended by this Act) as appear to them to be appropriate in consequence of sections 38 to 40 and 45 and Schedule 6.

(2) The power conferred by subsection (1) to make an order includes power—

(a) to make different provision for different cases, and

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

(3) Any order made under this section on or before 31st December 2004 may make provision having effect in relation to accounting periods ending before the date on which the order is made (but not before 1st April 2004).

(4) In this section—

"enactment" includes an enactment comprised in subordinate legislation;

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

Insurance companies: miscellaneous

47 Insurance companies etc.

Schedule 7 to this Act (which makes provision about insurance companies and companies which have ceased to be insurance companies after a transfer of business) shall have effect.

Loan relationships and derivative contracts

48 Loan relationships: miscellaneous amendments

Schedule 8 to this Act (which makes amendments relating to loan relationships) shall have effect.

49 Derivative contracts: miscellaneous amendments

Schedule 9 to this Act (which makes amendments relating to derivative contracts) shall have effect.

Accounting practice

50 Generally accepted accounting practice

(1) In the Tax Acts "generally accepted accounting practice" means—

(a) in relation to the affairs of a company or other entity that prepares accounts in accordance with international accounting standards ("IAS accounts"), generally accepted accounting practice with respect to such accounts;

(b) in any other case, UK generally accepted accounting practice.

(2) In the Tax Acts "international accounting standards" means the international accounting standards, within the meaning of Regulation (EC) No. 1606/2002 of the European Parliament and the Council of 19 July 2002 on the application of international accounting standards, adopted from time to time by the European Commission in accordance with that Regulation.

(3) Where the European Commission has not adopted a particular international accounting standard, then as regards the matters covered by that standard—

(a) generally accepted accounting practice with respect to IAS accounts shall be regarded as permitting the use either of the unadopted standard or of UK generally accepted accounting practice, and

(b) accounts prepared on either basis shall be regarded for the purposes of the Tax Acts as prepared in accordance with international accounting standards.

(4) In the Tax Acts "UK generally accepted accounting practice"—

(a) means generally accepted accounting practice with respect to accounts of UK companies (other than IAS accounts) that are intended to give a true and fair view, and

(b) has the same meaning in relation to—

(i) individuals,

(ii) entities other than companies, and

(iii) companies that are not UK companies,

as it has in relation to UK companies.

In this subsection "UK companies" means companies incorporated or formed under the law of a part of the United Kingdom.

(5) In section 832(1) of the Taxes Act 1988 (interpretation of the Tax Acts)—

(a) in the definition of "generally accepted accounting practice" for "has the meaning given by section 836A" substitute "has the meaning given by section 50(1) of the Finance Act 2004";

(b) at the appropriate place insert—

> ""international accounting standards" has the meaning given by section 50(2) of the Finance Act 2004;"; and
>
> ""UK generally accepted accounting practice" has the meaning given by section 50(4) of the Finance Act 2004;".

(6) This section has effect in relation to—

(a) periods of account beginning on or after 1st January 2005, and

(b) in the case of a company required to prepare accounts under the Companies Act 1985 (c. 6) or the Companies (Northern Ireland) Order 1986 (S.I. 1986/1032 (N.I. 6)), any period of account beginning before that date for which the company is required or permitted to prepare such accounts in accordance with international accounting standards.

51 Use of different accounting practices within a group of companies

(1) This section applies where—

(a) a company (company A) prepares accounts in accordance with international accounting standards,

(b) another company (company B) in the same group of companies prepares accounts in accordance with UK generally accepted accounting practice,

(c) there is a transaction between, or a series of transactions involving, company A and company B, and

(d) a tax advantage would (apart from this section) be obtained by either or both of those companies in relation to the transaction or series of transactions as a result of the use of different accounting practices.

(2) In that case the Tax Acts apply in relation to that transaction or series of transactions as if both companies prepared accounts in accordance with UK generally accepted accounting practice.

(3) The provisions of section 170(3) to (6) of the Taxation of Chargeable Gains Act 1992 (c. 12) apply to determine for the purposes of this section whether companies are in the same group of companies.

(4) A series of transactions is not prevented from being a series of transactions involving company A and company B by reason only of the fact that one or more of the following is the case—

(a) there is no transaction in the series to which both those companies are parties;

(b) that parties to any arrangement in pursuance of which the transactions in the series are entered into do not include one or both of those companies;

(c) there are one or more transactions in the series to which neither of those companies is a party.

(5) In this section "tax advantage" has the same meaning as in Chapter 1 of Part 17 of the Taxes Act 1988 (see section 709 of that Act).

(6) This section has effect in relation to—

(a) periods of account beginning on or after 1st January 2005, and

(b) in the case of a company required to prepare accounts under the Companies Act 1985 (c. 6) or the Companies (Northern Ireland) Order 1986 (S.I. 1986/1032 (N.I. 6)), any period of account beginning before that date for which the company is required or permitted to prepare such accounts in accordance with international accounting standards.

52 Amendment of enactments that operate by reference to accounting practice

(1) Schedule 10 makes amendments of provisions of the Tax Acts that operate by reference to accounting practice.

(2) In that Schedule—

Part 1 makes amendments relating to loan relationships;

Part 2 makes amendments relating to derivative contracts;

Part 3 makes amendments relating to intangible fixed assets;

Part 4 makes amendments relating to foreign currency accounting.

(3) The amendments have effect in relation to—

(a) periods of account beginning on or after 1st January 2005, and

(b) in the case of a company required to prepare accounts under the Companies Act 1985 or the Companies (Northern Ireland) Order 1986, any period of account beginning before that date for which the company is required or permitted to prepare such accounts in accordance with international accounting standards.

53 Treatment of expenditure on research and development

(1) Expenditure by a company on research and development, if not of a capital nature, is not prevented from being regarded for tax purposes as deductible in computing profits by reason of the fact that for accounting purposes it is brought into account by the company in determining the value of an intangible asset.

(2) Subsection (1) applies, in particular, for the purposes of—

section 82A of the Taxes Act 1988 (deduction of expenditure on research and development),

Schedule 20 to the Finance Act 2000 (c. 17) (R&D tax relief),

Schedule 12 to the Finance Act 2002 (c. 23) (tax relief for expenditure on research and development), and

Schedule 13 to that Act (tax relief for expenditure on vaccine research etc.).

(3) Where expenditure is brought into account by a company for tax purposes in accordance with subsection (1), no deduction may be made in computing for tax purposes the profits of the company in respect of the writing down of so much of the value of an intangible asset as is attributable to that expenditure.

(4) Expenditure shall not be regarded by virtue of subsection (1) as deductible in computing a company's profits for an accounting period to the extent that—

(a) a deduction has been made in respect of it in computing the company's profits for a previous accounting period, or

(b) the company has benefited from a tax relief in respect of it for a previous accounting period under any of the provisions specified in subsection (2).

(5) In this section—

"intangible asset" has the meaning it has for accounting purposes; and

"research and development" has the meaning given by section 837A of the Taxes Act 1988.

(6) This section shall come into force in accordance with provision made by the Treasury by order made by statutory instrument.

54 Trading profits etc. from securities: taxation of amounts taken to reserves

(1) Before section 473 of the Taxes Act 1988 insert—

"**472A Trading profits etc. from securities: taxation of amounts taken to reserves**

(1) This section applies in relation to securities—

(a) which are held by a person carrying on a banking business, an insurance business or a business consisting wholly or partly in dealing in securities; and

(b) which are such that a profit on their sale would form part of the trading profits of that business.

(2) Profits and losses arising from such securities that in accordance with generally accepted accounting practice are—

(a) calculated by reference to the fair value of the securities, and

(b) recognised in that person's statement of recognised gains and losses or statement of changes in equity,

shall be brought into account in computing the profits or losses of a business in accordance with the provisions of this Act applicable to Case I of Schedule D.

(3) Subsection (2) does not apply—

(a) to an amount to the extent that it derives from or otherwise relates to an amount brought into account under that subsection in an earlier period of account, or

(b) to an amount recognised for accounting purposes by way of correction of a fundamental error.

(4) In this section, "securities"—

(a) includes shares and any rights, interests or options that by virtue of section 99, 135(5) or 136(5) of the Taxation of Chargeable Gains Act 1992 are treated as shares for the purposes of sections 126 to 136 of that Act; but

(b) does not include a loan relationship (within the meaning of Chapter 2 of Part 4 of the Finance Act 1996).".

(2) This section has effect in relation to—

(a) periods of account beginning on or after 1st January 2005, and

(b) in the case of a company required to prepare accounts under the Companies Act 1985 (c. 6) or the Companies (Northern Ireland) Order 1986 (S.I. 1986/1032 (N.I. 6)), any period of account beginning before that date for which the company is required or permitted to prepare such accounts in accordance with international accounting standards.

Miscellaneous

55 Duty of company to give notice of coming within charge to corporation tax

(1) A company must give notice to the Board—

(a) of the beginning of its first accounting period, and

(b) of the beginning of any subsequent accounting period that does not immediately follow the end of a previous accounting period.

(2) The notice required by this section—

(a) must be in writing;

(b) must state when the accounting period began;

(c) must contain such other information as may be prescribed;

(d) may be given to any officer of the Board; and

(e) must be given not later than three months after the beginning of the accounting period.

(3) "Prescribed" in subsection (2)(c) means prescribed by regulations made by the Board.

(4) A company that has a reasonable excuse for failing to give notice as required by this section—

(a) is not to be regarded as having failed to comply with this section until the excuse ceases, and

(b) after the excuse ceases is not to be regarded as having failed to comply with this section if the required notice is given without unreasonable delay after the excuse ceases.

(5) In this section—

(a) "accounting period" means an accounting period for the purposes of corporation tax;

(b) "company" means a body corporate and does not include an unincorporated association or a partnership; and

(c) "the Board" means the Commissioners of Inland Revenue.

(6) In the second column of the Table in section 98 of the Taxes Management Act 1970 (c. 9) (penalty for failure to provide information), at the appropriate place insert—

"section 55 of the Finance Act 2004".

(7) This section applies in relation to accounting periods beginning on or after the day on which this Act is passed.

56 Relief for community amateur sports clubs

(1) Schedule 18 to the Finance Act 2002 (c. 23) (relief for community amateur sports clubs) is amended as follows.

(2) In paragraph 4(1)(b) (exemption for trading income not exceeding £15,000 etc) for "£15,000" substitute "£30,000".

(3) In paragraph 6(1)(b) (exemption for property income not exceeding £10,000 etc) for "£10,000" substitute "£20,000".

(4) The amendments made by this section have effect in relation to accounting periods ending on or after 1st April 2004.

(5) Where an accounting period begins before, and ends on or after, 1st April 2004, the amendments made by subsections (2) and (3) have effect as if—

(a) the part falling before that date and the part falling on or after it were two separate accounting periods, and

(b) the club's trading income and property income for each of those parts were the proportionally reduced amount of its trading income and property income for the actual accounting period.

(6) In this section—

"property income" has the same meaning as in paragraph 6 of Schedule 18 to the Finance Act 2002;

"trading income" has the same meaning as in paragraph 4 of that Schedule.

CHAPTER 3

CONSTRUCTION INDUSTRY SCHEME

Introduction

57 Introduction

(1) This Chapter provides for certain payments (see section 60) under construction contracts to be made under deduction of sums on account of tax (see sections 61 and 62).

(2) In this Chapter "construction contract" means a contract relating to construction operations (see section 74) which is not a contract of employment but where—

(a) one party to the contract is a sub-contractor (see section 58); and

(b) another party to the contract ("the contractor") either—

(i) is a sub-contractor under another such contract relating to all or any of the construction operations, or

(ii) is a person to whom section 59 applies.

(3) In sections 60 and 61 "the contractor" has the meaning given by this section.

(4) In this Chapter—

(a) references to registration for gross payment are to registration under section 63(2),

(b) references to registration for payment under deduction are to registration under section 63(3), and

(c) references to registration under section 63 are to registration for gross payment or registration for payment under deduction.

(5) To the extent that any provision of this Chapter would not, apart from this subsection, form part of the Tax Acts, it shall be taken to form part of those Acts.

58 Sub-contractors

For the purposes of this Chapter a party to a contract relating to construction operations is a sub-contractor if, under the contract—

(a) he is under a duty to the contractor to carry out the operations, or to furnish his own labour (in the case of a company, the labour of employees or officers of the company) or the labour of others in the carrying out of the operations or to arrange for the labour of others to be furnished in the carrying out of the operations; or

(b) he is answerable to the contractor for the carrying out of the operations by others, whether under a contract or under other arrangements made or to be made by him.

59 Contractors

(1) This section applies to the following bodies or persons—

(a) any person carrying on a business which includes construction operations;

(b) any public office or department of the Crown (including any Northern Ireland department and any part of the Scottish Administration);

(c) the Corporate Officer of the House of Lords, the Corporate Officer of the House of Commons and the Scottish Parliamentary Corporate Body;

(d) any local authority;

(e) any development corporation or new town commission;

(f) the Commission for the New Towns;

(g) the Secretary of State if the contract is made by him under section 89 of the Housing Associations Act 1985 (c. 69);

(h) the Housing Corporation, a housing association, a housing trust, Scottish Homes, and the Northern Ireland Housing Executive;

(i) any NHS trust;

(j) any HSS trust;

(k) any such body or person, being a body or person (in addition to those falling within paragraphs (b) to (j)) which has been established for the purpose of carrying out functions conferred on it by or under any enactment, as may be designated as a body or person to which this section applies in regulations made by the Board of Inland Revenue;

(l) a person carrying on a business at any time if—

(i) his average annual expenditure on construction operations in the period of three years ending with the end of the last period of account before that time exceeds £1,000,000, or

(ii) where he was not carrying on the business at the beginning of that period of three years, one-third of his total expenditure on

construction operations for the part of that period during which he has been carrying on the business exceeds £1,000,000.

(2) But this section only applies to a body or person falling within subsection (1)(b) to (f) or (h) to (k) if—

(a) in any period of three years, that body or person has had an average annual expenditure on construction operations of more than £1,000,000, and

(b) since the condition in paragraph (a) was last satisfied, there have not been three successive years in each of which the body or person has had expenditure on construction operations of less than £1,000,000.

In this subsection "year" means a year ending with 31st March.

(3) Where section 57(2)(b) begins to apply to a person in any period of account by virtue of his falling within subsection (1)(l), it shall continue to apply to him until he satisfies the Board of Inland Revenue that his expenditure on construction operations has been less than £1,000,000 in each of three successive years beginning in or after that period of account.

(4) Where the whole or part of a trade is transferred by a company ("the transferor") to another company ("the transferee") and section 343 of the Taxes Act 1988 has effect in relation to the transfer, then in determining for the purposes of this section the amount of expenditure incurred by the transferee—

(a) the whole or, as the case may be, a proportionate part of any expenditure incurred by the transferor at a time before the transfer is to be treated as if it had been incurred at that time by the transferee; and

(b) where only a part of the trade is transferred, the expenditure is to be apportioned in such manner as appears to the Board of Inland Revenue, or on appeal to the Commissioners, to be just and reasonable.

(5) In this section—

"development corporation" has the same meaning as in—

(a) the New Towns Act 1981 (c. 64), or

(b) the New Towns (Scotland) Act 1968 (c. 16);

"enactment" includes an enactment comprised in an Act of the Scottish Parliament and a provision comprised in Northern Ireland legislation;

"housing association" has the same meaning as in—

(a) the Housing Associations Act 1985 (c. 69), or

(b) Part 2 of the Housing (Northern Ireland) Order 1992 (S.I. 1992/ 1725 (N.I. 15));

"housing trust" has the same meaning as in the Housing Associations Act 1985;

"HSS trust" means a Health and Social Services trust established under the Health and Personal Social Services (Northern Ireland) Order 1991 (S.I. 1991/194 (N.I. 1));

"new town commission" has the same meaning as in the New Towns Act (Northern Ireland) 1965 (c. 13 (N.I.));

"NHS trust" means a National Health Service trust—

(a) established under Part 1 of the National Health Service and Community Care Act 1990 (c. 19), or

(b) constituted under section 12A of the National Health Service (Scotland) Act 1978 (c. 29).

(6) In this section references to a body or person include references to an office or department.

(7) The Board of Inland Revenue may make regulations amending this section for the purpose of removing references to bodies which have ceased to exist.

Deductions on account of tax from contract payments to sub-contractors

60 Contract payments

(1) In this Chapter "contract payment" means any payment which is made under a construction contract and is so made by the contractor (see section 57(3)) to—

(a) the sub-contractor,

(b) a person nominated by the sub-contractor or the contractor, or

(c) a person nominated by a person who is a sub-contractor under another such contract relating to all or any of the construction operations.

(2) But a payment made under a construction contract is not a contract payment if any of the following exceptions applies in relation to it.

(3) This exception applies if the payment is treated as earnings from an employment by virtue of Chapter 7 of Part 2 of the Income Tax (Earnings and Pensions) Act 2003 (c. 1) (agency workers).

(4) This exception applies if the person to whom the payment is made or, in the case of a payment made to a nominee, each of the following persons—

(a) the nominee,

(b) the person who nominated him, and

(c) the person for whose labour (or, where that person is a company, for whose employees' or officers' labour) the payment is made,

is registered for gross payment when the payment is made.

But this is subject to subsections (5) and (6).

(5) Where a person is registered for gross payment as a partner in a firm (see section 64), subsection (4) applies only in relation to payments made under contracts under which—

(a) the firm is a sub-contractor, or

(b) where a person has nominated the firm to receive payments, the person who has nominated the firm is a sub-contractor.

(6) Where a person is registered for gross payment otherwise than as a partner in a firm but he is or becomes a partner in a firm, subsection (4) does not apply in relation to payments made under contracts under which—

(a) the firm is a sub-contractor, or

(b) where a person has nominated the firm to receive payments, the person who has nominated the firm is a sub-contractor.

(7) This exception applies if such conditions as may be prescribed in regulations made by the Board of Inland Revenue for the purposes of this subsection are satisfied; and those conditions may relate to any one or more of the following—

(a) the payment,

(b) the person making it, and

(c) the person receiving it.

(8) For the purposes of this Chapter a payment (including a payment by way of loan) that has the effect of discharging an obligation under a contract relating to construction operations is to be taken to be made under the contract; and if—

(a) the obligation is to make a payment to a person ("A") within paragraph (a) to (c) of subsection (1), but

(b) the payment discharging that obligation is made to a person ("B") not within those paragraphs,

the payment is for those purposes to be taken to be made to A.

61 Deductions on account of tax from contract payments

(1) On making a contract payment the contractor (see section 57(3)) must deduct from it a sum equal to the relevant percentage of so much of the payment as is not shown to represent the direct cost to any other person of materials used or to be used in carrying out the construction operations to which the contract under which the payment is to be made relates.

(2) In subsection (1) "the relevant percentage" means such percentage as the Treasury may by order determine.

(3) That percentage must not exceed—

(a) if the person for whose labour (or for whose employees' or officers' labour) the payment in question is made is registered for payment under deduction, the percentage which is the basic rate for the year of assessment in which the payment is made, or

(b) if that person is not so registered, the percentage which is the higher rate for that year of assessment.

62 Treatment of sums deducted

(1) A sum deducted under section 61 from a payment made by a contractor—

(a) must be paid to the Board of Inland Revenue, and

(b) is to be treated for the purposes of income tax or, as the case may be, corporation tax as not diminishing the amount of the payment.

(2) If the sub-contractor is not a company a sum deducted under section 61 and paid to the Board is to be treated as being income tax paid in respect of the sub-contractor's relevant profits.

If the sum is more than sufficient to discharge his liability to income tax in respect of those profits, so much of the excess as is required to discharge any liability of his for Class 4 contributions is to be treated as being Class 4 contributions paid in respect of those profits.

(3) If the sub-contractor is a company—

(a) a sum deducted under section 61 and paid to the Board is to be treated, in accordance with regulations, as paid on account of any relevant liabilities of the sub-contractor;

(b) regulations must provide for the sum to be applied in discharging relevant liabilities of the year of assessment in which the deduction is made;

(c) if the amount is more than sufficient to discharge the sub-contractor's relevant liabilities, the excess may be treated, in accordance with the regulations, as being corporation tax paid in respect of the sub-contractor's relevant profits; and

(d) regulations must provide for the repayment to the sub-contractor of any amount not required for the purposes mentioned in paragraphs (b) and (c).

(4) For the purposes of subsection (3) the "relevant liabilities" of a sub-contractor are any liabilities of the sub-contractor, whether arising before or after the deduction is made, to make a payment to the Inland Revenue in pursuance of an obligation as an employer or contractor.

(5) In this section—

(a) "the sub-contractor" means the person for whose labour (or for whose employees' or officers' labour) the payment is made;

(b) references to the sub-contractor's "relevant profits" are to the profits from the trade, profession or vocation carried on by him in the course of which the payment was received;

(c) "Class 4 contributions" means Class 4 contributions within the meaning of the Social Security Contributions and Benefits Act 1992 (c. 4) or the Social Security Contributions and Benefits (Northern Ireland) Act 1992 (c. 7).

(6) References in this section to regulations are to regulations made by the Board of Inland Revenue.

(7) Regulations under this section may contain such supplementary, incidental or consequential provision as appears to the Board to be appropriate.

Registration of sub-contractors

63 Registration for gross payment or for payment under deduction

(1) If the Board of Inland Revenue are satisfied, on the application of an individual or a company, that the applicant has provided—

(a) such documents, records and information as may be required by or in accordance with regulations made by the Board, and

(b) such additional documents, records and information as may be required by the Inland Revenue in connection with the application,

the Board must register the individual or company under this section.

(2) If the Board are satisfied that the requirements of subsection (2), (3) or (4) of section 64 are met, the Board must register—

(a) the individual or company, or

(b) in a case falling within subsection (3) of that section, the individual or company as a partner in the firm in question,

for gross payment.

(3) In any other case, the Board must register the individual or company for payment under deduction.

64 Requirements for registration for gross payment

(1) This section sets out the requirements (in addition to that in subsection (1) of section 63) for an applicant to be registered for gross payment.

(2) Where the application is for the registration for gross payment of an individual (otherwise than as a partner in a firm), he must satisfy the conditions in Part 1 of Schedule 11 to this Act.

(3) Where the application is for the registration for gross payment of an individual or a company as a partner in a firm—

(a) the applicant must satisfy the conditions in Part 1 of Schedule 11 to this Act (if an individual) or Part 3 of that Schedule (if a company), and

(b) in either case, the firm itself must satisfy the conditions in Part 2 of that Schedule.

(4) Where the application is for the registration for gross payment of a company (otherwise than as a partner in a firm)—

(a) the company must satisfy the conditions in Part 3 of Schedule 11 to this Act, and

(b) if the Board of Inland Revenue have given a direction under subsection (5), each of the persons to whom any of the conditions in Part 1 of that Schedule applies in accordance with the direction must satisfy the conditions which so apply to him.

(5) Where the applicant is a company, the Board may direct that the conditions in Part 1 of Schedule 11 to this Act or such of them as are specified in the direction shall apply to—

(a) the directors of the company,

(b) if the company is a close company, the persons who are the beneficial owners of shares in the company, or

(c) such of those directors or persons as are so specified,

as if each of them were an applicant for registration for gross payment.

(6) See also section 65(1) (power of Board to make direction under subsection (5) on change in control of company applying for registration etc).

(7) In subsection (5) "director" has the meaning given by section 67 of the Income Tax (Earnings and Pensions) Act 2003 (c. 1).

65 Change in control of company registered for gross payment

(1) Where it appears to the Board of Inland Revenue that there has been a change in the control of a company—

(a) registered for gross payment, or

(b) applying to be so registered,

the Board may make a direction under section 64(5).

(2) The Board may make regulations requiring the furnishing of information with respect to changes in the control of a company—

(a) registered for gross payment, or

(b) applying to be so registered.

(3) Section 840 of the Taxes Act 1988 (control) applies for the purposes of this section.

66 Cancellation of registration for gross payment

(1) The Board of Inland Revenue may at any time make a determination cancelling a person's registration for gross payment if it appears to them that—

(a) if an application to register the person for gross payment were to be made at that time, the Board would refuse so to register him,

(b) he has made an incorrect return or provided incorrect information (whether as a contractor or as a sub-contractor) under any provision of this Chapter or of regulations made under it, or

(c) he has failed to comply (whether as a contractor or as a sub-contractor) with any such provision.

(2) Where the Board make a determination under subsection (1), the person's registration for gross payment is cancelled with effect from the end of a prescribed period after the making of the determination (but see section 67(5)).

(3) The Board of Inland Revenue may at any time make a determination cancelling a person's registration for gross payment if they have reasonable grounds to suspect that the person—

(a) became registered for gross payment on the basis of information which was false,

(b) has fraudulently made an incorrect return or provided incorrect information (whether as a contractor or as a sub-contractor) under any provision of this Chapter or of regulations made under it, or

(c) has knowingly failed to comply (whether as a contractor or as a sub-contractor) with any such provision.

(4) Where the Board make a determination under subsection (3), the person's registration for gross payment is cancelled with immediate effect.

(5) On making a determination under this section cancelling a person's registration for gross payment, the Board must without delay give the person notice stating the reasons for the cancellation.

(6) Where a person's registration for gross payment is cancelled by virtue of a determination under subsection (1), the person must be registered for payment under deduction.

(7) Where a person's registration for gross payment is cancelled by virtue of a determination under subsection (3), the person may, if the Board thinks fit, be registered for payment under deduction.

(8) A person whose registration for gross payment is cancelled under this section may not, within the period of one year after the cancellation takes effect (see subsections (2) and (4) and section 67(5)), apply for registration for gross payment.

(9) In this section "a prescribed period" means a period prescribed by regulations made by the Board.

67 Registration for gross payment: appeals

(1) A person aggrieved by—

(a) the refusal of an application for registration for gross payment, or

(b) the cancellation of his registration for gross payment,

may by notice appeal to the General Commissioners or, if the person so elects in the notice, to the Special Commissioners.

(2) The notice must be given to the Board of Inland Revenue within 30 days after the refusal or cancellation.

(3) The notice must state the person's reasons for believing that—

(a) the application should not have been refused, or

(b) his registration for gross payment should not have been cancelled.

(4) The jurisdiction of the Commissioners on such an appeal shall include jurisdiction to review any relevant decision taken by the Board of Inland Revenue in the exercise of their functions under section 63, 64, 65 or 66.

(5) Where a person appeals against the cancellation of his registration for gross payment by virtue of a determination under section 66(1), the cancellation of his registration does not take effect until whichever is the latest of the following—

(a) the abandonment of the appeal,

(b) the determination of the appeal by the Commissioners, or

(c) the determination of the appeal by the appropriate court.

(6) In this section "the appropriate court" means—

(a) in relation to England and Wales, the High Court;

(b) in relation to Scotland, the Court of Session, as the Court of Exchequer in Scotland;

(c) in relation to Northern Ireland, the Court of Appeal in Northern Ireland.

68 Registration for payment under deduction: cancellation and appeals

The Board of Inland Revenue may make regulations providing for—

(a) the cancellation, in such circumstances as may be prescribed by the regulations, of a person's registration for payment under deduction;

(b) appeals against a refusal to register a person for payment under deduction or the cancellation of such registration.

Verification, returns etc and penalties

69 Verification etc of registration status of sub-contractors

(1) The Board of Inland Revenue may make regulations requiring persons who make payments under contracts relating to construction operations, except in prescribed circumstances, to verify with the Board whether a person to whom they are proposing to make—

(a) a contract payment, or

(b) a payment which would be a contract payment but for section 60(4),

is registered for gross payment or for payment under deduction.

(2) The provision that may be made by regulations under subsection (1) includes provision—

(a) for preventing a person from verifying unless such conditions as may be prescribed have been satisfied;

(b) as to the period for which the verification remains valid.

(3) The Board of Inland Revenue may make regulations requiring the Board to notify persons of a prescribed description who make payments under contracts relating to construction operations that—

(a) a person registered for gross payment has become registered for payment under deduction or has ceased to be registered under section 63, or

(b) a person registered for payment under deduction has become registered for gross payment or has ceased to be registered under section 63.

(4) The provision that may be made by regulations under subsection (1) or (3) includes provision for a person to be entitled to assume, except in prescribed circumstances, that—

(a) a person verified or notified as being registered for gross payment, or

(b) a person verified or notified as being registered for payment under deduction,

has not subsequently ceased to be so registered.

(5) In this section "prescribed" means prescribed by regulations under this section.

70 Periodic returns by contractors etc

(1) The Board of Inland Revenue may make regulations requiring persons who make payments under construction contracts—

(a) to make to the Board, at such times and in respect of such periods as may be prescribed, returns relating to such payments;

(b) to keep such records as may be prescribed relating to such payments;

(c) to provide such information as may be prescribed, at such times as may be prescribed, to persons to whom such payments are made or to such of those persons as are of a prescribed description.

(2) The provision that may be made by regulations under subsection (1)(a) includes provision requiring, except in such circumstances as may be prescribed,—

(a) the person making a return to declare in the return that none of the contracts to which the return relates is a contract of employment;

(b) the person making a return to declare in the return that, in the case of each person to whom a payment to which the return relates is made, he has complied with the requirements of any regulations made under section 69(1) (verification of registration status);

(c) returns to contain such other information and to be in such form as may be prescribed;

(d) a return to be made where no payments have been made in the period to which the return relates.

(3) The Board of Inland Revenue may make regulations with respect to—

(a) the production, copying and removal of, and the making of extracts from, any records kept by virtue of any such requirement as is referred to in subsection (1)(b), and

(b) rights of access to, or copies of, any such records which are removed.

(4) Regulations under this section may make provision—

(a) for or in connection with enabling a person who makes payments under construction contracts to appoint another person (a "scheme representative")

to act on his behalf in connection with any requirements imposed on him by regulations under this section, and

(b) as to the rights, obligations or liabilities of scheme representatives.

(5) In this section "prescribed" means prescribed by regulations under this section.

71 Collection and recovery of sums to be deducted

(1) The Board of Inland Revenue must make regulations with respect to the collection and recovery, whether by assessment or otherwise, of sums required to be deducted from any payments under section 61.

(2) The regulations may include any matters with respect to which PAYE regulations may be made.

(3) Interest required to be paid by the regulations—

(a) is to be paid without any deduction of income tax, and

(b) is not to be taken into account in computing any income, profits or losses for any tax purposes.

72 Penalties

If a person, for the purpose of becoming registered for gross payment or for payment under deduction,—

(a) makes any statement, or furnishes any document, which he knows to be false in a material particular, or

(b) recklessly makes any statement, or furnishes any document, which is false in a material particular,

he shall be liable to a penalty not exceeding £3,000.

Supplementary

73 Regulations under this Chapter: supplementary

(1) The Board of Inland Revenue may by regulations make such other provision for giving effect to this Chapter as they consider necessary or expedient.

(2) The provision that may be made by regulations under subsection (1) includes provision for or in connection with modifying the application of this Chapter in circumstances where—

(a) a person acts as the agent of a contractor or sub-contractor;

(b) a person's right to payments under a construction contract is assigned or otherwise transferred to another person.

(3) Regulations under this Chapter may make different provision for different cases.

(4) Any power under this Chapter to make regulations authorising or requiring a document (whether or not of a particular description), or any records or information, to be given or requested by or to be sent or produced to the Board of Inland Revenue includes power—

(a) to authorise the Board to nominate a person who is not an officer of the Board to be the person who on behalf of the Board—

(i) gives or requests the document, records or information; or

(ii) is the recipient of the document, records or information; and

(b) to require the document, records or information, in cases prescribed by or determined under the regulations, to be sent or produced to the address (determined in accordance with the regulations) of the person nominated by the Board to receive it on their behalf.

74 Meaning of "construction operations"

(1) In this Chapter "construction operations" means operations of a description specified in subsection (2), not being operations of a description specified in subsection (3); and references to construction operations—

(a) except where the context otherwise requires, include references to the work of individuals participating in the carrying out of such operations; and

(b) do not include references to operations carried out or to be carried out otherwise than in the United Kingdom (or the territorial sea of the United Kingdom).

(2) The following operations are, subject to subsection (3), construction operations for the purposes of this Chapter—

(a) construction, alteration, repair, extension, demolition or dismantling of buildings or structures (whether permanent or not), including offshore installations;

(b) construction, alteration, repair, extension or demolition of any works forming, or to form, part of the land, including (in particular) walls, roadworks, power-lines, electronic communications apparatus, aircraft runways, docks and harbours, railways, inland waterways, pipe-lines, reservoirs, water-mains, wells, sewers, industrial plant and installations for purposes of land drainage, coast protection or defence;

(c) installation in any building or structure of systems of heating, lighting, air-conditioning, ventilation, power supply, drainage, sanitation, water supply or fire protection;

(d) internal cleaning of buildings and structures, so far as carried out in the course of their construction, alteration, repair, extension or restoration;

(e) painting or decorating the internal or external surfaces of any building or structure;

(f) operations which form an integral part of, or are preparatory to, or are for rendering complete, such operations as are previously described in this subsection, including site clearance, earth-moving, excavation, tunnelling and boring, laying of foundations, erection of scaffolding, site restoration, landscaping and the provision of roadways and other access works.

(3) The following operations are not construction operations for the purposes of this Chapter—

(a) drilling for, or extraction of, oil or natural gas;

(b) extraction (whether by underground or surface working) of minerals and tunnelling or boring, or construction of underground works, for this purpose;

(c) manufacture of building or engineering components or equipment, materials, plant or machinery, or delivery of any of these things to site;

(d) manufacture of components for systems of heating, lighting, air-conditioning, ventilation, power supply, drainage, sanitation, water supply or fire protection, or delivery of any of these things to site;

(e) the professional work of architects or surveyors, or of consultants in building, engineering, interior or exterior decoration or in the laying-out of landscape;

(f) the making, installation and repair of artistic works, being sculptures, murals and other works which are wholly artistic in nature;

(g) signwriting and erecting, installing and repairing signboards and advertisements;

(h) the installation of seating, blinds and shutters;

(i) the installation of security systems, including burglar alarms, closed circuit television and public address systems.

(4) The Treasury may by order made by statutory instrument amend either or both of subsections (2) and (3) by—

(a) adding,

(b) varying, or

(c) removing,

any description of operations.

(5) No statutory instrument containing an order under subsection (4) shall be made unless a draft of the instrument has been laid before and approved by a resolution of the House of Commons.

75 Meaning of "the Inland Revenue" etc and delegation of Board's functions

(1) In this Chapter "the Inland Revenue" means any officer of the Board of Inland Revenue.

(2) In this Chapter "the Board of Inland Revenue" means the Commissioners of Inland Revenue (as to which, see in particular the Inland Revenue Regulation Act 1890 (c. 21)).

(3) The Board of Inland Revenue may make regulations providing for any of the following to be done on behalf of the Board—

(a) the registration of persons under section 63;

(b) the giving of directions under section 64(5); and

(c) the cancellation under section 66 of a person's registration for gross payment.

76 Consequential amendments

Schedule 12 to this Act (which makes consequential amendments) has effect.

77 Commencement and transitional provision

(1) This Chapter has effect in relation to payments made on or after the appointed day under contracts relating to construction operations.

(2) Where a certificate issued to a person under section 561 of the Taxes Act 1988 is in force immediately before the appointed day, the person is to be treated as if, on the appointed day, the Board of Inland Revenue had registered him for gross payment.

(3) Where a registration card issued to a person in accordance with regulations made under section 566(2A) of the Taxes Act 1988 is in force immediately before the appointed day, the person is to be treated as if, on the appointed day, the Board of Inland Revenue had registered him for payment under deduction.

(4) Subsection (5) applies in relation to the first payment ("the relevant payment") made after the appointed day by a person ("C") to a sub-contractor ("SC") under a contract relating to construction operations if—

(a) before the appointed day, C had made one or more payments to SC under the contract or another such contract,

(b) the last of those payments ("the last payment") was made in the year of assessment in which the relevant payment was made or in either of the two years of assessment before that,

(c) at the time of the last payment—

(i) a certificate issued to SC under section 561 of the Taxes Act 1988 was in force, or

(ii) a registration card issued to SC in accordance with regulations made under section 566(2A) of that Act was in force, and

(d) on making the relevant payment, C has no reason to believe that SC—

(i) did not become registered for gross payment or (as the case may be) for payment under deduction by virtue of subsection (2) or (3), and

(ii) is not still so registered.

(5) Where this subsection applies, regulations under section 69(1) shall not require C, before making the relevant payment, to verify whether SC is registered for gross payment or for payment under deduction.

(6) Where subsection (5) applies, C shall be entitled to assume, on making any further payments to SC under a contract relating to construction operations, that SC has not subsequently ceased to be so registered, unless notified to the contrary in accordance with regulations made under section 69(3).

(7) In this section "the appointed day" means such day as the Treasury may by order appoint.

(8) The Treasury may by order make such further supplemental and transitional provision and savings as they think fit in connection with the coming into effect of this Chapter.

CHAPTER 4

PERSONAL TAXATION

Taxable benefits

78 Childcare and childcare vouchers

(1) Schedule 13 to this Act contains amendments of the Income Tax (Earnings and Pensions) Act 2003 (c. 1) relating to childcare and childcare vouchers.

(2) The amendments have effect for the year 2005-06 and subsequent years of assessment.

79 Exemption for loaned computer equipment

(1) In Chapter 11 of Part 4 of the Income Tax (Earnings and Pensions) Act 2003 (c. 1) (employment income: miscellaneous exemptions), section 320 (limited exemption for computer equipment) is amended as follows.

(2) For subsection (1) substitute—

"(1) If conditions A and B are met in respect of the provision of computer equipment—

(a) no liability to income tax arises by virtue of section 62 (general definition of earnings), and

(b) liability to income tax by virtue of Chapter 10 of Part 3 (taxable benefits: residual liability to charge) arises only in respect of so much of the aggregate cash equivalent of the benefit in the tax year as exceeds £500.".

(3) Omit subsections (4) and (5).

(4) This section has effect for the year 2004-05 and subsequent years of assessment.

80 Vans

(1) Schedule 14 to this Act contains amendments of the Income Tax (Earnings and Pensions) Act 2003 relating to vans.

(2) The amendments have effect for the year 2005-06 and subsequent years of assessment.

81 Emergency vehicles

(1) In the Income Tax (Earnings and Pensions) Act 2003, after section 248 insert—

"**248A Emergency vehicles**

(1) This section applies where—

(a) an emergency vehicle is made available to a person employed in an emergency service for the person's private use,

(b) the terms on which it is made available prohibit its private use otherwise than when the person is on call or engaged in on-call commuting, and

(c) the person does not make private use of it otherwise than in such circumstances.

(2) No liability to income tax arises by virtue of Chapter 6 or 10 of Part 3 (taxable benefits: cars, vans etc. and residual liability to charge) in respect of the benefit.

(3) "Emergency vehicle" means a vehicle which is used to respond to emergencies and which either—

(a) has fixed to it a lamp designed to emit a flashing light for use in emergencies, or

(b) would have such a lamp fixed to it but for the fact that (if it did) a special threat to the personal physical security of those using it would

arise by reason of it being apparent that they were employed in an emergency service.

(4) The following are "employed in an emergency service"—

(a) constables and other persons employed for police purposes,

(b) persons employed for the purposes of a fire, or fire and rescue, service, and

(c) persons employed in the provision of ambulance or paramedic services.

(5) The Treasury may by order amend subsection (4).

(6) "Private use", in relation to a person, means any use other than for the person's business travel; and "business travel" has the same meaning as in Chapter 6 of Part 3 (see section 171(1)).

(7) A person to whom an emergency vehicle is made available is on call when liable, as part of normal duties, to be called on to use the emergency vehicle to respond to emergencies.

(8) A person to whom an emergency vehicle is made available is engaged in on-call commuting when the person—

(a) is using it for ordinary commuting or for travel between two places that is for practical purposes substantially ordinary commuting, and

(b) is required to do so in order that it is available for use by the person, as part of normal duties, for responding to emergencies.".

(2) In section 236(2)(c) of that Act (mileage allowance and passenger payments: meaning of "company vehicle"), after "vans)" insert "and section 248A (emergency vehicles)".

(3) This section has effect for the year 2004-05 and subsequent years of assessment.

82 European travel expenses of MPs and other representatives

(1) The Income Tax (Earnings and Pensions) Act 2003 (c. 1) is amended as follows.

(2) In section 294 (EU travel expenses of MPs and other representatives) in subsection (1) (exemption from income tax in respect of sums paid to Members of the House of Commons and other representatives in respect of EU travel expenses) for "EU" (in both places) substitute "European".

(3) In that section, for subsections (2) to (4) substitute—

"(2) "European travel expenses" means the cost of, and any additional expenses incurred in, travelling between the United Kingdom and a relevant European location.

(3) "Relevant European location" means—

(a) a European Union institution or agency, or

(b) the national parliament of—

(i) another member State,

(ii) a candidate or applicant country, or

(iii) a member State of the European Free Trade Association.

(4) The Treasury may by order amend subsection (3) by—

(a) adding a European location,
(b) removing a European location, or
(c) varying the description of a European location.".

(4) In the heading of that section, "EU" accordingly becomes "European".

(5) This section has effect in relation to sums paid in respect of costs or expenses incurred on or after 6th April 2004.

Gift aid

83 Giving through the self-assessment return

(1) This section applies where—

(a) as a result of the making by an individual of a personal return for a year of assessment, a tax repayment in respect of one or more years of assessment falls to be made to him,

(b) the personal return contains a single direction, in the form specified in the return, requiring—

(i) the whole of the tax repayment, or

(ii) so much of the tax repayment as does not exceed a specified amount,

to be paid on his behalf as a gift to a single specified charity,

(c) the direction also requires the gift to be treated as a qualifying donation for the purposes of section 25 of the Finance Act 1990 (c. 29) (gift aid), and

(d) the gift satisfies the requirements of subsection (2) of that section.

(2) The gift is to be treated as a qualifying donation for the purposes of that section made by the individual at the time the payment is received by the charity.

(3) Section 98 of the Finance Act 2002 (c. 23) (gift aid: election to be treated as if gift made in previous tax year) accordingly does not apply to the gift.

(4) The charity is to be treated as having made a claim for any exemption which may be available under section 505(1)(c)(ii) of the Taxes Act 1988 (charities: exemption from tax under Case III of Schedule D) as a result of the charity's receipt of the gift (see section 25(10) of the Finance Act 1990).

(5) In this section—

"charity" means a charity within the meaning of section 25 of the Finance Act 1990 (see subsection (12)(a) of that section) which, at the time the personal return in question is made, is included (at the request of the charity) in a list maintained for the purposes of this section by the Board;

"personal return" means a return under section 8 of the Taxes Management Act 1970 (c. 9) (personal return);

"tax repayment" means a repayment (after any set-off that falls to be made against the individual's liabilities) of either or both of—

(a) income tax or amounts paid on account of income tax;

(b) capital gains tax;

and, for the purposes of subsection (1)(b), includes any repayment supplement (within the meaning of section 824 of the Taxes Act 1988 or section 283 of the Taxation of Chargeable Gains Act 1992 (c. 12)).

(6) In section 25 of the Finance Act 1990 (c. 29) (gift aid) after subsection (12) insert—

"(13) This section is to be read with—

(a) section 98 of the Finance Act 2002 (gift aid: election to be treated as if gift made in previous tax year);

(b) section 83 of the Finance Act 2004 (gift aid: giving through the self-assessment return).".

(7) This section has effect in relation to personal returns for the year 2003-04 and subsequent years of assessment.

Gifts with a reservation

84 Charge to income tax by reference to enjoyment of property previously owned

(1) Schedule 15 (which contains provisions imposing a charge to income tax by reference to benefits received in certain circumstances by a former owner of property) has effect.

(2) That Schedule has effect for the year 2005-06 and subsequent years of assessment.

Employment-related securities and options

85 Relief where national insurance contributions met by employee

(1) Schedule 16 to this Act provides—

(a) for income tax relief in certain cases where national insurance contributions are met by an employee, and

(b) for consequential amendments.

(2) This section (and that Schedule) come into force in accordance with provision made by the Treasury by order made by statutory instrument.

86 Shares in employee-controlled companies and unconnected companies

(1) Each of the provisions of Part 7 of the Income Tax (Earnings and Pensions) Act 2003 (c. 1) (employment income: securities) specified in subsection (2) (exception from charges for certain company shares) is amended in accordance with subsections (3) to (5).

(2) The provisions are—

(a) section 429 (restricted securities),

(b) section 443 (convertible securities),

(c) section 446R (securities acquired for less than market value), and

(d) section 449 (post-acquisition benefits from securities).

(3) In subsection (1) of each of those sections, after paragraph (b) (but before the word "and" where that word features at the end) insert—

"(ba) subsection (1A) is satisfied,".

(4) After subsection (1) of each of those sections insert—

"(1A) This subsection is satisfied if the avoidance of tax or national insurance contributions was not the main purpose, or one of the main purposes, of the arrangements under which the right or opportunity to acquire the employment-related securities was made available.".

(5) In subsection (4) of sections 429, 443 and 446R, and in subsection (3) of section 449, for the words after "are not" substitute "employment-related securities."; and accordingly omit sections 429(5), 443(5), 446R(5) and 449(4).

(6) In Chapter 3A of that Part of that Act (securities with artificially depressed market value), after section 446I insert—

"**446IA Disapplication of exceptions from charges**

(1) Section 429 (exception from charge under section 426 for certain company shares) does not prevent section 426 (restricted securities: chargeable events) applying in relation to an event if section 446E or 446I(1)(a) would have effect in relation to the event.

(2) Section 443 (exception from charge under section 438 for certain company shares) does not prevent section 438 (convertible securities: chargeable events) applying in relation to an event if section 446G, 446H or 446I(1)(b) would have effect in relation to the event.

(3) Section 446R (exception from charge under Chapter 3C for certain company shares) does not prevent that Chapter (securities acquired for less than market value) applying in relation to employment-related securities if section 446B would have effect in relation to them.

(4) Section 449 (exception from charge under Chapter 4 for certain company shares) does not prevent that Chapter (benefits from securities) applying in relation to a benefit if section 446I(1)(e) would have effect in relation to the benefit.".

(7) In Chapter 3B of that Part of that Act (securities with artificially enhanced market value), after section 446N insert—

"**446NA Disapplication of exceptions from charges**

(1) None of the provisions specified in subsection (2) (exceptions from charges for certain company shares) apply in relation to employment-related securities if the market value of the employment-related securities at the time of the acquisition has been increased by at least 10% by non-commercial increases within the period of 7 years ending with the acquisition.

(2) The provisions are—

(a) section 429 (restricted securities),

(b) section 443 (convertible securities),

(c) section 446R (securities acquired for less than market value), and

(d) section 449 (post-acquisition benefits from securities).

(3) If section 446L (market value on valuation date increased by more than 10% by non-commercial increases during relevant period) applies in relation to

employment-related securities, section 429 does not subsequently apply in relation to the employment-related securities.".

(8) This section applies on and after 7th May 2004.

87 Restricted securities with artificially depressed value

(1) Section 446E of the Income Tax (Earnings and Pensions) Act 2003 (c. 1) (employee securities with artificially depressed market value: charge on restricted securities) is amended as follows.

(2) In subsection (1), after "on restricted securities)," insert—

"(aa) immediately before the employment-related securities are disposed of (in circumstances which do not constitute such an event) or are cancelled without being disposed of,".

(3) For subsections (3) to (6) substitute—

"(3) "The relevant period" is the period beginning—

(a) if section 425(2) (no charge on acquisition of certain restricted securities or restricted interests in securities) applied in relation to the employment-related securities, 7 years before the acquisition, and

(b) in any other case, 7 years before the relevant date,

and ending with the relevant date.

(4) "The relevant date" is—

(a) in a case within subsection (1)(a), the date on which the chargeable event concerned occurs,

(b) in a case within subsection (1)(aa), the date on which the disposal or cancellation concerned occurs, and

(c) in a case within subsection (1)(b), the 5th April concerned.

(5) Where this section applies in a case within subsection (1)(aa) or (b), a chargeable event within section 427(3)(a) (lifting of restrictions) is to be treated as occurring in relation to the employment-related securities on the relevant date.

(6) In every case where this section applies, subsection (1) of section 428 (amount of charge on restricted securities) applies as if the reference in subsection (2) of that section to what would be the market value of the employment-related securities immediately after the chargeable event but for any restrictions were to what would be their market value at the appropriate time but for the matters to be disregarded.

(7) "The appropriate time" is—

(a) in a case within subsection (1)(a) or (b), the time immediately after the chargeable event concerned, and

(b) in a case within subsection (1)(aa), the time immediately before the chargeable event concerned.

(8) "The matters to be disregarded" are—

(a) any restrictions,

(b) the things done as mentioned in subsection (2), and

(c) if the employment-related securities are about to be disposed of or cancelled, that fact.

(9) Where this section applies in a case within subsection (1)(aa), section 428(1) applies with the omission of the reference to OP.

(10) Where this section applies in a case within subsection (1)(a) and the chargeable event concerned is within section 427(3)(c) (disposal for consideration), section 428 applies with the omission of subsection (9) (case where consideration is less than actual market value).".

(4) This section applies on and after 7th May 2004.

(5) But if the employment-related securities were acquired before that date, section 446E of the Income Tax (Earnings and Pensions) Act 2003 (c. 1) does not apply by virtue of the amendment made by subsection (2) of this section unless their market value would be artificially low immediately before the disposal or cancellation if the date on which the relevant period began were the later of—

(a) that on which it did begin, and

(b) 7th May 2004.

88 Shares under approved plans and schemes

(1) The Income Tax (Earnings and Pensions) Act 2003 is amended as follows.

(2) Omit section 421G (exclusion from Chapters 2 to 4 of Part 7 of shares awarded or acquired under approved plan or scheme).

(3) In Chapter 2 of Part 7 (restricted securities), after section 431 insert—

"**431A Shares under approved plan or scheme**

(1) Where employment-related securities are restricted securities or a restricted interest in securities, the employer and the employee are to be treated as making an election under section 431(1) in relation to the employment-related securities if they are shares, or an interest in shares, to which this subsection applies.

(2) Subsection (1) applies to—

(a) shares awarded or acquired under an approved share incentive plan (within the meaning of Chapter 6 of this Part) in circumstances in which (in accordance with section 490) no liability to income tax arises,

(b) shares acquired by the exercise of a share option granted under an approved SAYE option scheme (within the meaning of Chapter 7 of this Part) in circumstances in which (in accordance with section 519) no liability to income tax arises,

(c) shares acquired by the exercise of a share option granted under an approved CSOP scheme (within the meaning of Chapter 8 of this Part) in circumstances in which (in accordance with section 524) no liability to income tax arises, and

(d) shares acquired by the exercise of a qualifying option within the meaning of section 527(4) (enterprise management incentives) in

circumstances in which (in accordance with section 530) no liability to income tax arises.".

(4) In section 489 (operation of tax advantages in connection with approved share incentive plans), after subsection (3) insert—

"(4) And those sections do not apply if the main purpose (or one of the main purposes) of the arrangements under which the shares in question are awarded or acquired is the avoidance of tax or national insurance contributions.".

(5) In sections 505 and 506 (charge on shares ceasing to be subject to approved share incentive plan), after subsection (4) insert—

"(4A) Any tax due under subsection (2) or (3) is reduced by the amount or aggregate amount of any tax paid by virtue of Chapter 3B of this Part in relation to the shares.".

(6) In section 519(1) (approved SAYE option schemes: no charge in respect of exercise of option) insert at the end "and

(c) the avoidance of tax or national insurance contributions is not the main purpose (or one of the main purposes) of any arrangements under which the option was granted or is exercised.".

(7) In section 524(1) (approved CSOP schemes: no charge in respect of exercise of option) insert at the end "and

(c) the avoidance of tax or national insurance contributions is not the main purpose (or one of the main purposes) of any arrangements under which the option was granted or is exercised.".

(8) Section 701 (PAYE: meaning of "asset") is amended as follows.

(9) In subsection (2)(c)—

(a) in sub-paragraph (ia), for the words after "employee" substitute "under a scheme approved under Schedule 4 (approved CSOP schemes) in circumstances in which Condition A or B as set out in section 524(2) or (2A) is met;",

(b) omit sub-paragraph (ii), and

(c) in sub-paragraph (iii), after "1996" insert "where the avoidance of tax or national insurance contributions is not the main purpose (or one of the main purposes) of any arrangements under which the right was obtained or is exercised".

(10) After subsection (3) insert—

"(3A) Paragraph (c) of subsection (2) does not apply to shares after their acquisition as mentioned in that paragraph.".

(11) This section has effect on and after 18th June 2004 and (so far as it does not relate to the award or acquisition of shares) applies in relation to shares awarded or acquired before that date as well as in relation to those awarded or acquired on or after that date.

(12) Where section 431A(1) of the Income Tax (Earnings and Pensions) Act 2003 (c. 1) (as inserted by subsection (3)) has effect (by virtue of subsection (11)) in relation to shares acquired before 18th June 2004, it applies in relation to them so as to treat an election under section 431(1) of that Act as made in relation to them on that date.

(13) For the purposes of the application of Chapter 3B of Part 7 of that Act (securities with artificially enhanced market value) by reason of subsections (2) and (11) in relation to shares acquired before 18th June 2004, section 446O of that Act (meaning of "relevant period") has effect as if they were acquired on that date.

89 Shares acquired on public offer

(1) Section 421F of the Income Tax (Earnings and Pensions) Act 2003 (c. 1) (exclusion from Chapters 2 to 4 of Part 7 of shares acquired under terms of offer to the public) is amended as follows.

(2) In subsection (1), for "Chapters 2 to 4" substitute "Chapters 2, 3 and 3C".

(3) After that subsection insert—

"(1A) But subsection (1) does not disapply those Chapters if the main purpose (or one of the main purposes)—

(a) of the arrangements under which the right or opportunity under which the shares were acquired, or

(b) for which the shares are held,

is the avoidance of tax or national insurance contributions.".

(4) This section has effect on and after 18th June 2004 and applies in relation to shares acquired before that date as well as in relation to those acquired on or after that date.

(5) For the purposes of the application of Chapter 3B of Part 7 of the Income Tax (Earnings and Pensions) Act 2003 (securities with artificially enhanced market value) by reason of subsections (2) and (4) in relation to shares acquired before that date, section 446O of that Act (meaning of "relevant period") has effect as if they were acquired on that date.

90 Associated persons etc.

(1) Part 7 of the Income Tax (Earnings and Pensions) Act 2003 (employment income: securities) is amended as follows.

(2) In section 421C(2) (meaning of "relevant linked person" for purposes of Chapters 1 to 4), for "are connected or, although not connected, are" substitute "are or have been connected or (without being or having been connected) are or have been".

(3) In section 472(2) (meaning of "relevant linked person" for purposes of Chapter 5), for "are connected or, although not connected, are" substitute "are or have been connected or (without being or having been connected) are or have been".

(4) In section 477(3)(c) (chargeable events in relation to employment-related securities options), for the words after "benefit" substitute "in connection with the employment-related securities option (other than one within paragraph (a) or (b))."

(5) This section has effect on and after 18th June 2004 and applies in relation to securities, interests and options that were employment-related securities or employment-related securities options on that date (as well as those acquired on or after that date).

Miscellaneous

91 Income of spouses: jointly held property

(1) Section 282A of the Taxes Act 1988 is amended as follows.

(2) After subsection (4) insert—

"(4A) Subsection (1) above shall not apply to income consisting of a distribution arising from property consisting of—

(a) close company shares to which either the husband or the wife is beneficially entitled to the exclusion of the other, or

(b) close company shares to which they are beneficially entitled in equal or unequal shares.

In this subsection "close company shares" means shares in or securities of a close company; and for this purpose "shares" and "securities" have the same meaning as in Part 6 (see section 254).".

(3) This section has effect in relation to the year 2004-05 and subsequent years of assessment.

92 Minor amendments of or connected with ITEPA 2003

Schedule 17 to this Act contains minor amendments of or connected with the Income Tax (Earnings and Pensions) Act 2003 (c. 1).

CHAPTER 5

ENTERPRISE INCENTIVES

93 Enterprise investment scheme

Schedule 18 (which makes amendments to the enterprise investment scheme) has effect.

94 Venture capital trusts

(1) In relation to shares issued on or after 6th April 2004 but before 6th April 2006, paragraph 1(5)(a) of Schedule 15B to the Taxes Act 1988 (calculation of income tax relief by reference to lower rate) is to have effect as if the reference to the lower rate were a reference to the higher rate.

(2) Accordingly, paragraph 3(4) of that Schedule (loss of investment relief) is to have effect in relation to such shares as if the reference to the lower rate were a reference to the higher rate.

(3) Schedule 19 (which makes amendments relating to venture capital trusts) has effect.

95 Corporate venturing scheme

Schedule 20 (which makes amendments relating to the corporate venturing scheme) has effect.

96 Enterprise management incentives: subsidiaries

(1) Schedule 5 to the Income Tax (Earnings and Pensions) Act 2003 (enterprise management incentives) is amended as follows.

(2) In paragraph 8 (qualifying companies: introduction) after "having only qualifying subsidiaries (see paragraphs 10 and 11)," insert—

"property managing subsidiaries (see paragraphs 11A and 11B),".

(3) In paragraph 10 (the qualifying subsidiaries requirement) for sub-paragraph (2) substitute—

"(2) In this paragraph "subsidiary" means any company which the company controls, either on its own or together with any person connected with it.

(3) For the purpose of sub-paragraph (2), the question whether a person controls a company is to be determined in accordance with section 416(2) to (6) of ICTA ("control" in the context of close companies)."

(4) In paragraph 11 (meaning of "qualifying subsidiary")—

(a) in sub-paragraph (2), omit paragraphs (a) to (c),

(b) before paragraph (d) of that sub-paragraph insert—

"(ca) that the subsidiary is a 51% subsidiary of the holding company;",

(c) in paragraph (d) of that sub-paragraph, after "company" insert "or another of its subsidiaries",

(d) in paragraph (e) of that sub-paragraph, for "the conditions in paragraphs (a) to" substitute "either of the conditions in paragraphs (ca) and",

(e) omit sub-paragraph (3),

(f) after sub-paragraph (7) insert—

"(8) Sub-paragraph (9) applies at a time when the subsidiary or another company is in administration or receivership.

(9) The subsidiary is not to be regarded, by reason only of anything done as a consequence of the company concerned being in administration or receivership, as having ceased to be a company in relation to which the conditions in sub-paragraph (2) are met if—

(a) the entry into administration or receivership, and

(b) everything done as a consequence of the company concerned being in administration or receivership,

is for commercial reasons and is not part of a scheme or arrangement the main purpose (or one of the main purposes) of which is the avoidance of tax.

(10) Section 312(2A) of ICTA (meaning of being in administration or receivership) applies for the purposes of sub-paragraphs (8) and (9) as it applies for the purposes of Chapter 3 of Part 7 of ICTA (enterprise investment scheme).".

(5) After paragraph 11 insert—

"The property managing subsidiaries requirement

11A (1) A company is not a qualifying company if it has a property managing subsidiary which is not a qualifying 90% subsidiary of the company (see paragraph 11B).

(2) "Property managing subsidiary" means a qualifying subsidiary of a company whose business consists wholly or mainly in the holding or managing of land or any property deriving its value from land.

(3) In sub-paragraph (2) "land" and "property deriving its value from land" have the same meaning as in section 776 of ICTA.

Meaning of "qualifying 90% subsidiary"

11B (1) A company ("the subsidiary") is a qualifying 90% subsidiary of a company ("the holding company") if the following conditions are met.

(2) The conditions are—

(a) that the holding company possesses not less than 90% of the issued share capital of, and not less than 90% of the voting power in, the subsidiary;

(b) that the holding company would—

(i) in the event of a winding up of the subsidiary, or

(ii) in any other circumstances,

be beneficially entitled to not less than 90% of the assets of the subsidiary which would then be available for distribution to the shareholders of the subsidiary;

(c) that the holding company is beneficially entitled to not less than 90% of any profits of the subsidiary which are available for distribution to the shareholders of the subsidiary;

(d) that no person other than the holding company has control of the subsidiary; and

(e) that no arrangements are in existence by virtue of which any of the conditions in paragraphs (a) to (d) would cease to be met.

(3) Sub-paragraphs (4) to (10) of paragraph 11 (but not sub-paragraph (6)(b)) apply in relation to the conditions in sub-paragraph (2) above as they apply in relation to the conditions in sub-paragraph (2) of that paragraph.".

(6) The amendments made by this section have effect in relation to any right to acquire shares granted on or after 17th March 2004.

CHAPTER 6

EXEMPTION FROM INCOME TAX FOR CERTAIN INTEREST AND ROYALTY PAYMENTS

Introductory

97 Introductory

(1) This Chapter has effect for the purpose of implementing provisions of Council Directive 2003/49/EC of 3rd June 2003 on a common system of taxation applicable to interest and royalty payments made between associated companies of different member States ("the Directive").

(2) In this Chapter—

"company" has the same meaning as the expression "company of a member State" has for the purposes of the Directive (see Article 3(a) of the Directive);

"debt-claim" has the same meaning as in the Directive;

"the Directive" has the meaning given by subsection (1);

"EU company" means a company resident in a member State other than the United Kingdom;

"interest" and "royalties" have the meaning given by Article 2 of the Directive;

"non-EU permanent establishment" means a permanent establishment in a territory other than a member State;

"UK company" means a company resident in the United Kingdom;

"UK permanent establishment" means a permanent establishment in the United Kingdom.

(3) The Treasury may by order make such provision amending any reference in this Chapter to, or to a provision of,—

(a) the Directive, or

(b) any instrument referred to in this Chapter by virtue of an order under this subsection,

as appears to them appropriate for the purpose of giving effect to any Council Directive adopted after 8th April 2004 amending or replacing the Directive.

(4) The first order under subsection (3) may make provision having effect for periods before the making of the order.

(5) Subject to subsection (6), this Chapter has effect in relation to payments made on or after 1st January 2004.

(6) The following provisions have effect in relation to payments made on or after 8th April 2004—

(a) in section 100(2)(b), the words "and that section 104 (anti-avoidance) does not apply", and

(b) section 104.

Exemption from income tax

98 Exemption from income tax for certain interest and royalty payments

(1) No liability to income tax arises in respect of a payment of interest or a payment of a royalty if, at the time the payment is made, the following conditions are satisfied.

(2) Condition 1 is that the person making the payment is—

(a) a UK company (but not such a company's permanent establishment in a territory other than the United Kingdom), or

(b) a UK permanent establishment of an EU company.

See section 99(2) as to when a permanent establishment is to be treated as the person making the payment.

(3) Condition 2 is that the person beneficially entitled to the income in respect of which the payment is made is an EU company (but not such a company's UK permanent establishment or non-EU permanent establishment).

See section 99(3) as to when a permanent establishment is to be treated as the person beneficially entitled to the income in respect of which the payment is made.

(4) Condition 3 is that the company in Condition 1 and the company in Condition 2 are 25% associates (see section 99(4)).

(5) Condition 4 is that, if the payment is a payment of interest, the Board has issued an exemption notice in accordance with regulations under section 100.

(6) This section is subject to—

section 103 (special relationships), and

section 104 (anti-avoidance).

99 Permanent establishments and "25% associates"

(1) This section has effect for supplementing section 98 and is to be construed as one with it.

(2) For the purposes of Condition 1, a permanent establishment in a territory of a company that is resident in another territory is to be treated as the person making the payment (instead of the company) if, and to the extent that, (within the meaning of Article 1(3) of the Directive) the payment represents a tax-deductible expense for the permanent establishment in the territory in which it is situated.

(3) For the purposes of Condition 2, an EU company's UK permanent establishment or non-EU permanent establishment is to be treated as the person beneficially entitled to the income in respect of which the payment is made (instead of the company) if, and to the extent that, (within the meaning of Article 1(5) of the Directive)—

(a) the debt-claim, right or use of information in respect of which the payment arises is effectively connected with the permanent establishment, and

(b) the payment represents income in respect of which the permanent establishment is subject in the territory in which it is situated to United Kingdom corporation tax or a tax corresponding to that tax.

(4) For the purposes of Condition 3, two companies are "25% associates" if—

(a) one holds directly—

(i) 25% or more of the capital in the other, or

(ii) 25% or more of the voting rights in the other, or

(b) a third company holds directly—

(i) 25% or more of the capital in each of them, or

(ii) 25% or more of the voting rights in each of them.

Exemption notices

100 Interest payments: exemption notices

(1) The Board may make regulations about exemption notices under section 98(5).

(2) The provision that may be made by the regulations includes provision for or in connection with any of the following—

(a) enabling an exemption notice to be issued only on the request of a person of a prescribed description;

(b) requiring a person requesting the issue of an exemption notice to certify that Conditions 1 to 3 in section 98 are satisfied and that section 104 (anti-avoidance) does not apply;

(c) the information to be provided in the certificate;

(d) the person to whom an exemption notice is to be given;

(e) in a case where section 103 (special relationships) applies or may apply to a payment of interest, an exemption notice to specify the amount of the payment, or to specify the method to be used for determining the amount of the payment, in relation to which the notice has effect;

(f) imposing a time limit for the issue of an exemption notice;

(g) imposing notification requirements;

(h) the cancellation of exemption notices by the Board;

(i) exemption notices to become ineffective in prescribed circumstances;

(j) the making of appeals (for example, against a refusal to grant, or the cancellation of, an exemption notice);

(k) authorising, in cases where—

(i) an exemption notice has been issued,

(ii) tax has not been deducted from a payment of interest, and

(iii) any of the Conditions in section 98 was not satisfied in the case of the payment,

the recovery of that tax by assessment or by deduction from subsequent payments.

Payment without deduction

101 Payment of royalties without deduction at source

(1) Where—

(a) section 349(1) of the Taxes Act 1988 (certain payments to be made subject to deduction of income tax) applies to a payment of a royalty, but

(b) at the time the payment is made, the company making the payment reasonably believes that section 98 applies to the payment,

the company may, if it thinks fit, make the payment without deduction of tax under section 349(1).

(2) But if section 98 does not in fact apply to the payment, section 350 of, and Schedule 16 to, the Taxes Act 1988 (charge to tax where payments are made under section 349 etc) are to have effect as if subsection (1) never applied in relation to the payment.

(3) If the Board are not satisfied that section 98 will apply to one or more payments of royalties to be made by a company, they may direct the company that subsection (1) is not to apply to the payment or payments.

(4) A direction under subsection (3) may be varied or revoked by a subsequent such direction.

(5) If, before a payment of a royalty is made, the company beneficially entitled to the income in respect of which the payment is to be made—

(a) believed that section 98 would apply to the payment, but

(b) has subsequently become aware that any of Conditions 1 to 3 in section 98 has ceased to be satisfied,

it must without delay notify the Board and the company which is to make the payment.

(6) Paragraph 3(1) of Schedule 18 to the Finance Act 1998 (c. 36) (requirement to make return in respect of information relevant to application of Corporation Tax Acts) has effect as if the reference to the Corporation Tax Acts included a reference to subsections (1) to (4) of this section.

(7) Paragraph 20 of that Schedule (penalties for incorrect returns), in its application to an error relating to information required in a return by virtue of subsection (6), has effect as if—

(a) the reference in sub-paragraph (1) to a tax-related penalty were a reference to an amount not exceeding £3,000, and

(b) sub-paragraphs (2) and (3) were omitted.

102 Claim for tax deducted at source from exempt interest or royalty payments

A claim for relief under section 98 in respect of a payment which is made subject to deduction of tax under section 349 of the Taxes Act 1988 shall be made to the Board.

Special relationships and anti-avoidance

103 Special relationships

(1) In any case where—

(a) apart from this section, section 98 would apply in relation to a payment of interest or of a royalty,

(b) at the time the payment is made, there is a special relationship (within the meaning of Article 4(2) of the Directive) between the company in Condition 1 of section 98 and the company in Condition 2 of that section or between one of those companies and another person, and

(c) owing to the special relationship, the amount of the interest or royalty paid exceeds the amount ("the arm's length amount") which would have been paid in the absence of the relationship,

this Chapter, apart from this section, has effect in relation to only so much of the payment as does not exceed the arm's length amount (which may be nil).

(2) The following provisions of the Taxes Act 1988 apply in relation to subsection (1) as if that subsection were a special relationship provision within the meaning of those provisions—

(a) in the case of a payment of interest, subsections (2) to (4) of section 808A (interest: special relationship), and

(b) in the case of a payment of a royalty, subsections (2) to (7) and (9) of section 808B (royalties: special relationship).

(3) In those provisions of the Taxes Act 1988 as applied in relation to subsection (1), expressions also used in this section or this Chapter have the same meaning as in this section or this Chapter.

(4) This section does not affect any relief which may be allowed under any arrangements having effect by virtue of section 788 of the Taxes Act 1988 (double taxation relief by agreement with other territories).

104 Anti-avoidance

(1) Section 98 does not apply in relation to a payment of interest or of a royalty if—

(a) in the case of a payment of interest, Condition A is satisfied, or

(b) in the case of a payment of a royalty, Condition B is satisfied.

(2) Condition A is satisfied if it was the main purpose or one of the main purposes of any person concerned with the creation or assignment of the debt-claim in respect of which the interest is paid to take advantage of this Chapter by means of that creation or assignment.

(3) Condition B is satisfied if it was the main purpose or one of the main purposes of any person concerned with the creation or assignment of the right in respect of which the royalty is paid to take advantage of this Chapter by means of that creation or assignment.

Supplementary

105 Consequential amendments

(1) Section 98 of the Taxes Management Act 1970 (c. 9) (special returns etc) is amended as follows.

(2) In subsection (4A)(b), after "(4D)" insert ", (4DA)".

(3) After subsection (4D) insert—

"(4DA) A payment is within this subsection if—

(a) it is a payment to which section 349(1) of the principal Act (requirement to deduct tax) applies,

(b) a company, purporting to rely on section 101 of the Finance Act 2004 (payment of royalties without deduction at source), makes the payment without deduction of tax under section 349(1) of the principal Act, and

(c) at the time the payment is made section 98 of the Finance Act 2004 does not apply to the payment and the company—

(i) does not believe that that section does so apply, or

(ii) if it does so believe, cannot reasonably do so.".

(4) In section 18 of the Taxes Act 1988 (Schedule D) after subsection (5) insert—

"(6) This section is subject to Chapter 6 of Part 3 of the Finance Act 2004 (exemption from income tax for certain interest and royalty payments).".

(5) In section 349 of the Taxes Act 1988 (certain payments to be made subject to deduction of income tax) after subsection (6) insert—

"(7) This section is subject to Chapter 6 of Part 3 of the Finance Act 2004 (exemption from income tax for certain interest and royalty payments).".

106 Transitional provision

(1) This section has effect only in relation to—

(a) payments of interest made on or after 1st January 2004 but before the coming into force of the first regulations under section 100, and

(b) payments of royalties made on or after 1st January 2004 but before the passing of this Act.

(2) Anything done by a person—

(a) before 8th April 2004, and

(b) in reliance on, and in accordance with, a provision of the published draft Chapter or the published draft regulations,

is to be treated as if it had been done under, and in accordance with, the corresponding provision of this Chapter or of regulations under section 100.

(3) Anything done by a person—

(a) on or after 8th April 2004 but before the passing of this Act, and

(b) in reliance on, and in accordance with, a provision of the published Chapter or the published regulations,

is to be treated as if it had been done under, and in accordance with, the corresponding provision of this Chapter or of regulations under section 100.

(4) During the period between the passing of this Act and the coming into force of the first regulations under section 100, the published regulations shall have effect as if they were regulations under that section.

(5) In this section—

"the published draft Chapter" means the draft version of this Chapter published by the Board on 10th December 2003;

"the published draft regulations" means the draft version of regulations under section 100 published by the Board on 10th December 2003;

"the published Chapter" means the version of this Chapter appearing in the Finance Bill as introduced in the House of Commons and published on 8th April 2004;

"the published regulations" means the draft version of regulations under section 100 published by the Board on 8th April 2004.

CHAPTER 7

SAVINGS INCOME: DOUBLE TAXATION ARISING FROM WITHHOLDING TAX

Introductory

107 Introductory

(1) This Chapter has effect for the purpose of giving relief from double taxation in respect of special withholding tax.

(2) Such relief is given—

(a) by set-off against income tax or capital gains tax;

(b) to the extent that it cannot be so set off, by repayment.

(3) "Special withholding tax" means a withholding tax (however described) levied under the law of a territory outside the United Kingdom implementing—

(a) in the case of a member State, Article 11 of Council Directive 2003/48/ EC of 3rd June 2003 on taxation of savings income in the form of interest payments ("the Savings Directive"), or

(b) in the case of a territory other than a member State, any corresponding provision of international arrangements (whatever the period for which the provision is to have effect).

(4) "International arrangements", in relation to a territory, means arrangements made in relation to that territory with a view to ensuring the effective taxation of savings income under—

(a) the law of the United Kingdom, or

(b) that law and the law of that territory.

(5) For the purposes of Part 18 of the Taxes Act 1988 (double taxation relief)—

(a) relief from double taxation in respect of special withholding tax is not to be available under Chapters 1 and 2 of that Part; and

(b) special withholding tax is not to be regarded as foreign tax for the purposes of Chapter 2 of that Part.

(6) Sections 113 and 114 also make provision for implementing—

(a) Article 13(2) of the Savings Directive (provision of certificate to avoid levy of special withholding tax), and

(b) any corresponding provision of international arrangements.

(7) In this Chapter—

"double taxation arrangements" means arrangements having effect by virtue of section 788 of the Taxes Act 1988 (double taxation relief by agreement with other territories);

"international arrangements" has the meaning given by subsection (4);

"the Savings Directive" has the meaning given by subsection (3)(a);

"savings income"—

(a) in the case of special withholding tax levied under the law of a member State, has the same meaning as the expression "interest payment" has for the purposes of the Savings Directive (see Articles 6 and 15 of the Directive), and

(b) in the case of special withholding tax levied under the law of a territory other than a member State, has the same meaning as the corresponding expression has for the purposes of the international arrangements concerned;

"special withholding tax" has the meaning given by subsection (3).

(8) In the application of this Chapter in relation to capital gains tax, expressions used in this Chapter and in the Taxation of Chargeable Gains Act 1992 (c. 12) have the same meaning in this Chapter as in that Act.

Credit etc for special withholding tax

108 Income tax credit etc for special withholding tax

(1) This section applies where—

(a) a person is chargeable to income tax for a year of assessment in respect of a payment of savings income or would be so chargeable but for any exemption or relief which has effect in respect of that payment,

(b) special withholding tax is levied in respect of the payment, and

(c) the person is resident in the United Kingdom for that year of assessment.

(2) On the making of a claim, income tax ("the deemed tax") of an amount equal to the amount of the special withholding tax levied is to be treated as having been—

(a) paid by or on behalf of the person for that year of assessment, and

(b) deducted at source for that year of assessment for the purposes of the provisions in subsection (3).

(3) The provisions are—

section 7 of the Taxes Management Act 1970 (c. 9) (notice of liability to income tax and capital gains tax);

section 8 of that Act (personal return);

section 8A of that Act (trustee's return);

section 9 of that Act (returns to include self-assessment);

section 59A of that Act (payments on account of income tax);

section 59B of that Act (payments of income tax and capital gains tax);

section 824(3) of the Taxes Act 1988 (repayment supplements: determination of relevant time).

(4) Where the amount of the deemed tax exceeds the amount (which may be nil) of income tax for which the person is liable for the year of assessment (before any set-off for the deemed tax), then, to the extent that it would not otherwise be the case,—

(a) the excess is to be set against any capital gains tax for which he is liable for the year of assessment, and

(b) he is entitled to a repayment of income tax in respect of any remaining balance of that excess.

(5) But subsection (2) does not apply in relation to an amount of special withholding tax levied if—

(a) the person has obtained relief from double taxation in respect of that special withholding tax under the law of a territory outside the United Kingdom, and

(b) the person was resident in that territory, or was treated as being so resident under any double taxation arrangements, in the year of assessment in question.

109 Capital gains tax credit etc for special withholding tax

(1) This section applies where—

(a) a person makes a disposal of assets in a year of assessment,

(b) on the assumption that a chargeable gain were to accrue on the disposal,—

(i) it would accrue to the person, and

(ii) he would be chargeable to capital gains tax in respect of it,

(c) the consideration for the disposal consists of or includes an amount of savings income,

(d) special withholding tax is levied in respect of the whole or any part of the consideration for the disposal, and

(e) the person is resident in the United Kingdom for that year of assessment.

(2) For the purposes of subsection (1)(b)(ii), there are to be disregarded—

(a) any deductions that fall to be made from the total amount referred to in section 2(2) of the Taxation of Chargeable Gains Act 1992 (c. 12) (deductions for allowable losses),

(b) section 3 of that Act (annual exempt amount), and

(c) section 77(1) of that Act (settlor with interest in settlement: trustees not to be chargeable in certain circumstances).

(3) On the making of a claim, capital gains tax ("the deemed tax") of an amount equal to the amount of the special withholding tax levied is to be treated as having been paid—

(a) by or on behalf of the person for that year of assessment, and

(b) for the purposes of section 283(2) of the Taxation of Chargeable Gains Act 1992 (repayment supplements: determination of relevant time), on 31st January next following that year of assessment.

(4) For the purposes of the application of the following provisions in relation to the person for that year of assessment, references in those provisions to income tax deducted at source for that year of assessment are to be taken to include the amount of the deemed tax—

section 7 of the Taxes Management Act 1970 (c. 9) (notice of liability to income tax and capital gains tax);

section 8 of that Act (personal return);

section 8A of that Act (trustee's return);

section 9 of that Act (returns to include self-assessment);

section 59B of that Act (payments of income tax and capital gains tax).

(5) Where the amount of the deemed tax exceeds the amount (which may be nil) of capital gains tax for which the person is liable for the year of assessment (before any set-off for the deemed tax), then, to the extent that it would not otherwise be the case,—

(a) the excess is to be set against any income tax for which he is liable for the year of assessment, and

(b) he is entitled to a repayment of capital gains tax in respect of any remaining balance of that excess.

(6) But subsection (3) does not apply in relation to an amount of special withholding tax levied if—

(a) the person has obtained relief from double taxation in respect of that special withholding tax under the law of a territory outside the United Kingdom, and

(b) he was resident in that territory, or was treated as being so resident under any double taxation arrangements, in the year of assessment in question.

(7) To the extent that section 108 of this Act applies in relation to an amount of special withholding tax levied (or would so apply on the making of a claim), this section does not apply in relation to that amount.

110 Credit under Part 18 of Taxes Act 1988 to be allowed first

(1) Any credit for foreign tax that falls to be allowed under Chapters 1 and 2 of Part 18 of the Taxes Act 1988 (double taxation relief) against income tax or capital gains tax is to be so allowed before effect is given to section 108 or 109.

(2) In this section "foreign tax" has the same meaning as in Chapter 2 of Part 18 of the Taxes Act 1988 (see section 792(1) of that Act).

Computation of income etc

111 Computation of income etc subject to special withholding tax only

(1) This section applies where—

(a) a person is chargeable to income tax in respect of a payment of savings income, or

(b) a chargeable gain accrues to a person on a disposal by him of assets in circumstances where the consideration for the disposal consists of or includes an amount of savings income,

and the conditions in subsections (2) and (3) are satisfied.

(2) The first condition is that special withholding tax is levied in respect of—

(a) the payment of savings income, or

(b) the whole or any part of the consideration for the disposal.

(3) The second condition is that no credit for foreign tax in respect of the savings income or the chargeable gain in question falls to be allowed under Chapters 1 and 2 of Part 18 of the Taxes Act 1988 (double taxation relief) (so that section 795(1) and (2) of that Act, which make similar provision to subsections (4) to (6) of this section, do not apply).

(4) If income tax is payable by reference to the amount of the savings income received in the United Kingdom, the amount received is to be treated for the purposes of income tax as increased by the amount of special withholding tax levied in respect of it.

(5) If capital gains tax is payable by reference to the amount of the chargeable gain received in the United Kingdom, the amount received is to be treated for the purposes of capital gains tax as increased by an amount equal to—

$$SWT \times \frac{GUK}{G \quad SWT}$$

where—

SWT is the amount of special withholding tax levied in respect of the whole or the part of the consideration for the disposal,

GUK is the amount of the chargeable gain received in the United Kingdom, and

G is the amount of the chargeable gain accruing to the person on the disposal.

(6) If neither subsection (4) nor subsection (5) applies, then, in computing—

(a) the amount of the income or gain in question for the purposes of income tax, or

(b) the amount of any chargeable gain for the purposes of capital gains tax,

no deduction is to be made for special withholding tax (whether in respect of the same or any other income or gain or, as the case may be, chargeable gains).

(7) In this section references to special withholding tax are to special withholding tax in respect of which a claim has been made under this Chapter.

112 Computation of income etc subject to foreign tax and special withholding tax

(1) Section 795 of the Taxes Act 1988 (double taxation relief: computation of income subject to foreign tax) is amended as follows.

(2) In subsection (1) (remittance basis: grossing up) after "increased by" insert "— (a)" and at the end insert—

", and

(b) the amount of any special withholding tax levied in respect of the income.".

(3) In subsection (2)(a) (other cases: no deduction for foreign tax) after "foreign tax" insert "or special withholding tax".

(4) After subsection (4) insert—

"(5) In this section—

(a) "special withholding tax" has the same meaning as in Chapter 7 of Part 3 of the Finance Act 2004 (see section 107(3) of that Act); and

(b) references to special withholding tax are to special withholding tax in respect of which a claim has been made under that Chapter.".

(5) Section 277 of the Taxation of Chargeable Gains Act 1992 (c. 12) (which applies Chapters 1 and 2 of Part 18 of the Taxes Act 1988 in relation to capital gains tax) is amended as follows.

(6) After subsection (1) insert—

"(1A) Subsection (1B) below applies where—

(a) a chargeable gain accrues to a person on a disposal by him of assets in circumstances where the consideration for the disposal consists of or includes an amount of savings income, and

(b) special withholding tax is levied in respect of the whole or any part of the consideration for the disposal.

(1B) In section 795 of the Taxes Act, as applied by this section, for the reference in subsection (1)(b) to the amount of any special withholding tax levied in

respect of the income, there shall be substituted a reference to an amount equal to—

$$SWT \times \frac{GUK}{G - SWT}$$

where—

SWT is the amount of special withholding tax levied in respect of the whole or the part of the consideration for the disposal,

GUK is the amount of the chargeable gain received in the United Kingdom, and

G is the amount of the chargeable gain accruing to the person on the disposal.

(1C) In subsections (1A) and (1B) above "savings income" and "special withholding tax" have the same meaning as in Chapter 7 of Part 3 of the Finance Act 2004 (see section 107 of that Act); and references to special withholding tax are to special withholding tax in respect of which a claim has been made under that Chapter.".

Certificates to avoid levy of special withholding tax

113 Issue of certificate

(1) This section has effect for enabling the Inland Revenue to issue certificates to be used under the law of a territory outside the United Kingdom implementing—

(a) in the case of a member State, Article 13(1)(b) of the Savings Directive (procedure to avoid levy of special withholding tax where beneficial owner presents to his paying agent certificate drawn up by competent authority of his member State of residence for tax purposes), or

(b) in the case of a territory other than a member State, any corresponding provision of international arrangements (whatever the period for which the provision is to have effect).

(2) If, on the written application of a person, the Inland Revenue are satisfied that the applicant has provided them with—

(a) the required information, and

(b) such documents as they may require to verify that information,

the Inland Revenue must issue a certificate to the applicant.

(3) "The required information" means—

(a) the applicant's name and address,

(b) his National Insurance number or, if he does not have one, his date, town and country of birth,

(c) the number of the account which is to, or may, give rise to payments of savings income to or for the applicant or, if there is no such number, a statement identifying the debt, instrument or arrangement which is to, or may, give rise to such payments,

(d) the name and address of the paying agent who is to make such payments of savings income to, or to secure such payments of savings income for, the applicant, and

(e) the period, not exceeding three years, for which the applicant would like the certificate to be valid.

(4) A certificate under this section must be in writing and must state—

(a) the information mentioned in subsection (3)(a) to (d), and

(b) the period of validity of the certificate (which must not exceed three years).

(5) A certificate under this section must be issued no later than the end of the period of two months beginning with the date on which the applicant provides the information and documents required by or under subsection (2).

(6) In this section and section 114 "the Inland Revenue" means any officer of the Commissioners of Inland Revenue.

(7) Where the requirements of—

(a) Article 13(2) of the Savings Directive (requirements in relation to issue of certificates for purposes of Article 13(1)(b) procedure), and

(b) any corresponding provision of any international arrangements,

differ to any extent, subsections (3) to (5) shall have effect, in their application in relation to the international arrangements concerned, with such modifications as may be required by virtue of those arrangements.

114 Refusal to issue certificate and appeal against refusal

(1) This section applies if, on an application for a certificate under section 113, the Inland Revenue are not satisfied that the applicant has provided them with the information and documents required by or under subsection (2) of that section.

(2) The Inland Revenue must give written notice ("the refusal notice") to the applicant of their refusal to issue a certificate.

(3) The refusal notice must specify the reasons for the refusal.

(4) The applicant may by written notice ("the appeal notice") appeal to the Special Commissioners against the refusal.

(5) The appeal notice must be given to the Inland Revenue within 30 days of the date of the refusal notice.

(6) Part 5 of the Taxes Management Act 1970 (c. 9) (appeals and other proceedings) shall apply in relation to an appeal under this section.

(7) On the appeal, the Special Commissioners may—

(a) confirm the refusal notice, or

(b) quash it and require the Inland Revenue to issue a certificate.

SupplementaryM

115 Supplementary

(1) In section 792 of the Taxes Act 1988 (double taxation relief: interpretation of the credit code) in subsection (1), in the definition of "foreign tax", at the end insert "(other than special withholding tax within the meaning of Chapter 7 of Part 3 of the Finance Act 2004)".

(2) In section 811 of the Taxes Act 1988 (deduction for foreign tax where no credit allowable) in subsection (2), at the end insert "and to section 111 of the Finance Act 2004 (computation of income subject to special withholding tax)".

(3) In section 278 of the Taxation of Chargeable Gains Act 1992 (c. 12) (allowance for foreign tax) in subsection (1), after "section 277" insert "and to section 111 of the Finance Act 2004 (computation of chargeable gains subject to special withholding tax)".

(4) Section 10 of the Exchequer and Audit Departments Act 1866 (c. 39) (gross revenues to be paid to Exchequer) is to be construed as allowing the Commissioners of Inland Revenue to deduct payments for or in respect of amounts repaid in accordance with this Chapter before causing the gross revenues of their department to be paid to the account mentioned in that section.

CHAPTER 8

CHARGEABLE GAINS

116 Restriction of gifts relief etc

Schedule 21 (which makes provision for relief under section 165 or 260 of the Taxation of Chargeable Gains Act 1992 (c. 12) not to be available on certain transfers to settlor-interested settlements etc or on transfers of shares etc to companies, and makes minor amendments in sections 79 and 281 of that Act) has effect.

117 Private residence relief

Schedule 22 (which makes provision about private residence relief) has effect.

118 Authorised unit trusts: treatment of umbrella schemes

(1) The Taxation of Chargeable Gains Act 1992 is amended as follows.

(2) In section 99(2) (application of Act to unit trust schemes: definitions)—

(a) in the opening words, after "Subject to subsection (3)" insert "and section 99A"; and

(b) for paragraph (b) substitute—

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

(b) "authorised unit trust" means, as respects an accounting period, a unit trust scheme in the case of which an order under section 243 of the Financial Services and Markets Act 2000 is in force during the whole or part of that period."

(3) After that section insert—

"**99A Authorised unit trusts: treatment of umbrella schemes**

(1) In this section an "umbrella scheme" means an authorised unit trust—

(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, and

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

and any reference to a part of an umbrella scheme is a reference to such of the arrangements as relate to a separate pool.

(2) For the purposes of this Act (except subsection (1))—

(a) each of the parts of an umbrella scheme shall be regarded as an authorised unit trust, and

(b) the scheme as a whole shall not be regarded as an authorised unit trust or as any other form of collective investment scheme.

(3) In this Act, in relation to a part of an umbrella scheme, any reference to a unit holder is to a person for the time being having rights in the separate pool to which the part of the umbrella scheme relates.

(4) Nothing in subsections (2) or (3) shall prevent—

(a) gains accruing to an umbrella scheme being regarded as gains accruing to an authorised unit trust for the purposes of section 100(1) (exemption for authorised unit trusts etc);

(b) a transfer of business to an umbrella scheme being regarded as a transfer to an authorised unit trust for the purposes of section 139(4) (exclusion of transfers to authorised unit trusts etc);

(c) a disposal by a unit holder of units in an umbrella scheme being regarded as a disposal by him of units in an authorised unit trust for the purposes of section 271(1)(j) (exemption for disposal of units in an authorised unit trust which is also an approved personal pension scheme etc).".

(4) In section 288 (interpretation)—

(a) in subsection (1), in the definition of "collective investment scheme", at the end insert "(subject to section 99A)";

(b) in the table in subsection (8) (index of general definitions)—

(i) in the first column after "Unit trust scheme" insert "and "unit holder"";

(ii) in the second column for "s 99" substitute "ss 99 and 99A".

(5) The amendments made by this section have effect in relation to years of assessment and accounting periods beginning on or after 1st April 2004.

CHAPTER 9

AVOIDANCE INVOLVING LOSS RELIEF OR PARTNERSHIP

Individuals benefited by film relief

119 Individuals benefited by film relief

(1) This section applies if—

(a) an individual has made a claim under section 380 or 381 of the Taxes Act 1988 in respect of a film-related loss sustained by him in a trade carried on solely or in partnership ("a relevant claim");

(b) there is a disposal on or after 10 December 2003 of a right of the individual to profits arising from the trade (a "relevant disposal"); and

(c) an exit event occurs.

(2) An "exit event" occurs when any of the following happens—

(a) on or after 10 December 2003 the individual receives any non-taxable consideration for a relevant disposal (whether or not he also receives any taxable consideration for it);

(b) on or after 10 December 2003 the losses claimed become greater than the individual's capital contribution to the trade (whether because of a claim or a decrease in that capital contribution);

(c) on or after 10 December 2003 there is an increase in the amount (if any) by which the losses claimed exceed the individual's capital contribution to the trade.

(3) A "chargeable event" occurs whenever—

(a) the individual makes a relevant claim, if by the time the claim has been made a relevant disposal and an exit event have occurred; or

(b) a relevant disposal occurs, if by the time it has occurred an exit event has occurred and the individual has made a relevant claim; or

(c) an exit event occurs, if by the time it has occurred a relevant disposal has occurred and the individual has made a relevant claim.

(4) Where a chargeable event occurs, the individual shall be treated as receiving at the time of that event annual profits or gains which are—

(a) of an amount equal to the chargeable amount; and

(b) chargeable to income tax under Case VI of Schedule D.

(5) The "chargeable amount" is an amount equal to the sum of the following (computed as at the time immediately after the chargeable event)—

(a) so much of the total amount or value of any consideration received by the individual for the relevant disposal (or, if there has been more than one, for relevant disposals) as is non-taxable; and

(b) the amount (if any) by which the losses claimed exceed the individual's capital contribution to the trade;

but this is subject to section 122(2).

(6) For the purposes of subsection (1)(a) it is immaterial when the claim is made.

(7) It is immaterial whether the trade is still being carried on by the individual (or by anyone else) when a chargeable event occurs.

120 "Disposal of a right of the individual to profits arising from the trade"

(1) The reference in section 119(1)(b) to a disposal of a right of the individual to profits arising from the trade includes, in particular—

(a) the disposal, giving up or loss by the individual, or by a partnership of which he is a member, of any right to any income (or any part of any income) where the right arises from the trade;

(b) any default in the payment of income to which the individual, or a partnership of which he is a member, has a right arising from the trade;

(c) a change in the individual's entitlement to any profits arising from the trade such that his share of the profits is reduced or extinguished;

(d) a change in the individual's entitlement to any losses arising from the trade such that he becomes entitled to a share, or a greater share, of the losses without becoming entitled to a corresponding share of profits;

(e) the disposal, giving up or loss of the individual's interest in a partnership that carries on the trade, including the dissolution of the partnership.

(2) It is immaterial for the purposes of subsection (1)(a) whether the right is disposed of alone or as part of a larger disposal (and the references here to disposal include giving up or loss).

(3) If there is an agreement under which the individual is entitled—

(a) to a particular share of any profits or losses arising from the trade in a period, and

(b) to a different share of any profits or losses arising from the trade in a succeeding period ("the later period"),

his entitlement to the profits or losses arising in the later period shall be treated for the purposes of subsection (1)(c) and (d) as changing at the beginning of the later period; and in paragraphs (a) and (b) of this subsection a "share" of profits or losses includes a nil share.

121 "The losses claimed" and "the individual's capital contribution to the trade"

(1) In section 119 "the losses claimed" means the total amount of any film-related losses sustained by the individual in the trade in any years of assessment, to the extent that they are losses—

(a) in respect of which the individual has (at any time) claimed relief under section 380 or 381 of the Taxes Act 1988; or

(b) that he has (at any time) claimed as allowable losses under section 72 of the Finance Act 1991 (c. 31).

(2) In section 119 "the individual's capital contribution to the trade" means (subject to section 122(1)) the amount that the individual has contributed to the trade as capital, less so much of that amount (if any) as—

(a) he has directly or indirectly drawn out or received back;

(b) he is entitled so to draw out or receive back;

(c) he has had directly or indirectly reimbursed to him by any person;

(d) he is entitled to require any person so to reimburse to him.

(3) In relation to a member of a limited liability partnership, the reference in subsection (2) to the amount contributed to the trade as capital shall be read as a reference to the amount contributed to the limited liability partnership as capital.

(4) In subsection (2) references to reimbursement include reimbursement effected by discharging or assuming all or part of a liability of the individual.

(5) Subsection (4) shall not be taken to limit what is to be treated for the purposes of subsection (2) as the receipt back or reimbursement of an amount.

(6) An amount drawn out or received back that would otherwise fall within subsection (2)(a), or an entitlement that would otherwise fall within subsection (2)(b), shall be treated as not so falling if the amount drawn out or received back is chargeable to income tax as profits of the trade.

122 Computing the chargeable amount

(1) Where a chargeable event occurs, anything treated for the purposes of section 119(5)(a) as consideration received by the individual for a relevant disposal shall not also be deducted under section 121(2)(a) to (d) in computing the individual's capital contribution to the trade for the purposes of section 119(5)(b).

(2) Where successive chargeable events occur as respects the individual and the trade—

(a) any consideration that is taken into account under section 119(5)(a) in computing the chargeable amount on an earlier chargeable event shall not be included again in computing the chargeable amount on a later chargeable event; and

(b) in computing the chargeable amount on a later chargeable event, any amount found under section 119(5)(b) shall be reduced (but not below nil) by the total of any amounts found under section 119(5)(b) (read with this paragraph) on earlier chargeable events.

(3) In computing the chargeable amount in any case, any consideration given to the individual for a relevant disposal shall be treated as if it had been received free of any deduction actually made from it in consideration of any person's agreeing to or facilitating a relevant disposal or exit event.

123 "Film-related losses" and "non-taxable consideration"

(1) For the purposes of sections 119 and 121 a loss is a "film-related loss" if the computation of profits or losses that it results from is made in accordance with any of the following—

sections 40A to 40C of the Finance (No. 2) Act 1992 (c. 48);

sections 41 to 43 of that Act;

section 48 of the Finance (No. 2) Act 1997 (c. 58).

(2) References in section 119 to "non-taxable" consideration are to consideration that (apart from section 119) is not chargeable to income tax; and the reference to "taxable" consideration is to be read accordingly.

Individuals in partnership: restriction of relief

124 Restriction of relief: non-active partners

(1) After section 118ZD of the Taxes Act 1988 there is inserted—

"Non-active general partners and non-active members of limited liability partnerships

118ZE Restriction on relief for non-active partners

(1) This section applies to an amount which may be given to an individual under section 353, 380 or 381 in respect of a loss sustained by him in a trade, or interest paid by him in connection with the carrying on of a trade, in a qualifying year of assessment.

(2) The amount may be given otherwise than against income consisting of profits arising from the trade only to the extent that—

(a) the amount given, or

(b) (as the case may be) the aggregate amount,

does not exceed the amount of the individual's contribution to the trade as at the end of that year of assessment.

(3) A "qualifying year of assessment" means a year of assessment—

(a) at any time during which the individual carried on the trade as a general partner or a member of a limited liability partnership,

(b) in which he did not devote a significant amount of time to the trade (within the meaning given by section 118ZH),

(c) which is the year of assessment in which the trade is first carried on by him or any of the next three years of assessment,

(d) the basis period for which ends on or after 10 February 2004, and

(e) which is not a year of assessment at any time during which he carried on the trade as a limited partner.

(4) In this section—

(a) a "general partner" means any partner who is not a limited partner, and

(b) "limited partner" has the meaning given by section 117(2),

and in paragraph (a) "any partner" does not include a member of a limited liability partnership.

(5) In this section and sections 118ZF to 118ZK, "basis period" means (subject to subsection (6)) the basis period given by sections 60 to 63 as applied by section 111(4) and (5).

(6) The basis period for a year of assessment to which section 61(1) applies is to be taken for the purposes of this section and sections 118ZF to 118ZK to be the period beginning with the date when the individual first carried on the trade and ending with the end of the year of assessment.

(7) In subsection (1) "a trade" does not include underwriting business within the meaning of section 184 of the Finance Act 1993 (Lloyd's underwriters).

(8) This section has effect subject to sections 118ZJ and 118ZK (transitional provision).

118ZF Meaning of "the aggregate amount"

(1) In section 118ZE(2) "the aggregate amount" means (subject to section 118ZK) the aggregate of any amounts given to the individual at any time under section 353, 380 or 381 in respect of a loss sustained by him in the trade, or of interest paid by him in connection with carrying it on, in a year of assessment falling within subsection (2).

(2) A year of assessment falls within this subsection if—

(a) it is a qualifying year of assessment within the meaning of section 118ZE, or

(b) it is a year of assessment—

(i) at any time during which the individual carried on the trade as a member of a limited liability partnership or as a limited partner within the meaning given by section 117(2), and

(ii) the basis period for which ends on or after 10 February 2004.

118ZG "The individual's contribution to the trade"

(1) For the purposes of section 118ZE(2), the individual's contribution to the trade at any time ("the relevant time") is the sum of—

(a) the amount subscribed by him,

(b) the amount of any profits of the trade to which he is entitled but which he has not received in money or money's worth, and

(c) where there is a winding up, the amount that he has contributed to the assets of the partnership on its winding up.

(2) For the purposes of subsection (1)(a) the "amount subscribed" by an individual is the sum of—

(a) the total amount (if any) contributed by him to the trade as capital on or after 10 February 2004, reduced (but not below nil) by his withdrawn capital, and

(b) the total amount (if any) contributed by him to the trade as capital before 10 February 2004, reduced (but not below nil) by—

(i) the pre-announcement allowance (within the meaning given by section 118ZJ),

(ii) the aggregate of any amounts given to him at any time under section 353, 380 or 381 in respect of a loss sustained by him in a trade, or of interest paid by him in connection with carrying it on, in a year of assessment falling within subsection (3), and

(iii) the amount (if any) of his withdrawn capital that has not been used in the reduction to nil required by paragraph (a).

(3) A year of assessment falls within this subsection if—

(a) it does not fall within section 118ZE(3)(d), and

(b) it is either—

(i) a year of assessment that would be a qualifying year of assessment but for section 118ZE(3)(d), or

(ii) a year of assessment at any time during which the individual carried on the trade as a member of a limited liability partnership or as a limited partner within the meaning given by section 117(2).

(4) The individual's "withdrawn capital" is so much, if any, of the amount that he has contributed to the trade as capital as—

(a) he has previously, directly or indirectly, drawn out or received back,

(b) he so draws out or receives back during the period of five years beginning with the relevant time,

(c) he is or may be entitled so to draw out or receive back at any time when he carries on the trade as a member of the partnership, or

(d) he is or may be entitled to require another person to reimburse to him.

(5) An amount drawn out or received back that would otherwise fall within subsection (4)(a) or (b), or an entitlement that would otherwise fall within subsection (4)(c), shall be treated as not so falling if the amount drawn out or received back is chargeable to income tax as profits of the trade.

(6) In relation to a member of a limited liability partnership, references in this section to an amount contributed to the trade as capital shall be read as references to an amount contributed to the limited liability partnership as capital.

118ZH "A significant amount of time"

(1) For the purposes of section 118ZE the individual shall be treated as having "devoted a significant amount of time to the trade" in a given year of assessment if, for the whole of the relevant period, he spent an average of at least ten hours a week personally engaged in activities carried on for the purposes of the trade.

(2) "The relevant period" means the basis period for the year of assessment in question, except that—

(a) if the basis period is less than six months and begins with the date when the individual first carried on the trade, "the relevant period" means six months beginning with that date, and

(b) if the basis period is less than six months and ends with the date when the individual ceased to carry on the trade, "the relevant period" means six months ending with that date.

(3) Where relief has been given on the assumption that an individual will meet the condition in subsection (1) and he fails to do so, the relief shall be withdrawn by the making of an assessment under Case VI of Schedule D.

118ZI Carry forward of unrelieved losses of non-active partners

(1) Where amounts relating to a trade carried on by an individual in a qualifying year of assessment are prevented from being given by section 118ZE as it applies otherwise than by virtue of this section or section 118ZD, subsection (3) of this section applies as respects each subsequent year of assessment in which—

(a) the individual carries on the trade in partnership or makes a contribution to the assets of the partnership on its winding up, and

(b) any of his total restricted loss remains outstanding.

(2) His "total restricted loss" means the total of any amounts, relating to any one or more qualifying years of assessment, that have been prevented from being given by section 118ZE as it applies otherwise than by virtue of this section or section 118ZD.

(3) Sections 380 and 381 (and section 118ZE as it applies in relation to those sections) shall have effect in the subsequent year of assessment as if—

(a) any loss sustained by the individual in the trade in that year of assessment were increased by an amount equal to so much of his total restricted loss as remains outstanding in that year of assessment, or

(b) (if no loss is sustained) a loss of that amount were so sustained.

(4) To ascertain whether any (and, if so, how much) of the individual's total restricted loss remains outstanding in the subsequent year of assessment, deduct from the amount of his total restricted loss the aggregate of—

(a) any relief given (otherwise than as a result of subsection (3)) under any provision of the Tax Acts, in that or any previous year of assessment, in respect of any of his total restricted loss, and

(b) any amount which was given as a result of subsection (3), in any previous year of assessment, in respect of any of his total restricted loss (or which would have been so given had a claim been made).

(5) For the purposes of sections 118ZE and 118ZF (and of sections 117 and 118ZB(2))—

(a) any additional amount of loss deemed by subsection (3)(a) to have been sustained in the subsequent year of assessment, and

(b) any loss deemed by subsection (3)(b) to have been so sustained,

shall be treated as having been sustained in a qualifying year of assessment.

(6) Subsection (7) applies where the subsequent year of assessment—

(a) is one in which the trade is not carried on in partnership by the individual, but

(b) is one in which he contributes to the assets of the partnership on its winding up.

(7) Where this subsection applies, nothing in section 381(4) or 384 (restrictions on right of set-off) applies to—

(a) an additional amount of loss deemed by subsection (3)(a) to have been sustained in the subsequent year of assessment, or

(b) a loss deemed by subsection (3)(b) to have been so sustained.

(8) In this section "qualifying year of assessment" has the meaning given by section 118ZE.

18ZJ Commencement: the first restricted year

(1) This section applies where the year of assessment referred to in section 118ZE(1) is a year of assessment the basis period for which includes 10 February 2004 ("the first restricted year").

(2) If this section would (but for this subsection) apply in relation to more than one year of assessment as respects the same individual and the same trade, it applies only in relation to the first of those years of assessment and "the first restricted year" means that year of assessment.

(3) Where this section applies, section 118ZE(2) shall have effect as if for the words from "only to the extent that" there were substituted "only to the extent that the total amount given under section 353, 380 and 381 in respect of losses sustained by him in the trade, and interest paid by him in connection with carrying it on, in that year of assessment does not exceed the sum of—

(a) the pre-announcement allowance, and

(b) the post-announcement allowance."

(4) The "pre-announcement allowance" is the sum of—

(a) the loss (if any) sustained by the individual in the trade in the period beginning with the start of the basis period for the first restricted year and ending with 9 February 2004, and

(b) any interest paid by him in that period in connection with the carrying on of the trade.

(5) The "post-announcement allowance" is so much of—

(a) the loss (if any) sustained by the individual in the trade in the period beginning with 10 February 2004 and ending with the end of the basis period for the first restricted year, and

(b) any interest paid by him in that period in connection with the carrying on of the trade,

as does not exceed the individual's contribution to the trade as at the end of the year of assessment, computed in accordance with section 118ZG.

(6) In each of subsections (4)(a) and (5)(a), the reference to the loss sustained by the individual in the trade in the period there mentioned is a reference to his share of any losses of the partnership arising for that period from the trade, and—

(a) subject to subsection (7), the losses of the partnership arising for that period from the trade shall be computed in the same way as if the period were one for which profits and losses had to be computed for the purposes of section 111(2), and

(b) subject to subsection (8), the individual's share of the losses shall be determined according to his interest in the partnership during that period.

(7) In computing for the purposes of subsection (6) the losses of the partnership arising for the period mentioned in subsection (4)(a) or (5)(a)—

(a) any capital allowance treated as an expense of the trade for the purposes of the computation required by section 111(2) for the first restricted year is to be regarded as belonging to the period mentioned in subsection (4)(a) unless the capital expenditure to which it relates is incurred after 9 February 2004, and

(b) any amount deducted under section 42(1) of the Finance (No. 2) Act 1992 for the purposes of that computation is to be regarded as belonging to the period mentioned in subsection (4)(a) unless the expenditure to which it relates is incurred after 9 February 2004.

(8) If the individual had an interest in the partnership at any time that falls within—

(a) the basis period for the first restricted year, and

(b) the period beginning with 10 February 2004 and ending with 25 March 2004,

he shall be deemed for the purposes of subsection (6)(b) to have had the interest on 9 February 2004.

118ZK Transitional provision for years after the first restricted year

(1) This section applies where the year of assessment referred to in section 118ZE(1) is a year of assessment later than the first restricted year.

(2) Section 118ZE(2) shall not apply to any part of the amount mentioned in section 118ZE(1) that—

(a) derives from a capital allowance treated as an expense of the trade where the capital expenditure to which the allowance relates was incurred before 10 February 2004, or

(b) derives from a deduction made under section 42(1) of the Finance (No. 2) Act 1992 where the expenditure to which the deduction relates was incurred before 10 February 2004.

(3) In computing for the purposes of section 118ZE(2)(a) or (b) the amount given or (as the case may be) the aggregate amount, any part of an amount given that falls within subsection (2)(a) or (b) of this section shall be left out of account.

(4) In computing the aggregate amount for the purposes of section 118ZE(2), any amount given in respect of the pre-announcement allowance shall be left out of account.

(5) For the purposes of subsections (2) and (3) the part of an amount that derives from a capital allowance or a deduction made under section 42(1) of the Finance (No. 2) Act 1992 shall be determined on such basis as is just and reasonable.

(6) In this section "the first restricted year" and "the pre-announcement allowance" have the meanings given by section 118ZJ."

(2) In section 117(2) of the Taxes Act 1988, in paragraph (a) of the definition of "the aggregate amount", after "a relevant year of assessment" there is inserted "or a qualifying year of assessment within the meaning of section 118ZE".

(3) Section 118ZB of the Taxes Act 1988 (restriction on relief: members of limited liability partnerships) is renumbered as subsection (1) of that section and after that provision there is added—

"(2) However, section 117 does not apply in relation to a loss sustained by an individual in a trade, or interest paid by him in connection with the carrying on of a trade, in a qualifying year of assessment within the meaning of section 118ZE."

(4) In section 118ZD of the Taxes Act 1988 (carry forward of unrelieved losses by members of limited liability partnerships), in subsection (2), for "and 118" there is substituted ", 118 and 118ZE".

125 Partnerships exploiting films

After section 118ZK of the Taxes Act 1988 (inserted by section 124) there is inserted—

"Partnerships exploiting films

118ZL Partnerships exploiting films

(1) Where (apart from this section) an amount may be given to an individual under section 380 or 381 in respect of a loss ("the loss in question") sustained by him—

(a) in a trade consisting of or including the exploitation of films, and

(b) in an affected year of assessment,

none of that amount may be given otherwise than against income consisting of profits arising from the trade; but this is subject to subsection (4).

(2) An "affected year of assessment" means a year of assessment at any time during which the individual carried on the trade in partnership which is also—

(a) the year of assessment in which the trade is first carried on by him or any of the next three years of assessment,

(b) a year of assessment in which he did not devote a significant amount of time to the trade, and

(c) a year of assessment at any time during which there existed a relevant agreement guaranteeing him an amount of income.

(3) For the purposes of subsection (2)(c)—

(a) "a relevant agreement" means—

(i) an agreement that was made with a view to the individual's carrying on the trade or in the course of his carrying it on (including any agreement under which he is or may be required to contribute an amount to the trade), or

(ii) an agreement related to an agreement falling within sub-paragraph (i),

(b) an agreement "guarantees" the individual an amount of income if the agreement, or any part of it, is designed to secure the receipt by the individual of that amount (or at least that amount) of income, and

(c) it is immaterial when the amount of income would be received under the agreement.

(4) If the loss in question derives to any extent from exempt expenditure, amounts that (apart from this section) may be given under section 380 or 381 in respect of the loss otherwise than against income consisting of profits arising from the trade may be so given to the extent that the total of the amounts so given does not exceed the exempt part of the loss.

(5) The exempt part of the loss is so much of the loss in question as derives from exempt expenditure.

(6) Expenditure is exempt expenditure for the purposes of this section if it is—

(a) expenditure incurred before 26 March 2004 in a case where this paragraph applies, or

(b) expenditure that, for the purposes of the computation required by section 111(2), was deducted under section 41 or 42 of the Finance (No. 2) Act 1992, or

(c) incidental expenditure that, although deductible apart from section 41 or 42 of that Act, was incurred in connection with the production or acquisition of a film in relation to which expenditure was deducted under either of those sections.

(7) Subsection (6)(a) applies where the individual carried on the trade before 26 March 2004.

118ZM Partnerships exploiting films: supplementary

(1) In section 118ZL and this section any reference to a film is to be construed in accordance with paragraph 1 of Schedule 1 to the Films Act 1985.

(2) Section 118ZH (meaning of "a significant amount of time" etc) applies for the purposes of section 118ZL as it applies for the purposes of section 118ZE.

(3) For the purposes of section 118ZL(3) agreements are related if they are entered into in pursuance of the same arrangement (regardless of the date on which either agreement is entered into).

(4) The reference in section 118ZL(6) to the acquisition of a film is a reference to the acquisition of the master negative or any master tape or master disc of the film; and this subsection is to be construed in accordance with section 43(1) and (2)(b) of the Finance (No. 2) Act 1992.

(5) In section 118ZL(6) "incidental expenditure" means expenditure on management, administration or obtaining finance.

(6) The part of the loss in question that derives from exempt expenditure shall be determined on such basis as is just and reasonable.

(7) The extent to which any expenditure falls within section 118ZL(6)(c) shall be determined on such basis as is just and reasonable.

(8) In any case where sections 380 and 381 have effect as mentioned in section 118ZD(2) or 118ZI(3) (cases where sections 380 and 381 have effect as if loss carried forward from earlier year sustained in subsequent year), section 118ZL also has effect as mentioned in section 118ZD(2) or (as the case may be) section 118ZI(3)."

Individuals in partnership: exit charge

126 Losses derived from exploiting licence: introductory

(1) Section 127 (charge to income tax) applies in relation to an individual who carries on or has carried on a trade in partnership if—

(a) there is a disposal on or after 10 February 2004 of—

(i) any licence acquired in carrying on the trade; or

(ii) any rights to income under any agreement that is related to or contains such a licence;

(b) the individual receives any non-taxable consideration for the disposal ("relevant consideration"); and

(c) he has made a claim under section 380 or 381 of the Taxes Act 1988 in respect of a licence-related loss sustained in the trade in a qualifying year ("a relevant claim").

(2) A "licence-related loss" means a loss that derives to any extent from expenditure incurred in the trade in exploiting the licence.

(3) In relation to an individual who carried on the trade at any time before 26 March 2004, the reference in subsection (2) to expenditure does not include expenditure incurred before 10 February 2004.

(4) A "qualifying year" means a year of assessment at any time during which the individual carried on the trade in partnership which is also—

(a) the year of assessment in which the trade is first carried on by him or any of the next three years of assessment; and

(b) a year of assessment in which he did not devote a significant amount of time to the trade (within the meaning given by section 130).

(5) The reference in subsection (1)(b) to "non-taxable" consideration is to consideration—

(a) that (apart from section 127) is not chargeable to income tax; and

(b) whose receipt is not an exit event for the purposes of section 119;

and it is immaterial for the purposes of subsection (1)(b) whether the non-taxable consideration is the only consideration received by the individual for the disposal.

(6) For the purposes of this section and sections 127 to 129, an agreement is related to a licence if they are entered into in pursuance of the same arrangement (regardless of the date on which either is entered into).

(7) For the purposes of this section and sections 127 to 129 an agreement, or part of an agreement, that imposes an obligation to do a thing (rather than merely conferring authority to do it) is not for that reason to be regarded as not being a licence; and references to "exploiting" a licence shall be construed accordingly.

127 Charge to income tax

(1) A chargeable event occurs whenever, on or after 10 February 2004, an individual who carries on or has carried on a trade in partnership—

(a) receives relevant consideration, if by the time he has received it he has (at any time) made a relevant claim; or

(b) makes a relevant claim, if by the time he has made it he has received relevant consideration.

(2) Where, as respects an individual, one or more chargeable events occurs in a year of assessment in relation to a licence ("the licence in question"), so much of the total consideration as does not exceed the chargeable amount shall be treated as—

(a) annual profits or gains of the individual of that year of assessment; and

(b) chargeable to income tax under Case VI of Schedule D.

(3) The "total consideration" means the total amount or value of the relevant consideration that by the end of that year of assessment has been received by the individual (whether or not in that year of assessment).

(4) To find the chargeable amount—

(a) take so much of the total consideration as does not exceed the net-licence related loss; and

(b) reduce the amount found under paragraph (a) (but not below nil) by the amount of any relevant consideration that by reason of this section has been treated as annual profits or gains of previous years of assessment.

(5) The net licence-related loss is the amount, computed as at the end of the year of assessment in which the chargeable event occurs, by which A exceeds B, where—

A is the total of the individual's claimed licence-related losses for qualifying years; and

B is the total of his licence-related profits for any years of assessment.

(6) In subsections (3) and (4), the references to relevant consideration are to relevant consideration received on or after 10 February 2004 and relating to the licence in question (and where relevant consideration is received for a disposal of rights to income under any agreement related to or containing a licence, the consideration shall be regarded for the purposes of this section as relating to the licence).

(7) In this section "relevant consideration", "relevant claim" and "qualifying year" have the meanings given by section 126.

128 Definitions for purposes of section 127

(1) This section applies for the purposes of section 127(5).

(2) The individual's "claimed licence-related loss" for a qualifying year is so much of the loss (if any) sustained by him in the trade in that year as derives from expenditure incurred in the trade in exploiting the licence in question and is loss—

(a) in respect of which he has claimed relief under section 380 or 381 of the Taxes Act 1988; or

(b) that he has claimed as an allowable loss under section 72 of the Finance Act 1991 (c. 31).

(3) For the purposes of subsection (2) the part of a loss that falls within that subsection shall be determined on such basis as is just and reasonable.

(4) In relation to an individual who carried on the trade at any time before 26 March 2004, the reference in subsection (2) to expenditure does not include expenditure incurred before 10 February 2004.

(5) As espects any year of assessment, the individual's "licence-related profit" is such part of his profit (if any) from the trade for that year of assessment as derives from income arising from any agreement that is related to or contains the licence in question.

(6) The part of a profit that derives from such income shall be determined on such basis as is just and reasonable.

129 Disposals to which section 126 applies

(1) The reference in section 126(1)(a) to a disposal of such a licence or rights as are there mentioned includes, in particular—

(a) the revocation of the licence;

(b) the disposal, giving up or loss by the individual, or by a partnership of which he is a member, of any right under the licence;

(c) any disposal, giving up or loss by the individual, or by a partnership of which he is a member, of any right to any income (or any part of any income) under an agreement that is related to or contains the licence ("a licence-related agreement");

(d) any default in the payment of income to which the individual, or a partnership of which he is a member, has a right under a licence-related agreement;

(e) a change in the individual's entitlement to any profits deriving to any extent from such income, such that his share of the profits is reduced or extinguished;

(f) a change in the individual's entitlement to any losses deriving to any extent from expenditure incurred in exploiting the licence, such that he becomes entitled to a share, or a greater share, of the losses without becoming entitled to a corresponding share of profits;

(g) the disposal, giving up or loss of the individual's interest in a partnership that has the licence or a right to income under a licence-related agreement, including the dissolution of the partnership.

(2) It is immaterial for the purposes of section 126(1)(a) and subsection (1)(b) and (c) whether the licence or right is disposed of alone or as part of a larger disposal (and the references here to disposal of a right include giving up or loss).

(3) If there is an agreement under which the individual is entitled—

(a) to a particular share of any profits or losses arising in a period, and

(b) to a different share of any profits or losses arising in a succeeding period ("the later period"),

his entitlement to the profits or losses arising in the later period shall be treated for the purposes of subsection (1)(e) and (f) as changing at the beginning of the later period; and in paragraphs (a) and (b) of this subsection a "share" of profits or losses includes a nil share.

130 "A significant amount of time"

(1) For the purposes of section 126(4)(b) the individual shall be treated as having "devoted a significant amount of time to the trade" in a given year of assessment if, for the whole of the relevant period, he spent an average of at least ten hours a week personally engaged in activities carried on for the purposes of the trade.

(2) "The relevant period" means the basis period for the year of assessment in question, except that—

(a) if the basis period is less than six months and begins with the date when the individual first carried on the trade, "the relevant period" means six months beginning with that date; and

(b) if the basis period is less than six months and ends with the date when the individual ceased to carry on the trade, "the relevant period" means six months ending with that date.

(3) In this section "basis period" means (subject to subsection (4)) the basis period given by sections 60 to 63 of the Taxes Act 1988 as applied by section 111(4) and (5) of that Act.

(4) The basis period for a year of assessment to which section 61(1) of that Act applies is to be taken for the purposes of this section to be the period beginning with the date when the individual first carried on the trade and ending with the end of the year of assessment.

Companies in partnership

131 Companies in partnership

(1) This section applies if—

(a) on or after 17 March 2004, a company that is or has been a member of a partnership—

(i) directly or indirectly draws out or receives back any capital from the partnership; or

(ii) receives consideration for a disposal on or after 17 March 2004 of all or any of its interest in the partnership;

(b) as at the relevant time, the sum of—

(i) the total amount of any relevant withdrawals, and

(ii) the total amount or value of any relevant consideration,

exceeds the company's contribution to the partnership;

(c) that excess (or any part of it) results directly or indirectly from an arrangement under which any relevant profit was shared in such a way that the company was not allocated all or part of its due share of the profit; and

(d) if the company's due shares of relevant profits had been allocated to the company, some or all of them would have been chargeable to corporation tax.

(2) For the purposes of this section—

(a) "the relevant time" means the time immediately after the capital is drawn out or received back or (as the case may be) the consideration is received;

(b) a "relevant withdrawal" means any capital that the company has, directly or indirectly, drawn out or received back from the partnership at any time on or after 17 March 2004;

(c) "relevant consideration" means consideration received by the company at any time on or after 17 March 2004 for the disposal on or after that date of all or any of its interest in the partnership;

(d) "the company's contribution to the partnership" means the sum of—

(i) the amount that it has contributed to the partnership as capital (excluding any amount originally contributed by a person from whom the company acquired an interest in the partnership); and

(ii) any amount paid by the company to such a person for such an interest;

(e) a "relevant profit" is the profit of the partnership computed for any period, but does not include any profit, or any part of a profit, that derives from income arising before 17th March 2004;

(f) the company's "due share" of any relevant profit is the share of the profit that the company would have been allocated if it had been allocated a share calculated by reference to the percentage of the total capital contributed (as defined by subsection (3)) that was contributed by it.

(3) To find "the total capital contributed" for the purposes of subsection (2)(f)—

(a) find, as respects the end of each day in the period for which the profit was computed, the total amount of capital that as at that time had been contributed to the partnership and had not been drawn out or received back;

(b) aggregate those amounts; and

(c) divide by the number of days in that period.

(4) Where this section applies, the company shall be treated as receiving, at the relevant time, annual profits or gains which are of an amount equal to the chargeable amount and chargeable to tax under Case VI of Schedule D.

(5) The chargeable amount is (subject to subsections (8) and (9)) so much of A as does not exceed B, where—

A is the amount by which, at the relevant time, the sum of the total amount of any relevant withdrawals and the total amount or value of any relevant consideration exceeds the company's contribution to the partnership; and

B is the amount by which, at the relevant time, the total amount of the company's due shares of relevant profits exceeds the total amount of the shares of relevant profits that were actually allocated to the company.

(6) If any non-income amount is taken into account in computing a relevant profit, then for the purposes of subsection (5) the amount of the company's due share of the relevant profit and the amount of the share of the relevant profit that was actually allocated to the company shall be taken to be what they would have been if all non-income amounts had been left out of account in computing the relevant profit.

(7) In subsection (6) a "non-income amount" means an amount that for the purposes of corporation tax would not be taken into account as income or in computing income.

(8) Subsection (9) applies if this section applies on more than one occasion in relation to the same company and partnership (whether because of two or more receipts by the company of consideration relating to the same disposal or for any other reason).

(9) On each occasion after the first, the amount found under subsection (5) shall be reduced (but not below nil) by the total of the chargeable amounts found (under that subsection read with this) on the previous occasions.

132 Companies in partnership: supplementary

(1) In section 131 and this section "capital" includes—

(a) anything accounted for as partners' capital, or partners' equity, in the accounts of the partnership drawn up in accordance with generally accepted accountancy practice; or

(b) if no such accounts are drawn up, anything that would be so accounted for if such accounts had been drawn up.

(2) Where a partnership is dissolved by reason of one of the partners acquiring the interests of the others, the remaining partner is to be treated for the purposes of section 131 as having drawn out his and the others' shares of capital from the partnership.

(3) For the purposes of section 131(2)(e), where a profit for a period derives partly from income arising before 17th March 2004, the part of the profit that derives from such income shall be determined on such basis as is just and reasonable.

(4) For the purposes of section 131(2)(f) the capital contributed by the company shall be taken to include amounts originally contributed as mentioned in section 131(2)(d)(i).

(5) In section 131(3) the reference to capital that had been contributed includes amounts purporting to be provided by way of loan where the loan—

(a) carries no interest; or

(b) carries interest at a rate less than that which might have been expected if the loan had been between independent persons dealing at arm's length.

(6) For the purposes of section 131 a partnership is to be treated as the same partnership notwithstanding a change in membership if any person who was a member before the change remains a member after it.

133 Relationship with chargeable gains

(1) Subsection (3) below applies if—

(a) section 131 applies as a result of a receipt on or after 17 March 2004, by a company that is or has been a member of a partnership, of any consideration for a disposal on or after that date of all or any of its interest in the partnership ("the section 131 disposal");

(b) a chargeable gain accrues to the company on a relevant disposal; and

(c) the total amount of chargeable gains accruing to the company on relevant disposals exceeds the total amount of any allowable losses accruing to it on such disposals.

(2) References in this section to a "relevant disposal" are to any disposal of an asset that, alone or together with other disposals of assets, constitutes the section 131 disposal; and references in this subsection to a disposal of an asset are to be construed in accordance with the 1992 Act.

(3) Where this subsection applies—

(a) any chargeable gain accruing to the company on a relevant disposal must be excluded in computing, for the purposes of section 8(1) of the 1992 Act, the total amount of chargeable gains accruing to the company in the accounting period in which that gain accrued;

(b) the relevant net gain (defined by subsection (4) below) must be included in computing for those purposes the total amount of chargeable gains accruing to the company in the accounting period in which the receipt mentioned in subsection (1) above occurred; and

(c) any allowable loss accruing to the company on a relevant disposal must be excluded in computing for the purposes of section 8(1) of the 1992 Act the amount of any allowable losses.

(4) To find "the relevant net gain" for the purposes of this section—

(a) take the amount by which the total amount of chargeable gains accruing to the company on relevant disposals exceeds the total amount of allowable losses accruing to it on such disposals; and

(b) reduce it (but not below nil) by an amount equal to the chargeable amount.

(5) Where section 131 applies as mentioned in subsection (1)(a) above, in computing any chargeable gain or allowable loss accruing to the company on a relevant disposal—

(a) neither the chargeable amount, nor any amount taken into account in computing it, shall be excluded by section 37(1) of the 1992 Act (exclusions from consideration); and

(b) an amount that has been taken into account in computing the chargeable amount shall not by reason of that fact be excluded by section 39(1) of that Act (exclusions from allowable deductions).

(6) If section 131 and this section apply more than once as a result of two or more receipts by a company of consideration relating to the same section 131 disposal—

(a) subsection (3)(b) above does not apply in relation to any of the receipts after the first; and

(b) in relation to the first receipt, the amount to be deducted under subsection (4)(b) above is an amount equal to the total of the chargeable amounts found in relation to the receipts.

(7) Subsection (8) below applies if subsection (3) above prevents an allowable loss that accrued to a company otherwise than on a relevant disposal from being deductible from a chargeable gain accruing to the company on a relevant disposal.

(8) That loss (to the extent that it has not been deducted from any other chargeable gain) shall instead be deductible from the total amount of chargeable gains accruing to the company in the accounting period in which the receipt mentioned in subsection (1) above occurred.

(9) But if, in any case where subsection (3) above applies, there are one or more allowable losses—

(a) that are losses to which section 18(3) of the 1992 Act applies, and

(b) that accrued to the company otherwise than on a relevant disposal and are prevented by subsection (3) above from being deductible from a chargeable gain accruing to the company on a relevant disposal,

the total amount deducted under subsection (8) above in respect of those losses must not exceed the relevant net gain.

(10) In this section—

"the 1992 Act" means the Taxation of Chargeable Gains Act 1992 (c. 12);

"the chargeable amount" means the amount found under section 131 in relation to the receipt mentioned in subsection (1) above; and

references to chargeable gains, or allowable losses, accruing on disposals are to be construed in accordance with the 1992 Act.

CHAPTER 10

AVOIDANCE: MISCELLANEOUS

134 Finance leasebacks

(1) After section 228 of the Capital Allowances Act 2001 (c. 2) (sale and leaseback: election) insert—

"Finance leaseback: parties' income and profits

228A Application of sections 228B to 228E

(1) Sections 228B to 228E apply where—

(a) plant or machinery is the subject of a sale and finance leaseback for the purposes of section 221, and

(b) section 222 (restriction of disposal value) applies.

(2) Sections 228B to 228D also apply, with the modifications set out in section 228F, where plant or machinery is the subject of a lease and finance leaseback (as defined in section 228F).

228B Lessee's income or profits: deductions

(1) For the purpose of income tax or corporation tax, in calculating the lessee's income or profits for a period of account the amount deducted in respect of amounts payable under the leaseback may not exceed the permitted maximum.

(2) The permitted maximum is the total of—

(a) finance charges shown in the accounts, and

(b) depreciation, taking the value of the plant or machinery at the beginning of the leaseback to be the restricted disposal value.

(3) In relation to a period of account during which the leaseback terminates, the permitted maximum shall also include an amount calculated in accordance with subsection (4).

(4) The calculation is—

$$\text{Current Book Value} \times \frac{\text{Original Consideration}}{\text{Original Book Value}}$$

where—

"Current Book Value" means the net book value of the leased plant or machinery immediately before the termination,

"Original Consideration" means the consideration payable to S for entering into the relevant transaction, and

"Original Book Value" means the net book value of the leased plant or machinery at the beginning of the leaseback.

228C Lessee's income or profits: termination of leaseback

(1) Subsection (2) applies where the leaseback terminates.

(2) For the purpose of the calculation of income tax or corporation tax, the income or profits of the lessee from the relevant qualifying activity for the period in which the termination occurs shall be increased by an amount calculated in accordance with subsection (3).

(3) The calculation is—

$$\text{Net Consideration} \times \frac{\text{Current Book Value}}{\text{Original Book Value}}$$

where—

"Net Consideration" means—

(a) the consideration payable to S for entering into the relevant transaction, minus

(b) the restricted disposal value,

"Current Book Value" means the net book value of the leased plant or machinery immediately before the termination, and

"Original Book Value" means the net book value of the leased plant or machinery at the beginning of the leaseback.

(4) In this section "relevant qualifying activity" means the qualifying activity for the purposes of which the leased plant or machinery was used immediately before the termination.

(5) Section 228B has no effect on the treatment for the purposes of income tax or corporation tax of amounts received by way of refund on the termination of a leaseback of amounts payable under it.

(6) In subsection (5), "amounts received by way of refund" includes any amount that would be so received in respect of the lessee's interest under the leaseback if any amounts due to the lessor under the leaseback were disregarded.

228D Lessor's income or profits

(1) This section applies in relation to the calculation of the lessor's income or profits for a period of account for the purpose of income tax or corporation tax.

(2) Where—

(a) an amount receivable in respect of the lessor's interest under the leaseback falls to be taken into account in that calculation, and

(b) that amount is reduced by an amount due to the lessee under the leaseback,

that reduction shall be disregarded when taking the amount receivable into account.

(3) The amounts receivable in respect of the lessor's interest under the leaseback that fall to be taken into account in that calculation may be disregarded to the extent that they exceed the permitted threshold (whether or not subsection (2) applies).

(4) The permitted threshold is the total of—

(a) gross earnings, and

(b) the allowable proportion of the capital repayment.

(5) In subsection (4)(a) "gross earnings" means the amount shown in the lessor's accounts in respect of the lessor's gross earnings under the leaseback.

(6) In subsection (4)(b) "allowable proportion of the capital repayment" means the amount obtained by this calculation—

$$\text{Restricted Disposal Value} \times \frac{\text{Investment Reduction For Period}}{\text{Net Investment}}$$

where—

"Investment Reduction For Period" means the amount shown in the lessor's accounts in respect of the reduction in net investment in the leaseback, and

"Net Investment" means the amount shown in the lessor's accounts as the lessor's net investment in the leaseback at the beginning of its term.

(7) This section does not apply to a leaseback if the lessee is a lessee by way of an assignment made before 17 March 2004.

228E Lessor's income or profits: termination of leaseback

(1) Subsection (2) applies where—

(a) the leaseback terminates,

(b) the lessor disposes of the plant or machinery, and

(c) the amount of the disposal value required to be brought into account because of that disposal is limited by section 62.

(2) For the purpose of income tax or corporation tax, in calculating the lessor's income or profits for the period in which the termination occurs the amount deducted in respect of any amount refunded to the lessee may not exceed the amount to which the disposal value is limited by section 62.

228F Lease and finance leaseback

(1) Sections 228B, 228C and 228D apply, with the following modifications, where plant or machinery is the subject of a lease and finance leaseback.

(2) In determining the permitted maximum for the purposes of section 228B, depreciation shall be disregarded.

(3) In the calculation under section 228C(3), the amount of the consideration referred to in subsection (6)(b) of this section shall be substituted for the Net Consideration.

(4) In determining the permitted threshold for the purposes of section 228D, the allowable proportion of the capital repayment shall be disregarded.

(5) Plant or machinery is the subject of a lease and finance leaseback if—

(a) a person ("S") leases the plant or machinery to another ("B"),

(b) after the date of that transaction, the use of the plant or machinery falls within sub-paragraph (i), (ii) or (iii) of section 221(1)(b), and

(c) it is directly as a consequence of having been leased under a finance lease that the plant or machinery is available to be so used after that date.

(6) For the purposes of subsection (5), S leases the plant or machinery to B only if—

(a) S grants B rights over the plant or machinery,

(b) consideration is given for that grant, and

(c) S is not required to bring all of that consideration into account under this Part.

(7) Plant or machinery is not the subject of a lease and finance leaseback for the purposes of this section in any case where the condition in subsection (6)(c) is met only because of an election under section 199 made before 18 May 2004.

(8) In the application of sections 228B to 228D in relation to a lease and finance leaseback—

(a) references to the lessee are references to the person referred to as S in this section, and

(b) references to the lessor are references to the person referred to as B in this section or, where appropriate, to an assignee of that person.

228G Leaseback not accounted for as finance lease in accounts of lessee

(1) Sections 228B and 228C are subject to this section in their application in relation to a leaseback that is not accounted for as a finance lease in the accounts of the lessee.

(2) Subsection (3) applies where the leaseback is accounted for as a finance lease in the accounts of a person connected with the lessee; and in that subsection "relevant calculation" means the calculation of—

(a) the permitted maximum for the purposes of section 228B, or

(b) the amount by which the income or profits of the lessee are to be increased in accordance with section 228C.

(3) Where an amount that falls to be used for the purposes of a relevant calculation—

(a) cannot be ascertained by reference to the lessee's accounts because the leaseback is not accounted for as a finance lease in those accounts, but

(b) can be ascertained by reference to the connected person's accounts for one or more periods,

that amount as ascertained by reference to the connected person's accounts shall be used for the purposes of the relevant calculation.

(4) Subsections (5) and (6) apply in a case where the leaseback is not accounted for as a finance lease in the accounts of a person connected with the lessee.

(5) Sections 228B and 228C do not apply in relation to the leaseback.

(6) If the term of the leaseback begins on or after 18 May 2004 then, for the purposes of income tax or corporation tax, the income or profits of the lessee from the relevant qualifying activity for the period of account during which the term of the leaseback begins shall be increased by—

(a) the net consideration for the purposes of section 228C(3) (in the case of a sale and finance leaseback), or

(b) the consideration referred to in section 228F(6)(b) (in the case of a lease and finance leaseback).

(7) For the purposes of this section the leaseback is accounted for as a finance lease in a person's accounts if—

(a) the leaseback falls, under generally accepted accounting practice, to be treated in that person's accounts as a finance lease or loan, or

(b) in a case where the leaseback is comprised in other arrangements, those arrangements fall, under generally accepted accounting practice, to be so treated.

228H Sections 228A to 228G: supplementary

(1) In sections 228A to 228G—

"lessee" does not include a person who is lessee by way of an assignment;

the "net book value" of leased plant or machinery means the book value of the plant or machinery having regard to any relevant entry in the lessee's accounts, but—

(a) also having regard to depreciation up to the time in question, and

(b) disregarding any revaluation gains or losses and any impairments;

"restricted disposal value" means the disposal value under section 222;

"termination" in relation to a leaseback includes (except in section 228E)—

(a) the assignment of the lessee's interest,

(b) the making of any arrangements (apart from an assignment of the lessee's interest) under which a person other than the lessee becomes liable to make some or all payments under the leaseback, and

(c) a variation as a result of which the leaseback ceases to be a finance lease.

(2) In a case where accounts drawn up are not correct accounts, or no accounts are drawn up—

(a) the provisions of sections 228A to 228G apply as if correct accounts had been drawn up, and

(b) amounts referred to in any of those sections as shown in accounts are those that would have been shown in correct accounts.

(3) In a case where accounts are drawn up in reliance upon amounts derived from an earlier period of account for which correct accounts were not drawn up, or no accounts were drawn up, amounts referred to in sections 228A to 228G as shown in the accounts for the later period are those that would have been shown if correct accounts had been drawn up for the earlier period.

(4) In subsections (2) and (3) "correct accounts" means accounts drawn up in accordance with generally accepted accounting practice.

228J Plant or machinery subject to further operating lease

(1) This section applies where—

(a) plant or machinery is the subject of—

(i) a sale and finance leaseback, or

(ii) a lease and finance leaseback, and

(b) some or all of the plant or machinery becomes, while the subject of the leaseback, also the subject of a lease in relation to which the following conditions are met—

(i) the term of the lease begins on or after 18 May 2004;

(ii) S, or a person connected with S, is the lessee under the lease;

(iii) the lease is not accounted for as a finance lease in the accounts of the lessee.

(2) For the purpose of income tax or corporation tax, in calculating the lessee's income or profits for a period of account the amount deducted in respect of amounts payable under the operating lease shall not exceed the relevant amount.

(3) Subsections (4) and (5) apply in relation to the calculation of the lessor's income or profits for a period of account for the purpose of income tax or corporation tax.

(4) Where—

(a) an amount receivable in respect of the lessor's interest under the operating lease falls to be taken into account in that calculation, and

(b) that amount is reduced by an amount due to the lessee under the operating lease,

that reduction shall be disregarded when taking the amount receivable into account.

(5) The amounts receivable in respect of the lessor's interest under the operating lease that fall to be taken into account in that calculation may be disregarded to the extent that they exceed the relevant amount (whether or not subsection (4) applies).

(6) Where only some of the plant or machinery is the subject of the operating lease, subsections (2) to (5) shall apply subject to such apportionments as may be just and reasonable.

(7) For the purposes of this section a lease is accounted for as a finance lease in a person's accounts if—

(a) the lease falls, under generally accepted accounting practice, to be treated in that person's accounts as a finance lease or loan, or

(b) in a case where the lease is comprised in other arrangements, those arrangements fall, under generally accepted accounting practice, to be so treated.

(8) In this section—

"lease and finance leaseback" has the meaning given in section 228F;

"lessee" means the lessee under the operating lease;

"lessor" means the lessor under the operating lease;

"operating lease" means the lease referred to in subsection (1)(b);

"relevant amount" means an amount equal to the permitted maximum under section 228B as it applies in relation to the leaseback.".

(2) In sections 228A to 228J of the Capital Allowances Act 2001 (c. 2) (as inserted by subsection (1) above), a reference to a provision of that Act includes a reference to an equivalent provision of the Capital Allowances Act 1990 (c. 1) (with any necessary modification).

(3) This section applies to income tax and corporation tax chargeable in relation to periods that end on or after 17 March 2004.

(4) Schedule 23 contains transitional provision.

135 Rent factoring of leases of plant or machinery

(1) After section 785 of the Taxes Act 1988 insert—

"**785A Rent factoring of leases of plant or machinery**

(1) This section applies in any case where the following conditions are satisfied—

(a) a person (call him "P") is entitled to receive rentals under a lease of plant or machinery,

(b) the rentals, so far as receivable by him, fall to be brought into account as income for the purpose of calculating his tax liability,

(c) P enters into arrangements for the transfer of his right to receive some or all of the rentals to another person,

(d) apart from this section, some or all of the amount or value of the consideration for the transfer ("the relevant portion of the consideration") would fall to be brought into account neither—

(i) as income, nor

(ii) as a capital allowances disposal receipt,

for the purpose of calculating P's tax liability.

(2) In any such case, the relevant portion of the consideration—

(a) shall be treated for tax purposes as income of P,

(b) shall be taxable as rentals receivable by P under the lease (apart from any transfer of his right to receive some or all of the rentals), and

(c) shall be brought into account in a period of account to the extent that it is receivable in that period of account.

(3) Any reference to the transfer from P to another person of a right to receive rentals includes a reference to any arrangement under which rental ceases to form part of the receipts taken into account as income for the purposes of calculating P's tax liability.

(4) Where P is a partnership, any reference in this section to calculating P's tax liability includes a reference to calculating the tax liability of the partners, notwithstanding that the partnership has legal personality.

(5) A partnership has legal personality for the purposes of subsection (4) above if it is regarded as a legal person, or as a body corporate, under the law of the country or territory under which it is formed.

(6) In this section—

"capital allowances disposal receipt" means a disposal receipt within the meaning of Part 2 of the Capital Allowances Act 2001 (see section 60 of that Act);

"lease" includes an underlease, sublease, tenancy or licence and an agreement for any of those things;

"tax liability" means liability to income tax or corporation tax.".

(2) The amendment made by this section has effect where arrangements for the transfer from one person to another of a right to receive rentals are entered into on or after 2nd July 2004.

136 Manufactured dividends

Schedule 24 to this Act (which makes provision in relation to cases where payments are or have been made, or treated as made, which are representative of dividends on shares of companies resident in the United Kingdom) has effect.

137 Manufactured payments under arrangements having an unallowable purpose

(1) In Schedule 23A to the Taxes Act 1988 (manufactured dividends and interest) after paragraph 7 (irregular manufactured payments) insert—

"Manufactured payments under arrangements having an unallowable purpose

7A (1) This paragraph applies in any case where—

(a) a manufactured payment falls to be made by a company in an accounting period in pursuance of any arrangements (see sub-paragraphs (9) and (10) for definitions), and

(b) the arrangements have an unallowable purpose at any time (see sub-paragraphs (3) to (5)).

But this is subject to sub-paragraph (8) below (cases where tax relief is denied apart from this paragraph).

(2) The company is not entitled, by virtue of anything in this Schedule or any provision of regulations under it, or otherwise, to any relevant tax relief (see sub-paragraph (10)), to the extent that the relief is in respect of, or referable to, the whole or any part of so much of the manufactured payment as, on a just and reasonable apportionment, is attributable to the unallowable purpose.

(3) Arrangements have an unallowable purpose at any time if at that time the purposes for which the company is a party to—

(a) the arrangements,

(b) any related transaction (see sub-paragraphs (6) and (7)), or

(c) any transaction in pursuance of the arrangements,

include a purpose ("the unallowable purpose") which is not among the business or other commercial purposes of the company.

(4) The business and other commercial purposes of a company do not include the purposes of any part of its activities in respect of which it is not within the charge to corporation tax.

(5) Where one of the purposes for which a company is at any time a party to—

(a) any arrangements,

(b) any related transaction in the case of any arrangements, or

(c) any transaction in pursuance of any arrangements,

is a tax avoidance purpose, that purpose shall be taken to be a business or other commercial purpose of the company only where it is not the main purpose, or one of the main purposes, for which the company is party to the arrangements or transaction at that time.

(6) One or more transactions are to be regarded as related transactions, in the case of any arrangements, if it would be reasonable to assume, from either or both of—

(a) the likely effect of the transactions, and

(b) the circumstances in which the transactions are entered into or effected,

that none of the transactions would have been entered into or effected independently of the arrangements.

(7) Transactions are not prevented from being related transactions, in the case of any arrangements, just because the transactions—

(a) are not between the same parties, or

(b) are not between the parties to the arrangements.

(8) This paragraph does not apply if, as a result of any of the following provisions—

(a) section 75(4)(b) (expenses of management of companies with investment business: unallowable purposes),

(b) section 76(4)(d) (expenses of insurance companies: unallowable purposes),

(c) paragraph 13 of Schedule 9 to the Finance Act 1996 (loan relationships with unallowable purposes),

the company in question is not entitled to a relevant tax relief in respect of, or referable to, the whole or any part of the manufactured payment.

The references to sections 75 and 76 are references to those provisions as they have effect in relation to accounting periods beginning on or after 1st April 2004.

(9) Any reference in this paragraph to a manufactured payment falling to be made by a company includes a reference to a manufactured payment which is deemed by or under any provision of the Tax Acts to be made by a company (and references to a transaction, or to a company being party to a transaction, are to be construed accordingly).

(10) In this paragraph—

"arrangements" includes schemes, arrangements and understandings of any kind, whether or not legally enforceable, and shall be taken to include any related transactions;

"manufactured payment" means any of the following—

(a) any manufactured dividend;

(b) any manufactured interest;

(c) any manufactured overseas dividend;

"related transaction" shall be construed in accordance with sub-paragraphs (6) and (7) above;

"relevant tax relief" means any of the following—

(a) any deduction in computing profits or gains for the purposes of corporation tax;

(b) any deduction against total profits;

(c) the bringing into account of any debit for the purposes of Chapter 2 of Part 4 of the Finance Act 1996 (loan relationships);

(d) the surrender of an amount by way of group relief;

"tax advantage" has the same meaning as in Chapter 1 of Part 17 (tax avoidance);

"tax avoidance purpose" means any purpose that consists in securing a tax advantage (whether for the company in question or any other person);

and sub-paragraphs (3) to (7) above have effect for the purposes of this paragraph.".

(2) In section 95 of the Taxes Act 1988 (taxation of dealers in respect of distributions etc) before subsection (2) insert—

"(1C) The application of subsection (1) above in relation to a payment made by a dealer is subject to paragraph 7A of Schedule 23A (manufactured payments under arrangements having an unallowable purpose).".

This amendment has effect on and after the commencement date.

(3) The amendment made by subsection (1) has effect—

(a) in the case of new arrangements, in relation to manufactured payments made, or deemed by or under any provision of the Tax Acts to be made, on or after the commencement date, and

(b) in the case of old arrangements, in relation to manufactured payments made, or deemed by or under any provision of the Tax Acts to be made, on or after the day on which this Act is passed.

(4) But where—

(a) as a result of old arrangements, any income arose or accrued, or any gain accrued, to a company before the commencement date,

(b) the income or gain is or was within the charge to corporation tax, and

(c) a manufactured payment in pursuance of the arrangements is made, or deemed by or under any provision of the Tax Acts to be made, by the company on or after the day on which this Act is passed,

the amendment made by subsection (1) does not have effect in relation to so much of the manufactured payment as (on such just and reasonable apportionments as may be necessary) represents the income or gain.

(5) For the purposes of subsection (4)—

(a) "income" includes any income deemed by or under any provision of the Tax Acts to arise or accrue,

(b) "gain" includes any gain deemed by or under any provision of the Tax Acts to accrue.

(6) In this section—

"the commencement date" means 2nd July 2004;

"new arrangements" means any arrangements other than old arrangements;

"old arrangements" means arrangements which were, or some part of which was, entered into or acted upon before the commencement date.

(7) For the purposes of subsection (6), the cases where arrangements were, or some part of any arrangements was, acted upon before the commencement date are those cases where a transaction in pursuance of the arrangements, or of any part of the arrangements, has taken place before that date.

138 Gilt strips

(1) Schedule 13 to the Finance Act 1996 (c. 8) (discounted securities: income tax provisions) is amended as follows.

(2) In paragraph 8 (transfers between connected persons deemed to be at market value) after sub-paragraph (3) insert—

"(4) Where the relevant discounted security is a strip, its market value at any time shall be determined for the purposes of this paragraph in accordance with paragraph 14E below.".

(3) In paragraph 9 (other transactions deemed to be at market value) after sub-paragraph (2) insert—

"(3) Where the relevant discounted security is a strip, its market value at any time shall be determined for the purposes of this paragraph in accordance with paragraph 14E below.".

(4) In paragraph 14 (strips of government securities) for sub-paragraph (6) (regulations as to manner of determining market value) substitute—

"(6) Paragraph 14E below makes provision as to the manner of determining for the purposes of this paragraph the market value at any time of—

(a) any strip, or

(b) any security exchanged for strips of that security.".

(5) After paragraph 14A (strips of government securities: losses) insert—

"Strips of government securities: manipulation of acquisition, sale or redemption price

14B (1) This paragraph applies in any case where, as a result of any scheme or arrangement,—

(a) the amount paid by a person in respect of his acquisition of a strip is or was more than the market value of the strip at the time of that acquisition,

(b) the amount payable to a person on a transfer of a strip by him is less than the market value of the strip at the time of the transfer, or

(c) on redemption of a strip, the amount payable to a person, as the person holding the strip, is less than the market value of the strip on the day before redemption,

and the obtaining of a tax advantage by any person is the main benefit, or one of the main benefits, that might have been expected to accrue from, or from any provision of, the scheme or arrangement.

(2) In a case falling within sub-paragraph (1)(a) above, the person shall be treated for the purposes of paragraphs 1(2)(b) and 14A(3)(b) above on a transfer of the strip by him as if he had paid in respect of his acquisition of the strip an amount equal to the market value of the strip at the time of that acquisition.

(3) In a case falling within sub-paragraph (1)(b) above, the person shall be treated for the purposes of paragraphs 1(2)(b) and 14A(3)(b) above as if the amount payable to him on the transfer were an amount equal to the market value of the strip at the time of the transfer.

(4) In a case falling within sub-paragraph (1)(c) above, the person shall be treated for the purposes of paragraphs 1(2)(b) and 14A(3)(b) above as if the amount payable to him on redemption were an amount equal to the market value of the strip on the day before redemption.

(5) For the purposes of this paragraph, no account shall be taken of any costs incurred in connection with any transfer or redemption of a strip or its acquisition.

(6) Paragraph 14E below makes provision as to the manner of determining for the purposes of this paragraph the market value at any time of a strip.

(7) In this paragraph "tax advantage" has the meaning given by section 709(1) of the Taxes Act 1988.".

(6) After paragraph 14B insert—

"Strips: manipulation of price: associated payment giving rise to capital gains tax loss

14C (1) Where—

(a) as a result of any scheme or arrangement which has an unallowable purpose, the circumstances are, or might have been, as mentioned in paragraph (a), (b) or (c) of paragraph 14B(1) above,

(b) under the scheme or arrangement, a payment falls to be made otherwise than in respect of the acquisition or disposal of a strip, and

(c) as a result of that payment or the circumstances in which it is made, a loss accrues to any person for the purposes of capital gains tax,

the loss shall not be an allowable loss for the purposes of capital gains tax.

(2) For the purposes of this paragraph a scheme or arrangement has an unallowable purpose if the main benefit, or one of the main benefits, that might have been expected to result from, or from any provision of, the scheme or arrangement (apart from paragraph 14B above and this paragraph) is—

(a) the obtaining of a tax advantage by any person, or

(b) the accrual to any person of an allowable loss for the purposes of capital gains tax.

(3) In this paragraph "tax advantage" has the meaning given by section 709(1) of the Taxes Act 1988.".

(7) After paragraph 14C insert—

"Restriction of profits and losses on strips by reference to original acquisition cost

14D (1) This paragraph has effect for the purpose of excluding from charge or, as the case may be, relief under this Schedule so much of—

(a) any profit realised by a person from the discount on a strip, or

(b) any loss sustained by a person from the discount on a strip,

as is referable to a relevant amount being less than the person's original acquisition cost for the strip.

For this purpose a relevant amount is any amount that falls to be brought into account as paid in respect of the acquisition of the strip or as payable on the transfer or redemption of the strip.

(2) Where, on the transfer or redemption of a strip,—

(a) a person realises a profit (apart from this paragraph) from the discount on the strip and amount C exceeds amount A, or

(b) a person sustains a loss (apart from this paragraph) from the discount on the strip and amount C exceeds amount P,

then, for the purposes of the other provisions of this Schedule, the profit or loss shall be restricted or eliminated in accordance with the following provisions of this paragraph.

(3) For the purposes of this paragraph—

"amount A" is the amount that falls to be brought into account as the amount paid by the person in respect of his acquisition of the strip in determining the amount of the profit or loss apart from this paragraph;

"amount C" is the person's original acquisition cost for the strip (see sub-paragraph (6) below);

"amount L" is the amount (apart from this paragraph) of the loss mentioned in sub-paragraph (2)(b) above;

"amount P" is the amount that falls to be brought into account as the amount payable on the transfer or redemption of the strip in determining the amount of the profit or loss apart from this paragraph.

(4) In a case falling within sub-paragraph (2)(a) above (person realising a profit)—

(a) if amount P exceeds amount C, the amount of the profit is restricted to the amount of that excess;

(b) if amount P does not exceed amount C, the person shall be treated as not realising a profit from the discount on the strip.

(5) In a case falling within sub-paragraph (2)(b) above (person sustaining a loss)—

(a) if amount A exceeds amount C, the amount of the loss is restricted to so much of amount L as remains after deducting from it the amount by which amount C exceeds amount P;

(b) if amount A does not exceed amount C, the person shall be treated for the purposes of this Schedule as not sustaining a loss from the discount on the strip.

(6) For the purposes of this paragraph a person's "original acquisition cost" in the case of a strip is the amount which—

(a) disregarding any deemed transfers or re-acquisitions under paragraph 14(4) above (other than the transfer mentioned in sub-paragraph (2) above, if it is such a transfer), but

(b) otherwise giving effect, so far as applicable, to paragraph 8, 9, 14 or 14B above (each of which treats a person acquiring a security as having paid an amount equal to its market value determined in accordance with paragraph 14E below),

would fall to be taken into account as the amount paid by the person in respect of his acquisition of the strip in determining whether a profit is realised, or a loss is sustained, from the discount on the strip.

(7) In this paragraph any reference to a transfer includes a reference to a deemed transfer under paragraph 14(4) above.

(8) In this paragraph any reference to sustaining a loss from the discount on a strip shall be construed in accordance with paragraph 14A above.".

(8) After paragraph 14D insert—

"Market value of strips etc for the purposes of paragraphs 8, 9, 14 and 14B

14E (1) This paragraph makes provision as to the manner of determining—

(a) for the purposes of paragraph 8, 9, 14 or 14B above, the market value at any time of a strip, and

(b) for the purposes of paragraph 14(2) above, the market value at any time of a security exchanged for strips of that security.

(2) The market value on any day of a strip or security quoted in the Daily List shall be—

(a) the lower of the two figures shown in the Daily List for the strip or security for that day,

plus

(b) one-quarter of the difference between those two figures,

unless the Stock Exchange is closed on that day.

(3) If the Stock Exchange is closed on any day, the market value on that day of any such strip or security shall be taken to be its market value on the latest previous day or earliest subsequent day on which the Stock Exchange is open, whichever affords the lower value.

(4) In the case of a strip or security which—

(a) is a security, or a strip of a security, issued by or on behalf of the government of a territory outside the United Kingdom, and

(b) is not quoted in the Daily List, but

(c) is quoted in a foreign stock exchange list,

the market value shall be determined in accordance with sub-paragraph (5) below.

(5) In any such case, sub-paragraphs (2) and (3) above shall have effect for determining the market value of the strip or security, but for this purpose those provisions shall have effect—

(a) with the substitution for references to the Daily List of references to the foreign stock exchange list,

(b) with the substitution for references to the Stock Exchange of references to the foreign stock exchange to which that list relates, and

(c) with any modifications which are necessary by reason of the form of quotation adopted in the foreign stock exchange list (including, in a case where a single figure only is published, taking that figure as the market value).

(6) Where a strip or security is quoted in more than one foreign stock exchange list—

(a) any such list published for a foreign stock exchange in the territory of the issuing government shall be used for the purposes of sub-paragraph (5) above in preference to any other such list, and

(b) any such list published for a foreign stock exchange which is regarded as the major exchange in that territory for strips or securities shall be used for those purposes in preference to any other such list.

(7) In this paragraph—

"the Daily List" means the The Stock Exchange Daily Official List;

"foreign stock exchange" means a recognised stock exchange in a territory outside the United Kingdom on which strips are traded;

"foreign stock exchange list" means any publication which performs in the case of a foreign stock exchange a function equivalent, or broadly similar, to that performed by the Daily List in relation to strips;

"issuing government" means the government which issued the security mentioned in sub-paragraph (4)(a) above.

(8) The Treasury may by regulations make provision as to the manner of determining, for any of the purposes mentioned in sub-paragraph (1) above, the market value at any time of—

(a) any strip, or

(b) any security exchanged for strips of that security.

(9) Regulations under sub-paragraph (8) above may—

(a) amend or modify any provision of this paragraph other than that sub-paragraph, sub-paragraph (1) above or this sub-paragraph;

(b) make different provision for different cases; and

(c) contain such incidental, supplemental, consequential and transitional provision and savings as the Treasury may think fit.".

(9) In paragraph 15(1) (general interpretation) in the definition of "market value" (which applies except in paragraph 14) for "(except in paragraph 14 above)" substitute "(except as provided in relation to paragraph 8, 9, 14 or 14B above by paragraph 14E above)".

(10) The amendments made by—

(a) subsections (2) and (3), and

(b) subsections (8) and (9), so far as relating to paragraph 8 or 9 of Schedule 13 to the Finance Act 1996 (c. 8),

have effect in relation to any transfer of a strip on or after 17th March 2004.

(11) The amendments made by—

(a) subsection (4), and

(b) subsections (8) and (9), so far as relating to paragraph 14 of Schedule 13 to the Finance Act 1996,

have effect in relation to exchanges on or after 17th March 2004 and deemed transfers and re-acquisitions under sub-paragraph (4) of that paragraph on or after that date.

(12) The amendments made by—

(a) subsection (5), and

(b) subsections (8) and (9), so far as relating to paragraph 14B of Schedule 13 to the Finance Act 1996,

have effect in relation to any strip held on 15th January 2004 or acquired after that date (and see subsection (15)).

(13) The amendment made by subsection (6) has effect in relation to losses accruing on or after 17th March 2004.

(14) The amendment made by subsection (7) has effect in relation to any strip acquired on or after 15th January 2004 (and see subsection (15)).

(15) In determining when a strip is acquired for the purposes of subsection (12) or (14), any deemed transfers or re-acquisitions under paragraph 14(4) of Schedule 13 to the Finance Act 1996 shall be disregarded.

139 Gifts of shares, securities and real property to charities etc

(1) Section 587B of the Taxes Act 1988 (gifts of shares, securities and real property to charities etc) is amended as follows.

(2) For subsection (4) (the relevant amount) substitute—

"(4) Subject to subsections (5) to (7) below, the relevant amount is an amount equal to—

(a) where the disposal is a gift, the value of the net benefit to the charity at, or immediately after, the time when the disposal is made (whichever time gives the lower value);

(b) where the disposal is at an undervalue, the amount by which—

(i) the value described in paragraph (a) above, exceeds

(ii) the amount or value of the consideration for the disposal,

or, if there is no such excess, nil.".

(3) After subsection (8) insert—

"(8A) The value of the net benefit to the charity is—

(a) the market value of the qualifying investment, unless subsection (8B) below applies;

(b) where that subsection applies, that market value reduced by the aggregate amount of the related liabilities of the charity (see subsections (8E) to (8G)).

(8B) This subsection applies in any case where—

(a) the charity is, or becomes, subject to an obligation to any person (whether or not the person making the disposal or a person connected with him), and

(b) one or more of the conditions in subsection (8C) below is satisfied.

(8C) For the purposes of subsection (8B) above—

(a) condition 1 is that, taking into account all the circumstances (including, in particular, the difference in the value of the net benefit to the charity if subsection (8B) applies and if it does not), it is reasonable to suppose that the disposal of the qualifying investment to the charity would not have been made in the absence of the obligation;

(b) condition 2 is that the obligation (whether in whole or in part) relates to, is framed by reference to, or is conditional on the charity receiving, the qualifying investment or a related investment (see subsection (8D)).

(8D) In subsection (8C) above "related investment" means any of the following—

(a) any asset of the same class or description as the qualifying investment (irrespective of size, quantity or amount);

(b) any asset derived from, or representing, the qualifying investment whether in whole or in part and whether directly or indirectly;

(c) any asset from which the qualifying investment is derived, or which the qualifying investment represents, whether in whole or in part and whether directly or indirectly.

(8E) For the purposes of this section, the liabilities which are related liabilities in the case of any qualifying investment are the liabilities of the charity under each of the obligations that fall within subsection (8B) above (as read with subsection (8C) above) in relation to that investment.

(8F) Where an obligation is contingent and the contingency occurs, the amount to be brought into account for the purposes of this section at any time in respect of the liability, so far as contingent, under the obligation is the amount or value of the liability actually incurred in consequence of the occurrence of the contingency.

(8G) Where an obligation is contingent and the contingency does not occur, the amount to be brought into account for the purposes of this section at any time in respect of the liability, so far as contingent, is nil.".

(4) In subsection (9) (definitions) insert each of the following definitions at the appropriate place—

""obligation" includes a reference to each of the following—

(a) any scheme, arrangement or understanding of any kind, whether or not legally enforceable;

(b) a series of obligations (whether or not between the same parties);";

""related liabilities" shall be construed in accordance with subsection (8E) above;";

""value of the net benefit to the charity" shall be construed in accordance with subsection (8A) above;".

(5) After subsection (10) (market value) insert—

"(10A) Section 839 (connected persons) applies for the purposes of this section.".

(6) The amendments made by this section have effect in relation to any disposal to a charity on or after 2nd July 2004, except where the disposal is in performance of a contract entered into before that date and not varied on or after that date.

140 Life policies etc.: restriction of corresponding deficiency relief

(1) In Chapter 2 of Part 13 of the Taxes Act 1988 (life policies, life annuities and capital redemption policies), section 549 (certain deficiencies allowable as deductions) is amended as follows.

(2) In subsection (1) for the words from "the total amount" to the end substitute "the allowable amount".

(3) After that subsection insert—

"(1A) The allowable amount is the total of any amounts that—

(a) were treated as a gain by virtue of section 541(1)(d), 543(1)(c) or 546C(7) on the previous happenings of chargeable events, and

(b) formed part of that individual's total income for a previous year of assessment.".

(4) This section applies in relation to a deficiency occurring in connection with a policy of life insurance if—

(a) it is issued in respect of an insurance made on or after 3rd March 2004, or

(b) it is issued in respect of an insurance made before that date but on or after that date—

(i) it is varied so as to increase the benefits secured (any exercise of rights conferred by the policy being regarded for this purpose as a variation),

(ii) there is an assignment (whether or not for money or money's worth) of the rights, or a share of the rights, conferred by the policy, or

(iii) all or part of the rights conferred by the policy become held as security for a debt.

(5) This section applies in relation to a deficiency occurring in connection with a contract for a life annuity if—

(a) it is entered into on or after 3rd March 2004, or

(b) it is entered into before that date but on or after that date—

(i) it is varied so as to increase the benefits secured (any exercise of rights conferred by the contract being regarded for this purpose as a variation),

(ii) there is an assignment (whether or not for money or money's worth) of the rights, or a share of the rights, conferred by the contract, or

(iii) all or part of the rights conferred by the contract become held as security for a debt.

(6) This section applies in relation to a deficiency occurring in connection with a capital redemption policy if—

(a) it is effected on or after 3rd March 2004, or

(b) it is effected before that date but on or after that date—

(i) it is varied so as to increase the benefits secured (any exercise of rights conferred by the policy being regarded for this purpose as a variation),

(ii) there is an assignment (whether or not for money or money's worth) of the rights, or a share of the rights, conferred by the policy, or

(iii) all or part of the rights conferred by the policy become held as security for a debt.

CHAPTER 11

MISCELLANEOUS

Reliefs for business

141 Relief for research and development: software and consumable items

(1) In Schedule 20 to the Finance Act 2000 (c. 17) (tax relief for expenditure on research and development) for paragraph 6 (expenditure on consumable stores) substitute—

"Expenditure on software or consumable items

6 (1) For the purposes of this Schedule expenditure on software or consumable items means expenditure on—

(a) computer software, or

(b) consumable or transformable materials,

and references to software or consumable items shall be construed accordingly.

(2) For the purposes of this Schedule consumable or transformable materials include water, fuel and power.

(3) Expenditure on software or consumable items is attributable to relevant research and development if the software or consumable items are employed directly in such research and development.

(4) In the case of software or consumable items partly employed directly in relevant research and development, an appropriate portion of the expenditure on the software or consumable items is treated as attributable to relevant research and development.

(5) For the purposes of sub-paragraphs (3) and (4), software or consumable items employed in the provision of services, such as secretarial or administrative services, in support of other activities are not, by virtue of their employment in the provision of those services, to be treated as themselves directly employed in those other activities.".

(2) In each of the following enactments (which relate to tax relief for expenditure on research and development)—

(a) Schedule 20 to the Finance Act 2000 (c. 17) (small or medium-sized enterprises), other than paragraph 6,

(b) Schedule 12 to the Finance Act 2002 (c. 23) (large companies, work sub-contracted to, and large company relief for, small or medium-sized enterprises),

(c) Schedule 13 to that Act (vaccine research etc),

for the words "consumable stores", wherever occurring, substitute "software or consumable items".

(3) The amendments made by this section to Schedule 12 to the Finance Act 2002 (large companies etc) have effect in relation to expenditure incurred on or after 1st April 2004.

(4) Except as provided by subsection (5), the amendments made by this section to—

(a) Schedule 20 to the Finance Act 2000 (small or medium-sized enterprises),

(b) Schedule 13 to the Finance Act 2002 (vaccine research etc),

have effect in relation to expenditure incurred on or after the appointed day.

(5) The amendment made by subsection (1) (substitution of paragraph 6 of Schedule 20 to the Finance Act 2000), in its application for the purposes of Schedule 12 to the Finance Act 2002 by virtue of the amendments made to that Schedule by subsection (2), has effect in relation to expenditure incurred on or after 1st April 2004.

(6) In this section "the appointed day" means such day as the Treasury may by order appoint; and different days may be so appointed for different provisions or different purposes.

(7) The days that may be appointed by an order under subsection (6) include days earlier than the day on which this Act is passed, but not days earlier than 1st April 2004.

142 Temporary increase in amount of first-year allowances for small enterprises

(1) The amount of a first-year allowance under section 44 of the Capital Allowances Act 2001 (c. 2) (expenditure incurred by small or medium-sized enterprises) shall

be determined, in the case of expenditure to which this subsection applies, as if the percentage specified in the entry relating to that section in the Table in section 52(3) of that Act were 50%.

(2) Subsection (1) applies to expenditure incurred by a small enterprise (within the meaning of section 44 of that Act) in the period of 12 months beginning with—

(a) 1st April 2004, if the small enterprise is within the charge to corporation tax, or

(b) 6th April 2004, if the small enterprise is within the charge to income tax.

(3) Accordingly, in section 52(3) of the Capital Allowances Act 2001, after the Table insert—

"In the case of expenditure qualifying under section 44, see also section 142 of the Finance Act 2004 (substitution of 50% in the case of expenditure incurred by a small enterprise in 2004-05 or financial year 2004).".

143 Deduction for expenditure by landlords on energy-saving items

(1) After section 31 of the Taxes Act 1988 (Schedule A deductions and allowances: provisions supplementary to sections 25 to 30) insert—

"**31A Deductions for expenditure by landlords on energy-saving items**

(1) This section applies to a Schedule A business if the land mentioned in paragraph 1(1) of Schedule A consists of or includes a dwelling-house.

(2) In computing for the purposes of income tax the profits of a Schedule A business to which this section applies, a deduction shall be allowed in respect of any expenditure to which subsection (3) applies.

That is subject to any provision of regulations under subsection (13).

(3) This subsection applies to expenditure as respects which the numbered conditions set out in the following provisions of this section ("the qualifying conditions") are satisfied.

(4) Condition 1 is that the expenditure is incurred in the provision of a qualifying energy-saving item in the dwelling-house.

(5) Condition 2 is that the expenditure is incurred on or after 6th April 2004 but before 6th April 2009.

(6) Condition 3 is that the expenditure is incurred wholly and exclusively for the purposes of the Schedule A business.

(7) Condition 4 is that the expenditure is capital expenditure.

(8) Condition 5 is that, apart from this section, the expenditure is not deductible in computing the profits of the Schedule A business.

(9) Condition 6 is that no allowance under the Capital Allowances Act may be claimed in respect of the expenditure.

(10) Condition 7 is that the expenditure is not incurred in respect of the provision of an item in a dwelling-house which, at the time when the item is installed,—

(a) is in the course of construction, or

(b) is comprised in land in which the person claiming the deduction under this section does not have an interest or is in the course of acquiring an interest or further interest.

(11) Condition 8 is that for the purposes of section 503 (letting of furnished holiday accommodation to be treated as a trade for certain purposes) either—

(a) the Schedule A business does not consist to any extent in the commercial letting of furnished holiday accommodation, or

(b) if it does so consist to any extent, the dwelling-house does not constitute any or all of the furnished holiday accommodation in question.

(12) Condition 9 is that the income of the person claiming the deduction is not computed in accordance with paragraph 9 or 11 of Schedule 10 to the Finance (No. 2) Act 1992 (furnished accommodation) in respect of any qualifying residence which consists of or includes the dwelling-house.

(13) The Treasury may by regulations make provision for any of the following purposes—

(a) restricting or reducing the amount of expenditure in respect of which deductions may be claimed under this section;

(b) excluding entitlement to a deduction under this section in such cases as may be specified in, or determined in accordance with, the regulations;

(c) determining which of two or more persons is (and which is not) entitled to a deduction under this section in cases where different persons have different interests in land consisting of or including the whole or part of a building containing one or more dwelling-houses;

(d) making apportionments (including apportioning amounts to companies which are not entitled to a deduction under this section) in cases where—

(i) a Schedule A business is carried on by two or more persons in partnership, or

(ii) an interest in land is beneficially owned by two or more persons jointly or in common.

(14) Section 31B supplements this section.

31B Provisions supplementary to section 31A

(1) This section has effect for the purpose of supplementing section 31A and shall be construed as one with that section.

(2) Section 31A does not have effect for the purposes of corporation tax.

(3) No deduction may be made under section 31A unless a claim is made.

(4) Where, on a just and reasonable apportionment of any expenditure, the qualifying conditions—

(a) would be satisfied as respects some part or parts of the expenditure, but

(b) would not be satisfied as respects the remainder of the expenditure,

a deduction under section 31A shall be allowed in respect of the part or parts mentioned in paragraph (a) but not in respect of the remainder.

Any such deduction is subject to, and must be in accordance with, the other provisions of this section and regulations under section 31A(13).

(5) Expenditure incurred by a person—

(a) for the purposes of a Schedule A business, but

(b) before the time when he begins to carry on that business,

is not deductible under section 31A by virtue of section 401 (relief for pre-trading expenditure) unless the expenditure is incurred not more than 6 months before that time (and on or after 6th April 2004).

The reference to section 401 is a reference to that section as it applies for the purposes of Schedule A in relation to a Schedule A business by virtue of section 21B.

(6) "Qualifying energy-saving items" are items of any of the following descriptions—

(a) cavity wall insulation;

(b) loft insulation.

(7) The Treasury may by regulations amend subsection (6)—

(a) by adding further descriptions of items; or

(b) by removing or varying descriptions of items.

(8) The Treasury may by regulations provide that an item is to be regarded as an item of any particular description in subsection (6) only if it satisfies such conditions as may be specified in, or determined in accordance with, the regulations.

(9) The conditions that may be imposed by regulations under subsection (8) include conditions imposed by reference to information or documents issued by any body, person or organisation.

(10) The provision that may be made by regulations under this section or section 31A which are made on or before 31st December 2004 includes provision—

(a) having effect before the date on which the regulations are made, or

(b) having effect in relation to expenditure incurred before that date.

(11) Any reference to the provision of a qualifying energy-saving item is a reference to the acquisition of such an item and its installation in the dwelling-house.".

(2) The amendment made by this section has effect in relation to expenditure incurred on or after 6th April 2004 but before 6th April 2009.

144 Lloyd's names: conversion to limited liability underwriting

Schedule 25 to this Act (which makes provision for certain reliefs to be available where a member of Lloyd's converts to limited liability underwriting) has effect.

Offshore matters

145 Offshore funds

(1) The provisions of the Taxes Act 1988 relating to offshore funds are amended in accordance with Schedule 26 to this Act.

(2) Except as otherwise provided—

(a) the amendments have effect for account periods (within the meaning of Chapter 5 of Part 17 of that Act) ending on or after the day on which this Act is passed, and

(b) regulations made under a power conferred by virtue of any of the amendments may be made so as to have effect in relation to any such account period.

146 Meaning of "offshore installation"

Schedule 27 to this Act (which makes amendments relating to the meaning of "offshore installation") has effect.

Health

147 Immediate needs annuities

(1) The Taxes Act 1988 is amended as follows.

(2) In section 431 (interpretative provisions relating to insurance companies) in subsection (2) (interpretation for purposes of Chapter 1 of Part 12) in the definition of "annuity business", at the end insert ", other than the business of granting immediate needs annuities (within the meaning of section 580C)".

(3) After section 580B insert—

"**580C Relief from tax on annual payments under immediate needs annuities**

(1) No liability to income tax arises in respect of a relevant annual payment made under an immediate needs annuity to the extent that—

(a) it is made for the benefit of the person protected under the immediate needs annuity, and

(b) it is made to a care provider or a local authority in respect of the provision of care for the person protected.

(2) In this section "relevant annual payment" means an annual payment which—

(a) would (apart from this section) be brought into charge under Case III of Schedule D, or

(b) is equivalent to a description of payment brought into charge under Case III of that Schedule but would (apart from this section) be brought into charge under Case V of that Schedule.

(3) In this section "immediate needs annuity" means a contract for a life annuity—

(a) the purpose, or one of the purposes, of which is to protect a person against the consequences of his being unable, at the time the contract is made, to live independently without assistance because of—

(i) mental or physical impairment, or

(ii) injury, sickness or other infirmity,

which is expected to be permanent, and

(b) under which benefits are payable in respect of the provision of care for the person protected.

(4) In this section "care provider" means a person who carries on a trade, profession or vocation which consists of or includes the provision of care and who—

(a) in relation to care provided in England and Wales or Northern Ireland, is registered under the relevant enactment in respect of the provision of care;

(b) in relation to care provided in Scotland, provides care which is registered under the relevant enactment;

(c) in relation to care provided in a territory outside the United Kingdom, satisfies comparable requirements under the law of that territory relating to the provision of care.

(5) In this section "the relevant enactment" means—

(a) in relation to England and Wales, Part 2 of the Care Standards Act 2000,

(b) in relation to Scotland, Part 1 of the Regulation of Care (Scotland) Act 2001,

(c) in relation to Northern Ireland, Part 2 or 3 of the Registered Homes (Northern Ireland) Order 1992 or Part 3 of the Health and Personal Social Services (Quality, Improvement and Regulation) (Northern Ireland) Order 2003.

(6) In this section "care" means accommodation, goods or services which it is necessary or desirable to provide to a person because of—

(a) mental or physical impairment, or

(b) injury, sickness or other infirmity,

which is expected to be permanent.

(7) In this section "life annuity" means an annuity to which section 656 (read with section 657) applies.

(8) The Treasury may by order amend—

(a) the definition of "immediate needs annuity" in subsection (3) above;

(b) the definitions of "care provider" in subsection (4) above and of "the relevant enactment" in subsection (5) above.".

(4) The amendment made by subsection (2) has effect in relation to accounting periods beginning on or after 1st January 2005.

(5) For the purposes of section 547(5A)(b) of the Taxes Act 1988 (chargeable event gains: method of charging gain to tax), an immediate needs annuity made before 1st January 2005 shall not be taken, by virtue of the amendment made by subsection (2), to fall or to have at any time fallen to be regarded as not forming part of an insurance company

or friendly society's basic life assurance and general annuity business the income and gains of which are subject to corporation tax.

(6) The amendment made by subsection (3) has effect in relation to annual payments made on or after 1st October 2004 (whenever the immediate needs annuity in question was made).

148 Corporation tax: health service bodies

At the end of section 519A of the Taxes Act 1988 (health service bodies: exemptions from income and corporation tax) add—

"(3) The Treasury may by order disapply subsection (1)(b) in relation to a specified activity, or class of activity, of an NHS foundation trust.

(4) An order under subsection (3) shall make provision for determining the amount of the profits relating to an activity that are to be charged to corporation tax as a result of the disapplication of subsection (1)(b).

(5) An order under subsection (3) may, in particular—

(a) make provision for disregarding profits of less than a specified amount in respect of a financial year or accounting period or a specified part of a financial year or accounting period;

(b) make provision for disregarding a specified part of profits in respect of a financial year or accounting period or a specified part of a financial year or accounting period;

(c) make provision for disregarding all or part of profits relating to activity in respect of which receipts or turnover (as defined by the order) are less than a specified amount in respect of a financial year or accounting period or a specified part of a financial year or accounting period.

(6) An order under subsection (3)—

(a) may apply, with or without modification, a provision of the Tax Acts,

(b) may disapply a provision of the Tax Acts,

(c) may make provision similar to a provision of the Tax Acts, and

(d) may make provision generally or in relation to a specified body or class of bodies.

(7) The Treasury may make an order under subsection (3) only—

(a) in relation to an activity or class of activity that appears to the Treasury to be of a commercial nature,

(b) where it appears to the Treasury to be expedient for the purpose of avoiding, removing or reducing differences between—

(i) the fiscal treatment of the body undertaking the activity, and

(ii) the fiscal treatment of another body or class of body which is of a commercial nature and which undertakes or might undertake the same or a similar activity, and

(c) if a draft has been laid before, and approved by resolution of, the House of Commons.

(8) An activity authorised under section 14(1) of the Health and Social Care (Community Health and Standards) Act 2003 shall not be treated as an activity of a commercial nature for the purposes of subsection (7)(a).".

PART 4

PENSION SCHEMES ETC

CHAPTER 1

INTRODUCTION

Introductory

149 Overview of Part 4

(1) This Part contains tax provision about pension schemes and other similar schemes.

(2) This Chapter defines some basic concepts.

(3) As for the rest of this Part—

Chapter 2 is about the registration and de-registration of pension schemes,

Chapter 3 is about the payments that may be made by registered pension schemes and related matters,

Chapter 4 deals with tax reliefs and exemptions in connection with registered pension schemes,

Chapter 5 imposes tax charges in connection with registered pension schemes,

Chapter 6 is about some schemes that are not registered pension schemes,

Chapter 7 makes provision about compliance,and

Chapter 8 contains interpretation and other supplementary provisions.

Main concepts

150 Meaning of "pension scheme"

(1) In this Part "pension scheme" means a scheme or other arrangements, comprised in one or more instruments or agreements, having or capable of having effect so as to provide benefits to or in respect of persons—

(a) on retirement,

(b) on death,

(c) on having reached a particular age,

(d) on the onset of serious ill-health or incapacity, or

(e) in similar circumstances.

(2) A pension scheme is a registered pension scheme for the purposes of this Part at any time if it is at that time registered under Chapter 2.

(3) In this Part "public service pension scheme" means a pension scheme—

(a) established by or under any enactment,

(b) approved by a relevant governmental or Parliamentary person or body, or

(c) specified in an order made by the Treasury.

(4) In subsection (3) "a relevant governmental or Parliamentary person or body" means—

(a) a Minister of the Crown or a government department,
(b) the Scottish Parliament, the Scottish Parliamentary Corporate Body or a member of the Scottish Executive,
(c) the National Assembly for Wales, or
(d) the Northern Ireland Assembly, the Northern Ireland Assembly Commission, a Northern Ireland Minister, the head of a Northern Ireland department or a Northern Ireland department.

(5) In this Part "occupational pension scheme" means a pension scheme established by an employer or employers and having or capable of having effect so as to provide benefits to or in respect of any or all of the employees of—
(a) that employer or those employers, or
(b) any other employer,
(whether or not it also has or is capable of having effect so as to provide benefits to or in respect of other persons).

(6) In this Part "sponsoring employer", in relation to an occupational pension scheme, means the employer, or any of the employers, to or in respect of any or all of whose employees the pension scheme has, or is capable of having, effect so as to provide benefits.

(7) In this Part "overseas pension scheme" means a pension scheme (other than a registered pension scheme) which—
(a) is established in a country or territory outside the United Kingdom, and
(b) satisfies any requirements prescribed for the purposes of this subsection by regulations made by the Board of Inland Revenue.

(8) In this Part "recognised overseas pension scheme" means an overseas pension scheme which—
(a) is established in a country or territory prescribed, or of a description prescribed, for the purposes of this subsection by regulations made by the Board of Inland Revenue, or
(b) satisfies any requirements so prescribed.

151 Meaning of "member"

(1) In this Part "member" in relation to a pension scheme, means any active member, pensioner member, deferred member or pension credit member of the pension scheme.

(2) For the purposes of this Part a person is an active member of a pension scheme if there are presently arrangements made under the pension scheme for the accrual of benefits to or in respect of the person.

(3) For the purposes of this Part a person is a pensioner member of a pension scheme if the person is entitled to the present payment of benefits under the pension scheme and is not an active member.

(4) A person is a deferred member of a pension scheme if the person has accrued rights under the pension scheme and is neither an active member nor a pensioner member.

(5) A person is a pension credit member of a pension scheme if the person has rights under the pension scheme which are attributable (directly or indirectly) to pension credits.

152 Meaning of "arrangement"

(1) In this Part "arrangement", in relation to a member of a pension scheme, means an arrangement relating to the member under the pension scheme.

(2) For the purposes of this Part an arrangement is a "money purchase arrangement" at any time if, at that time, all the benefits that may be provided to or in respect of the member under the arrangement are cash balance benefits or other money purchase benefits.

(3) For the purposes of this Part a money purchase arrangement is a "cash balance arrangement" at any time if, at that time, all the benefits that may be provided to or in respect of the member under the arrangement are cash balance benefits.

(4) In this Part "money purchase benefits", in relation to a member of a pension scheme, means benefits the rate or amount of which is calculated by reference to an amount available for the provision of benefits to or in respect of the member (whether the amount so available is calculated by reference to payments made under the pension scheme by the member or any other person in respect of the member or any other factor).

(5) In this Part "cash balance benefits" means benefits the rate or amount of which is calculated by reference to an amount available for the provision of benefits to or in respect of the member calculated otherwise than wholly by reference to payments made under the arrangement by the member or by any other person in respect of the member (or transfers or other credits).

(6) For the purposes of this Part an arrangement is a "defined benefits arrangement" at any time if, at that time, all the benefits that may be provided to or in respect of the member under the arrangement are defined benefits.

(7) In this Part "defined benefits", in relation to a member of a pension scheme, means benefits which are not money purchase benefits (but which are calculated by reference to earnings or service of the member or any other factor other than an amount available for their provision).

(8) For the purposes of this Part an arrangement is a "hybrid arrangement" at any time if, at that time, all of the benefits that may be provided to or in respect of the member under the arrangement are, depending on the circumstances, to be of one of any two or three of the following varieties—

(a) cash balance benefits,

(b) other money purchase benefits, and

(c) defined benefits.

(9) Where not all of the benefits that may be provided under an arrangement to or in respect of the member are of the same one of those varieties of benefits, the arrangement is to be treated for the purposes of this Part as being two or three separate arrangements one of which relates to each of the two or three varieties of benefits that may be so provided.

CHAPTER 2

REGISTRATION OF PENSION SCHEMES

Registration

153 Registration of pension schemes

(1) An application may be made to the Inland Revenue for a pension scheme to be registered.

(2) The application—

(a) must contain any information which is reasonably required by the Inland Revenue in any form specified by the Board of Inland Revenue, and

(b) must be accompanied by a declaration that the application is made by the scheme administrator (see section 270) and any other declarations by the scheme administrator which are reasonably required by the Inland Revenue.

(3) The declarations which the Inland Revenue may require to accompany an application for the registration of a pension scheme include, in particular, a declaration that the instruments or agreements by which it is constituted do not entitle any person to unauthorised payments (see section 160(5)).

(4) On receipt of an application for a pension scheme to be registered the Inland Revenue must decide whether or not to register the pension scheme.

(5) The Inland Revenue's decision must be to register the pension scheme unless it appears that—

(a) any information contained in the application is incorrect, or

(b) any declaration accompanying it is false.

(6) The Inland Revenue must notify the scheme administrator of the decision on the application.

(7) Unless the Inland Revenue's decision is not to register the pension scheme, the notification must state the day on and after which the pension scheme will be a registered pension scheme.

(8) An annuity contract—

(a) by means of which benefits under a registered pension scheme have been secured, but

(b) which does not provide for the immediate payment of benefits,

is to be treated as having become a registered pension scheme on the day on which it is made.

(9) Schedule 36 contains (in Part 1) provisions treating certain pension schemes in existence immediately before 6th April 2006 as registered pension schemes (and related provisions).

154 Persons by whom registered pension scheme may be established

(1) An application to register a pension scheme may be made only if the pension scheme is an occupational pension scheme or has been established by—

(a) an insurance company (see section 275),
(b) a unit trust scheme manager,
(c) an operator, trustee or depositary of a recognised EEA collective investment scheme,
(d) an authorised open-ended investment company,
(e) a building society,
(f) a bank, or
(g) an EEA investment portfolio manager.

(2) But subsection (1) does not apply to a public service pension scheme.

(3) Section 155 defines terms used in subsection (1)(b) to (g).

(4) The Treasury may by order amend this section and section 155.

155 Persons by whom scheme may be established: supplementary

(1) This section has effect for defining terms used in section 154(1)(b) to (g).

(2) "Unit trust scheme manager" means—
(a) a person who has permission under Part 4 of FISMA 2000 to manage unit trust schemes authorised under section 243 of FISMA 2000, or
(b) a firm which has permission under paragraph 4 of Schedule 4 to FISMA 2000 (as a result of qualifying for authorisation under paragraph 2 of that Schedule: Treaty firms) to manage unit trust schemes authorised under that section.

(3) "Recognised EEA collective investment scheme" means a collective investment scheme (within the meaning given by section 235 of FISMA 2000) which is recognised by virtue of section 264 of FISMA 2000 (schemes constituted in other EEA States).

(4) "Authorised open-ended investment company" has the meaning given by section 237(3) of FISMA 2000.

(5) "Building society" means a building society within the Building Societies Act 1986 (c. 53).

(6) "Bank" means—
(a) a person falling within section 840A(1)(b) of ICTA (persons, other than building societies etc. permitted to accept deposits), or
(b) a body corporate which is a subsidiary or holding company of a person falling within section 840A(1)(b) of ICTA or is a subsidiary of the holding company of such a person.

In paragraph (b) "subsidiary" and "holding company" are to be read in accordance with section 736 of the Companies Act 1985 (c. 6) or Article 4 of the Companies (Northern Ireland) Order 1986 (S.I. 1986/1032 (N.I. 6)).

(7) "EEA investment portfolio manager" means an institution which—
(a) is an EEA firm of the kind mentioned in paragraph 5(a), (b) or (c) of Schedule 3 to FISMA 2000 (certain credit and financial institutions),
(b) qualifies for authorisation under paragraph 12(1) or (2) of that Schedule, and
(c) has permission under FISMA 2000 to manage portfolios of investments.

156 Appeal against decision not to register

(1) This section applies where, on an application for a pension scheme to be registered, the Inland Revenue's decision is not to register the pension scheme.

(2) The scheme administrator may appeal against the decision.

(3) The appeal is to the General Commissioners, except that the scheme administrator may elect (in accordance with section 46(1) of TMA 1970) to bring the appeal before the Special Commissioners instead of the General Commissioners.

(4) Paragraphs 1, 2, 8 and 9 of Schedule 3 to TMA 1970 (rules for assigning proceedings to General Commissioners) have effect to identify the General Commissioners before whom an appeal under this section is to be brought, but subject to modifications specified in an order made by the Board of Inland Revenue.

(5) An appeal under this section against a decision must be brought within the period of 30 days beginning with the day on which the scheme administrator was notified of the decision.

(6) The Commissioners before whom an appeal under this section is brought must consider whether the pension scheme ought to have been registered by the Inland Revenue.

(7) If they decide that the pension scheme ought not to have been registered by the Inland Revenue, they must dismiss the appeal.

(8) If they decide that the pension scheme ought to have been registered by the Inland Revenue, the pension scheme is to be treated as having been registered on such date as the Commissioners determine (but subject to any further appeal or any determination on, or in consequence of, a case stated).

De-registration

157 De-registration

(1) The Inland Revenue may withdraw the registration of a pension scheme.

(2) If the Inland Revenue withdraws the registration of a pension scheme the Inland Revenue must notify the scheme administrator.

(3) If there is no-one who is the scheme administrator, the Inland Revenue must instead notify any person or persons—

(a) who has or have responsibility for the discharge of any obligation relating to the pension scheme under section 271(4) (continuation of liability where no scheme administrator), section 272 (trustees etc.) or section 273 (members), and

(b) whom it is reasonably practicable for the Inland Revenue to identify.

(4) The notification must state the date on and after which the pension scheme will not be a registered pension scheme.

158 Grounds for de-registration

(1) The registration of a pension scheme may be withdrawn under section 157 only if it appears to the Inland Revenue—

(a) that the amount of the scheme chargeable payments (see section 241) made by the pension scheme during any period of 12 months exceeds the de-registration threshold,

(b) that the scheme administrator fails to pay a substantial amount of tax (or interest on tax) due from the scheme administrator by virtue of this Part,

(c) that the scheme administrator fails to provide information required to be provided to the Inland Revenue by virtue of this Part and the failure is significant,

(d) that any information contained in the application to register the pension scheme or otherwise provided to the Inland Revenue is incorrect in a material particular,

(e) that any declaration accompanying that application or the provision of other information to the Inland Revenue is false in a material particular, or

(f) that there is no scheme administrator.

(2) The amount of the scheme chargeable payments made by a pension scheme during any period of 12 months exceeds the de-registration threshold if the scheme chargeable payments percentage is 25% or more.

(3) The scheme chargeable payments percentage is—

(a) if only one scheme chargeable payment is made during the period of 12 months, the percentage of the pension fund used up on the occasion of that scheme chargeable payment, and

(b) if two or more scheme chargeable payments are made during the period of 12 months, the aggregate of the percentages of the pension fund used up on the occasion of each of those scheme chargeable payments.

(4) The percentage of the pension fund used up on the occasion of a scheme chargeable payment is—

$$\frac{SCP}{AA} \times 100$$

where—

SCP is the amount of the scheme chargeable payment, and

AA is an amount equal to the aggregate of the amount of the sums and the market value of the assets held for the purposes of the pension scheme at the time when the scheme chargeable payment is made.

(5) A failure by a scheme administrator to provide information required to be provided to the Inland Revenue by or under this Part is significant if—

(a) the amount of information which the scheme administrator fails to provide is substantial, or

(b) the failure to provide the information is likely to result in serious prejudice to the assessment or collection of tax.

159 Appeal against decision to de-register

(1) This section applies where the Inland Revenue decides to withdraw the registration of a pension scheme under section 157.

(2) The scheme administrator, or any person notified under that section of the withdrawal of registration, may appeal against the decision.

(3) The appeal is to the General Commissioners, except that the appellant may elect (in accordance with section 46(1) of TMA 1970) to bring the appeal before the Special Commissioners instead of the General Commissioners.

(4) Paragraphs 1, 2, 8 and 9 of Schedule 3 to TMA 1970 (rules for assigning proceedings to General Commissioners) have effect to identify the General Commissioners before whom an appeal under this section is to be brought, but subject to modifications specified in an order made by the Board of Inland Revenue.

(5) An appeal under this section against a decision must be brought within the period of 30 days beginning with the day on which the appellant was notified of the decision.

(6) The Commissioners before whom an appeal under this section is brought must consider whether the registration of the pension scheme ought to have been withdrawn.

(7) If they decide that the registration of the pension scheme ought to have been withdrawn, they must dismiss the appeal.

(8) If they decide that the registration of the pension scheme ought not to have been withdrawn, the pension scheme is to be treated as having remained a registered pension scheme (but subject to any further appeal or any determination on, or in consequence of, a case stated).

CHAPTER 3

PAYMENTS BY REGISTERED PENSION SCHEMES

Introductory

160 Payments by registered pension schemes

(1) The only payments which a registered pension scheme is authorised to make to or in respect of a member of the pension scheme are those specified in section 164.

(2) In this Part "unauthorised member payment" means—

(a) a payment by a registered pension scheme to or in respect of a member of the pension scheme which is not authorised by section 164, and

(b) anything which is to be treated as an unauthorised payment to or in respect of a member of the pension scheme under section 172, 173 or 174.

(3) The only payments which a registered pension scheme that is an occupational pension scheme is authorised to make to or in respect of a sponsoring employer are those specified in section 175.

(4) In this Part "unauthorised employer payment" means—

(a) a payment by a registered pension scheme that is an occupational pension scheme, to or in respect of a sponsoring employer, which is not authorised by section 175, and

(b) anything which is to be treated as an unauthorised payment to a sponsoring employer under section 181.

(5) In this Part "unauthorised payment" means—

(a) an unauthorised member payment, or

(b) an unauthorised employer payment.

(6) As well as section 157 (de-registration), the following provisions—

(a) section 208 (unauthorised payments charge),

(b) section 209 (unauthorised payments surcharge),

(c) section 239 (scheme sanction charge), and

(d) section 242 (de-registration charge),

specify consequences of making unauthorised payments.

(7) Sections 182 to 185 contain provision about amounts that a registered pension scheme is not authorised to borrow.

(8) As well as section 157, sections 239 and 242 specify consequences of unauthorised borrowing.

(9) Schedule 36 contains (in Parts 3 and 4) transitional provision about unauthorised payments.

161 Meaning of "payment" etc

(1) This section applies for the interpretation of this Chapter.

(2) "Payment" includes a transfer of assets and any other transfer of money's worth.

(3) Subsection (4) applies to a payment made or benefit provided under or in connection with an investment (including an insurance contract or annuity) acquired using sums or assets held for the purposes of a registered pension scheme.

(4) The payment or benefit is to be treated as made or provided from sums or assets held for the purposes of the pension scheme, even if the pension scheme has been wound up since the investment was acquired.

(5) A payment made by a registered pension scheme to a person who—

(a) is connected with a member or sponsoring employer (or was connected with a member at the date of the member's death), and

(b) is not a member or sponsoring employer,

is to be treated as made in respect of the member or sponsoring employer.

(6) Any asset held by a person connected with a member or sponsoring employer (or who was connected with a member at the date of the member's death) is to be treated as held for the benefit of the member or sponsoring employer.

(7) Any increase in the value of an asset held by, or reduction in the liability of, a person connected with a member or sponsoring employer (or who was connected with a member at the date of the member's death) is to be treated as an increase or reduction for the benefit of the member or sponsoring employer.

(8) Section 839 of ICTA (connected persons) applies for the purposes of this section.

162 Meaning of "loan"

(1) This section applies for the interpretation of this Chapter.

(2) "Loan" does not include the purchase of or subscription to debentures, debenture stock, loan stock, bonds, certificates of deposit or other instruments creating or acknowledging indebtedness which are—

(a) listed or dealt in on a recognised stock exchange (within the meaning of section 841 of ICTA), or

(b) offered to the public.

(3) A guarantee of a loan made to or in respect of a member or sponsoring employer of a registered pension scheme is to be treated as a loan to or in respect of the member or sponsoring employer of an amount equal to the amount guaranteed.

(4) If a member or sponsoring employer of a registered pension scheme—

(a) is liable to pay a debt, the right to payment of which constitutes an asset held for the purposes of the pension scheme, but

(b) is not required to pay it by the relevant date,

the debt is to be treated as a loan made by the pension scheme to the member or sponsoring employer on that date.

(5) The relevant date is the date by which a person at arm's length from the pension scheme might be expected to be required to pay the debt.

163 Meaning of "borrowing" etc

(1) This section applies for the interpretation of this Chapter.

(2) Borrowing is borrowing by a registered pension scheme if the amount borrowed is to be repaid from sums or assets held for the purposes of the pension scheme.

(3) A liability is a liability of a registered pension scheme if the liability is to be met from sums or assets held for the purposes of the pension scheme.

(4) Borrowing by a registered pension scheme is in respect of an arrangement if it is properly attributable to the arrangement in accordance with the provisions of the pension scheme and any just and reasonable apportionment.

Authorised member payments

164 Authorised member payments

The only payments a registered pension scheme is authorised to make to or in respect of a member of the pension scheme are—

(a) pensions permitted by the pension rules or the pension death benefit rules (see sections 165 and 167),

(b) lump sums permitted by the lump sum rule or the lump sum death benefit rule (see sections 166 and 168),

(c) recognised transfers (see section 169),

(d) scheme administration member payments (see section 171),
(e) payments pursuant to a pension sharing order or provision, and
(f) payments of a description prescribed by regulations made by the Board of Inland Revenue.

165 Pension rules

(1) These are the rules relating to the payment of pensions by a registered pension scheme to a member of the pension scheme ("the pension rules").

Pension rule 1

No payment of pension may be made before the day on which the member reaches normal minimum pension age, unless the ill-health condition was met immediately before the member became entitled to a pension under the pension scheme.

Pension rule 2

If the member dies before the end of the period of ten years beginning with the day on which the member became entitled to a scheme pension, an annuity or alternatively secured pension, payment of the scheme pension, annuity or alternatively secured pension may continue to be made (to any person) until the end of that period.

But no other payment of the member's pension may be made after the member's death.

Pension rule 3

No payment of pension other than a scheme pension may be made in respect of a defined benefits arrangement.

Pension rule 4

If the member has not reached the age of 75, no payment of pension other than—

(a) a scheme pension,
(b) a lifetime annuity, or
(c) unsecured pension,

may be made in respect of a money purchase arrangement; but a scheme pension may only be paid if the member had an opportunity to select a lifetime annuity instead.

Pension rule 5

The total amount of unsecured pension paid in each unsecured pension year in respect of a money purchase arrangement must not exceed 120% of the basis amount for the unsecured pension year.

Pension rule 6

If the member has reached the age of 75, no payment of pension other than—

(a) a scheme pension,
(b) a lifetime annuity, or
(c) alternatively secured pension,

may be made in respect of a money purchase arrangement; but a scheme pension may only be paid if the member had an opportunity to select a lifetime annuity instead.

Pension rule 7

The total amount of alternatively secured pension paid in each alternatively secured pension year in respect of a money purchase arrangement must not exceed 70% of the basis amount for the alternatively secured pension year.

(2) In this Part "pension", in relation to a registered pension scheme, includes—

(a) an annuity, and

(b) income withdrawal.

(3) For the purposes of this Part, a person becomes entitled to a pension under a registered pension scheme—

(a) in the case of income withdrawal under the pension scheme, whenever sums or assets held for the purposes of an arrangement under the pension scheme are designated as available for the payment of unsecured pension, and

(b) in any other case, when the person first acquires an actual (rather than a prospective) right to receive the pension.

(4) Part 1 of Schedule 28 gives the meaning of expressions used in the pension rules.

166 Lump sum rule

(1) This is the rule relating to the payment of lump sums by a registered pension scheme to a member of the pension scheme ("the lump sum rule").

Lump sum rule

No lump sum may be paid other than—

(a) a pension commencement lump sum,

(b) a serious ill-health lump sum,

(c) a short service refund lump sum,

(d) a refund of excess contributions lump sum,

(e) a trivial commutation lump sum,

(f) a winding-up lump sum, or

(g) a lifetime allowance excess lump sum.

(2) For the purposes of this Part, a person becomes entitled to a lump sum under a registered pension scheme—

(a) in the case of a pension commencement lump sum, immediately before the person becomes entitled to the pension in connection with which it is paid, and

(b) in any other case, when the person acquires an actual (rather than a prospective) right to receive the lump sum.

(3) Part 1 of Schedule 29 gives the meaning of expressions used in the lump sum rule.

(4) Schedule 36 contains (in Part 3) transitional provisions about lump sums.

167 Pension death benefit rules

(1) These are the rules relating to the payment of pension death benefits by a registered pension scheme in respect of a member of the pension scheme ("the pension death benefit rules").

Pension death benefit rule 1

No payment of pension death benefit may be made otherwise than to a dependant of the member.

Pension death benefit rule 2

No payment of pension death benefit other than a dependants' scheme pension may be made in respect of a defined benefits arrangement.

Pension death benefit rule 3

If a dependant has not reached the age of 75, no payment of pension death benefit to the dependant other than—

(a) a dependants' scheme pension,

(b) a dependants' annuity, or

(c) dependants' unsecured pension,

may be made to the dependant in respect of a money purchase arrangement; but a dependants' scheme pension may only be paid if the member or dependant had an opportunity to select a dependants' annuity instead.

Pension death benefit rule 4

The total amount of dependants' unsecured pension paid to a dependant in each unsecured pension year in respect of a money purchase arrangement must not exceed 120% of the basis amount for the unsecured pension year.

Pension death benefit rule 5

If a dependant has reached the age of 75, no payment of pension other than—

(a) a dependants' scheme pension,

(b) a dependants' annuity, or

(c) dependants' alternatively secured pension,

may be made to the dependant in respect of a money purchase arrangement; but a dependants' scheme pension may only be paid if the member or dependant had an opportunity to select a dependants' annuity instead.

Pension death benefit rule 6

The total amount of dependants' alternatively secured pension paid to a dependant in each alternatively secured pension year in respect of a money purchase arrangement must not exceed 70% of the basis amount for the alternatively secured pension year.

(2) "Pension death benefit" means a pension payable on the death of the member (other than a member's pension payable after the member's death under pension rule 2: see section 165).

(3) Part 2 of Schedule 28 gives the meaning of expressions used in the pension death benefit rules.

168 Lump sum death benefit rule

(1) This is the rule relating to the payment of lump sum death benefits by a registered pension scheme in respect of a member of the pension scheme ("the lump sum death benefit rule").

Lump sum death benefit rule

No lump sum death benefit may be paid other than—

(a) a defined benefits lump sum death benefit,

(b) a pension protection lump sum death benefit,

(c) an uncrystallised funds lump sum death benefit,

(d) an annuity protection lump sum death benefit,

(e) an unsecured pension fund lump sum death benefit,
(f) a charity lump sum death benefit,
(g) a transfer lump sum death benefit,
(h) a trivial commutation lump sum death benefit, or
(i) a winding-up lump sum death benefit.

(2) In this Part "lump sum death benefit" means a lump sum payable on the death of the member.

(3) Part 2 of Schedule 29 gives the meaning of expressions used in the lump sum death benefit rule.

(4) Schedule 36 contains (in Part 3) transitional provision about lump sum death benefits.

169 Recognised transfers

(1) A "recognised transfer" is a transfer of sums or assets held for the purposes of, or representing accrued rights under, a registered pension scheme so as to become held for the purposes of, or to represent rights under—
(a) another registered pension scheme, or
(b) a qualifying recognised overseas pension scheme,
in connection with a member of that pension scheme.

(2) For the purposes of this Part a recognised overseas pension scheme is a qualifying recognised overseas pension scheme if—
(a) the scheme manager has given to the Inland Revenue notification that it is a recognised overseas pension scheme and has provided any such evidence that it is a recognised overseas pension scheme as the Inland Revenue may require,
(b) the scheme manager has undertaken to the Inland Revenue to inform the Inland Revenue if it ceases to be a recognised overseas pension scheme,
(c) the scheme manager has undertaken to the Inland Revenue to comply with any prescribed information requirements imposed on the scheme manager, and
(d) the recognised overseas pension scheme is not excluded from being a qualifying recognised overseas pension scheme by subsection (5).

(3) In this Part "scheme manager", in relation to a pension scheme, means the person or persons administering, or responsible for the management of, the pension scheme.

(4) In this section "prescribed information requirements" means—
(a) requirements imposed by or under regulations made by the Board of Inland Revenue to provide to the Inland Revenue any information of a description prescribed by regulations so made, and
(b) requirements specified by regulations so made to provide information to an authority so specified in circumstances so specified.

(5) A recognised overseas pension scheme is excluded from being a qualifying recognised overseas pension scheme by this subsection if the Inland Revenue has decided that—
(a) there has been a failure to comply with any prescribed information requirements imposed on the scheme manager and the failure is significant, and
(b) by reason of the failure it is not appropriate that transfers of sums or assets held for the purposes of, or representing accrued rights under, registered pension

schemes so as to become held for the purposes of, or to represent rights under, the recognised overseas pension scheme should be recognised transfers,

and has notified the person or persons appearing to be the scheme manager of that decision (but subject to subsection (7) and section 170).

(6) A failure to comply with prescribed information requirements imposed on the scheme manager is significant if—

(a) the amount of the information which has not been provided is substantial, or

(b) the failure to provide the information is likely to result in serious prejudice to the assessment or collection of tax.

(7) The Inland Revenue—

(a) may at any time after a recognised overseas pension scheme becomes excluded from being a qualifying recognised overseas pension scheme decide that the pension scheme is to cease to be so excluded, and

(b) must notify the scheme manager of the decision.

170 Appeal against decision to exclude recognised overseas pension scheme

(1) This section applies where a recognised overseas pension scheme is excluded from being a qualifying recognised overseas pension scheme by a decision of the Inland Revenue under section 169(5).

(2) The scheme manager may appeal against the decision.

(3) The appeal is to the General Commissioners, except that the scheme manager may elect (in accordance with section 46(1) of TMA 1970) to bring the appeal before the Special Commissioners instead of the General Commissioners.

(4) Paragraphs 1, 2, 8 and 9 of Schedule 3 to TMA 1970 (rules for assigning proceedings to General Commissioners) have effect to identify the General Commissioners before whom an appeal under this section is to be brought, but subject to modifications specified in an order made by the Board of Inland Revenue.

(5) An appeal under this section against a decision must be brought within the period of 30 days beginning with the day on which the notification of the decision was given.

(6) The Commissioners before whom an appeal under this section is brought must consider whether the recognised overseas pension scheme ought to have been excluded from being a qualifying recognised overseas pension scheme.

(7) If they decide that the recognised overseas pension scheme ought to have been excluded from being a qualifying recognised overseas pension scheme, they must dismiss the appeal.

(8) If they decide that the recognised overseas pension scheme ought not to have been excluded from being a qualifying recognised overseas pension scheme, the recognised overseas pension scheme is to be treated as having remained a qualifying recognised overseas pension scheme (but subject to any further appeal or any determination on, or in consequence of, a case stated).

171 Scheme administration member payments

(1) A "scheme administration member payment" is a payment by a registered pension scheme to or in respect of a member of the pension scheme which is made for the purposes of the administration or management of the pension scheme.

(2) But if a payment falling within subsection (1) exceeds the amount which might be expected to be paid to a person who was at arm's length, the excess is not a scheme administration member payment.

(3) Scheme administration member payments include in particular—

(a) the payment of wages, salaries or fees to persons engaged in administering the pension scheme, and

(b) payments made for the purchase of assets to be held for the purposes of the pension scheme.

(4) A loan to or in respect of a member of the pension scheme is not a scheme administration member payment.

(5) Regulations made by the Board of Inland Revenue may provide that payments of a description specified in the regulations are, or are not, scheme administration member payments.

Unauthorised member payments

172 Assignment

(1) Subsection (2) applies if a member of a registered pension scheme (or the member's personal representatives) assigns or agrees to assign any benefit, other than an excluded pension, to which the member has an actual or prospective entitlement under the pension scheme.

(2) Unless the assignment or agreement is pursuant to a pension sharing order or provision, the pension scheme is to be treated as making an unauthorised payment to the member (or to the member's personal representatives in respect of the member).

(3) Subsection (4) applies if a person (or a person's personal representatives) assigns or agrees to assign any benefit, other than an excluded pension, to which the person has an actual or prospective entitlement under a registered pension scheme in respect of a member of the pension scheme.

(4) Unless the assignment or agreement is pursuant to a pension sharing order or provision, the pension scheme is to be treated as making an unauthorised payment to the person (or the person's personal representatives) in respect of the member.

(5) The amount of the unauthorised payment is the greater of—

(a) the consideration received in respect of the assignment or agreement, and

(b) the consideration which might be expected to be received in respect of the assignment or agreement if the parties to the transaction were at arm's length.

(6) Where a pension scheme is treated by this section as having made an unauthorised payment in relation to an assignment (or an agreement to assign), payments by the pension scheme of the benefit assigned (or agreed to be assigned) are not unauthorised payments.

(7) An excluded pension is a pension which under pension rule 2 may continue to be paid after the member's death (see section 165).

(8) "Assignment" includes assignation and related expressions are to be read accordingly.

173 Benefits

(1) A registered pension scheme is to be treated as having made an unauthorised payment to a member of the pension scheme if an asset held for the purposes of the pension scheme is used to provide a benefit (other than a payment) to—

(a) the member, or

(b) a member of the member's family or household.

(2) If the benefit is received by reason of an employment which is not an excluded employment, subsection (1) does not apply.

(3) If the benefit is received by reason of an excluded employment, subsection (1) only applies if—

(a) it is a benefit to which Chapter 6 or 10 of the benefits code (cars and vans, and benefits not dealt with elsewhere in benefits code) would apply if the employment were not an excluded employment,

(b) the pension scheme is an occupational pension scheme, and

(c) the member, or a member of the member's family or household, is a director of, and has a material interest in, a sponsoring employer.

(4) A registered pension scheme is to be treated as having made an unauthorised payment in respect of a member of the pension scheme if, after the member's death, an asset held for the purposes of the pension scheme is used to provide a benefit (other than a payment) to a person who, at the date of the member's death, was a member of the member's family or household.

(5) The person who receives the benefit is to be treated as having received the unauthorised payment.

(6) If the benefit is received by reason of an employment which is not an excluded employment, subsections (4) and (5) do not apply.

(7) If the benefit is received by reason of an excluded employment, subsections (4) and (5) only apply if—

(a) paragraphs (a) and (b) of subsection (3) apply, and

(b) at the date of the member's death the member, or a member of the member's family or household, was a director of, and had a material interest in, a sponsoring employer.

(8) The amount of an unauthorised payment treated as having been made by this section—

(a) in relation to such benefits, and in such circumstances, as may be prescribed by regulations made by the Board of Inland Revenue, is an amount determined in accordance with the regulations, and

(b) otherwise, is the amount which would be the cash equivalent of the benefit under the benefits code if the benefit were received by reason of an employment and the benefits code applied to it.

(9) For the purposes of subsection (8)—

(a) references in the benefits code to the employee are to be treated as references to the member, and

(b) references in the benefits code to the employer are to be treated as references to the pension scheme.

(10) In this section—

"the benefits code" has the meaning given by section 63(1) of ITEPA 2003,

"director" has the meaning given by section 67 of that Act,

"excluded employment" has the meaning given by section 63(4) of that Act, and

"material interest" has the meaning given by section 68 of that Act.

(11) Section 721 of ITEPA 2003 applies for the purposes of determining the members of a person's family or household.

174 Value shifting

(1) A registered pension scheme is to be treated as having made an unauthorised payment to a member of the pension scheme if, in connection with any of the events mentioned in subsection (3) or a change in the value of a currency—

(a) the value of an asset held for the purposes of the pension scheme is reduced or a liability of the pension scheme is increased, and

(b) the value of an asset held by or for the benefit of the member is increased, a liability of the member is reduced, or a liability of another person is reduced for the benefit of the member.

(2) But if the event or the change in the value of the currency occurs after the member's death—

(a) the pension scheme is to be treated as having made an unauthorised payment in respect of the member (rather than to the member), and

(b) the person who holds the asset or is subject to the liability in relation to which subsection (1)(b) is satisfied is to be treated as having received the unauthorised payment.

(3) The events are—

(a) the creation, alteration, release or extinction of any power, right, option or liability relating to assets held for the purposes of the pension scheme (whether or not provided for in the terms on which the asset is acquired or held),

(b) the creation, alteration, release or extinction of any power, right or option relating to a liability of the pension scheme (whether or not provided for in the terms on which the liability is incurred),

(c) the exercise of, or failure to exercise, any power, right or option in relation to assets held for the purposes of the pension scheme or a liability of the pension scheme, or

(d) the exercise of, or failure to exercise, any power, right or option which constitutes an asset held for the purposes of the pension scheme,

in a way which differs from that which might be expected if the parties to the transaction were at arm's length.

(4) The amount of the unauthorised payment is the amount by which the reduction in value of the asset held for the purposes of the pension scheme, or the increase in the

liability of the pension scheme, exceeds that which might be expected if the parties to the transaction were at arm's length.

(5) Regulations made by the Board of Inland Revenue may make provision as to how the excess is to be calculated in relation to events of a description specified in the regulations (including provision as to the times at which the asset or liability is to be valued).

Authorised employer payments

175 Authorised employer payments

The only payments which a registered pension scheme that is an occupational pension scheme is authorised to make to or in respect of a sponsoring employer are—

(a) public service scheme payments (see section 176),
(b) authorised surplus payments (see section 177),
(c) compensation payments (see section 178),
(d) authorised employer loans (see section 179),
(e) scheme administration employer payments (see section 180), and
(f) payments of a description prescribed by regulations made by the Board of Inland Revenue.

176 Public service scheme payment

A payment is a public service scheme payment if—

(a) it is made by a public service pension scheme, and
(b) it is not of a description prescribed by regulations made by the Board of Inland Revenue.

177 Authorised surplus payment

For the purposes of this Part a payment is an authorised surplus payment if it is of a description prescribed by regulations made by the Board of Inland Revenue.

178 Compensation payments

A payment is a compensation payment if it is made in respect of a member's liability to a sponsoring employer in respect of a criminal, fraudulent or negligent act or omission by the member.

179 Authorised employer loan

(1) A loan made to or in respect of a sponsoring employer is an authorised employer loan if—

(a) the amount loaned does not exceed an amount equal to 50% of the aggregate of the amount of the sums, and the market value of the assets, held for the purposes of the pension scheme immediately before the loan is made,
(b) the loan is secured by a charge which is of adequate value, and
(c) the repayment terms comply with subsection (2).

(2) The repayment terms comply with this subsection if—

(a) the rate of interest payable on the loan is not less than the rate prescribed by regulations made by the Board of Inland Revenue,

(b) the loan repayment date is before the end of the period of five years beginning with the date on which the loan is made, or has been postponed to a date after the end of that period under subsection (3), and

(c) the amount payable in each period beginning with the date on which the loan is made, and ending with the last day of a loan year, is not less than the required amount.

(3) If on a standard loan repayment date any amount (including interest) is owing, the loan repayment date may be postponed to a date before the end of the period of five years beginning with the standard loan repayment date.

(4) The loan repayment date may be postponed under subsection (3) only once.

(5) If the amount of a loan to or in respect of a sponsoring employer is increased, the amount of the increase is to be treated as a loan made on the date of the increase.

(6) Schedule 30 gives the meaning of expressions used in this section and explains how to calculate the amount of the unauthorised payment when a loan to or in respect of a sponsoring employer does not comply with subsection (1).

(7) In this section and that Schedule "charge" includes a right in security or an agreement to create a right in security; and any reference to assets subject to a charge or assets charged includes a reference to the property over which such a right is granted.

(8) Schedule 36 contains (in Part 4) transitional provision about loans to sponsoring employers.

180 Scheme administration employer payments

(1) A "scheme administration employer payment" is a payment made—

(a) by a registered pension scheme that is an occupational pension scheme, and

(b) to or in respect of a sponsoring employer,

for the purposes of the administration or management of the pension scheme.

(2) But if a payment falling within subsection (1) exceeds the amount which might be expected to be paid to a person who was at arm's length, the excess is not a scheme administration employer payment.

(3) Scheme administration employer payments include in particular—

(a) the payment of wages, salaries or fees to persons engaged in administering the pension scheme, and

(b) payments made for the purchase of assets to be held for the purposes of the pension scheme.

(4) A loan to or in respect of a sponsoring employer is not a scheme administration employer payment.

(5) Payments made to acquire shares in a sponsoring employer are not scheme administration employer payments if, when the payment is made—

(a) the market value of shares in the sponsoring employer held for the purposes of the pension scheme is equal to or greater than 5% of the aggregate of the

amount of the sums, and the market value of the assets, held for the purposes of the pension scheme, or

(b) the total market value of shares in sponsoring employers held for the purposes of the pension scheme is equal to or greater than 20% of the aggregate of the amount of the sums, and the market value of the assets, held for the purposes of the pension scheme.

(6) Regulations made by the Board of Inland Revenue may provide that payments of a description specified in the regulations are, or are not, scheme administration employer payments.

Unauthorised employer payments

181 Value shifting

(1) A registered pension scheme that is an occupational pension scheme is to be treated as having made an unauthorised payment to a sponsoring employer if, in connection with any of the events mentioned in subsection (2) or a change in the value of a currency—

(a) the value of an asset held for the purposes of the pension scheme is reduced or a liability of the pension scheme is increased, and

(b) the value of an asset held by or for the benefit of the sponsoring employer is increased, a liability of the sponsoring employer is reduced, or a liability of another person is reduced for the benefit of the sponsoring employer.

(2) The events are—

(a) the creation, alteration, release or extinction of any power, right, option or liability relating to assets held for the purposes of the pension scheme (whether or not provided for in the terms on which the asset is acquired or held),

(b) the creation, alteration, release or extinction of any power, right or option relating to a liability of the pension scheme (whether or not provided for in the terms on which the liability is incurred),

(c) the exercise of, or failure to exercise, any power, right or option in relation to assets held for the purposes of the pension scheme or a liability of the pension scheme, or

(d) the exercise of, or failure to exercise, any power, right or option which constitutes an asset held for the purposes of the pension scheme,

in a way which differs from that which might be expected if the parties to the transaction were at arm's length.

(3) The amount of the unauthorised payment is the amount by which the reduction in value of the asset held for the purposes of the pension scheme, or the increase in the liability of the pension scheme, exceeds that which might be expected if the parties to the transaction were at arm's length.

(4) Regulations made by the Board of Inland Revenue may make provision as to how the excess is to be calculated in relation to events of a description specified in the regulations (including provision as to the times at which the asset or liability is to be valued).

Borrowing

182 Unauthorised borrowing: money purchase arrangements

(1) A registered pension scheme is not authorised to borrow an amount in respect of a money purchase arrangement unless the arrangement borrowing condition is met.

(2) The arrangement borrowing condition is met if—

$$(APB + PB) < \frac{VA}{2}$$

where—

APB is the aggregate of the amounts previously borrowed in respect of the arrangement (excluding any amounts which have been repaid),

PB is the amount proposed to be borrowed in respect of the arrangement, and

VA is the value of the arrangement.

(3) The value of the arrangement is the aggregate of—

(a) the amount of such of the sums and the market value of such of the assets as represent the member's unsecured pension fund or alternatively secured pension fund in respect of the arrangement (if any),

(b) the amount of such of the sums and the market value of such of the assets as represent dependants' unsecured pension funds or alternatively secured pension funds in respect of the arrangement (if any),

(c) the aggregate of the value of each scheme pension or dependants' scheme pension payable in respect of the arrangement, and

(d) the value of the uncrystallised rights under the arrangement.

(4) The value of a scheme pension or dependants' scheme pension payable in respect of the arrangement is—

$$RVF \times ARP$$

where—

RVF is the relevant valuation factor (see section 276), and

ARP is the annual rate at which the pension is payable.

(5) Rights are uncrystallised if no-one has become entitled to the present payment of benefits in respect of the rights; and a person is to be treated as entitled to the present payment of benefits in respect of the sums and assets representing the person's unsecured pension fund or alternatively secured pension fund.

(6) If the arrangement is a cash balance arrangement, the value of the uncrystallised rights under the arrangement is the amount which would, on the valuation assumptions (see section 277), be available for the provision of benefits in respect of those rights if a person became entitled to benefits in respect of those rights.

(7) If the arrangement is a money purchase arrangement other than a cash balance arrangement, the value of the uncrystallised rights under the arrangement is the aggregate of the amount of such of the sums, and the market value of such of the assets, held for the purposes of the arrangement as represent those rights.

(8) If the arrangement is a hybrid arrangement under which either cash balance benefits or other money purchase benefits (but not defined benefits) may be provided, the value of the uncrystallised rights under the arrangement is the greater of—

(a) their value calculated under subsection (6) (on the assumption that cash balance benefits are provided), and

(b) their value calculated under subsection (7) (on the assumption that other money purchase benefits are provided).

183 Effect of unauthorised borrowing: money purchase arrangements

(1) Subsection (2) applies if a registered pension scheme borrows in respect of a money purchase arrangement an amount which it is not authorised to borrow under section 182.

(2) The pension scheme is to be treated as having made a scheme chargeable payment—

(a) if subsection (3) applies, of an amount calculated in accordance with subsection (4), and

(b) otherwise, of the amount borrowed.

(3) This subsection applies if, immediately before the amount is borrowed—

$$APB < \frac{VA}{2}$$

(4) If subsection (3) applies, the amount of the scheme chargeable payment is—

$$APB + AB - \frac{VA}{2}$$

(5) In subsections (3) and (4)—

APB is the aggregate of the amounts previously borrowed in respect of the arrangement (excluding any amounts which have been repaid),

AB is the amount borrowed, and

VA is the value of the arrangement, calculated in accordance with section 182(3), immediately before the amount is borrowed.

184 Unauthorised borrowing: other arrangements

(1) A registered pension scheme is not authorised to borrow an amount in respect of any arrangement which is not a money purchase arrangement unless the scheme borrowing condition is met.

(2) The scheme borrowing condition is met if—

$$(APB + PB) < \frac{AARA}{2}$$

where—

APB is the aggregate of the amounts previously borrowed by the pension scheme in respect of arrangements which are not money purchase arrangements (excluding any amounts which have been repaid),

PB is the amount proposed to be borrowed by the pension scheme, and

AARA is the aggregate amount of the relevant sums and assets.

(3) The aggregate amount of the relevant sums and assets is the aggregate of—

(a) the amount of the sums held for the purposes of such of the arrangements under the pension scheme as are not money purchase arrangements, and

(b) the market value of the assets held for the purposes of such of the arrangements under the pension scheme as are not money purchase arrangements.

185 Effect of unauthorised borrowing: other arrangements

(1) Subsection (2) applies if a registered pension scheme borrows, in respect of an arrangement which is not a money purchase arrangement, an amount which it is not authorised to borrow under section 184.

(2) The pension scheme is to be treated as having made a scheme chargeable payment—

(a) if subsection (3) applies, of an amount calculated in accordance with subsection (4), and

(b) otherwise, of the amount borrowed.

(3) This subsection applies if, immediately before the amount is borrowed—

$$APB < \frac{AARA}{2}$$

(4) If subsection (3) applies, the amount of the scheme chargeable payment is—

$$APB + AB - \frac{AARA}{2}$$

(5) In subsections (3) and (4)—

APB is the aggregate of the amounts previously borrowed by the pension scheme in respect of arrangements which are not money purchase arrangements (excluding any amounts which have been repaid),

AB is the amount borrowed, and

AARA is the aggregate amount of the relevant sums and assets, calculated in accordance with section 184(3), immediately before the amount is borrowed.

CHAPTER 4

REGISTERED PENSION SCHEMES: TAX RELIEFS AND EXEMPTIONS

Scheme investments

186 Income

(1) No liability to income tax arises in respect of—

(a) income derived from investments or deposits held for the purposes of a registered pension scheme, or

(b) underwriting commissions applied for the purposes of a registered pension scheme which would otherwise be chargeable to tax under Case VI of Schedule D.

(2) The exemption provided by subsection (1) does not apply to income derived from investments or deposits held as a member of a property investment LLP; and for this purpose "income" includes relevant stock lending fees, in relation to any investments, to which subsection (1) would apply by virtue of section 129B of ICTA (inclusion of relevant stock lending fees in income).

(3) In this Part "investments", in relation to a registered pension scheme, includes futures contracts and options contracts; and income derived from transactions relating to futures contracts or options contracts is to be treated as derived from the contracts.

(4) For that purpose a contract is not prevented from being a futures contract or an options contract by the fact that a party is or may be entitled to receive or liable to make, or entitled to receive and liable to make, only a payment of a sum (as opposed to a transfer of assets) in full settlement of all obligations.

187 Chargeable gains

(1) Section 271 of TCGA 1992 (exemptions) is amended as follows.

(2) In paragraph (b) of subsection (1), for the words after "part of" substitute "the Fund mentioned in section 613(4) of the Taxes Act (House of Commons Members' Fund);".

(3) In subsection (1), omit—

(a) paragraph (d) (retirement annuity contracts),

(b) paragraph (g) (exempt approved schemes),

(c) paragraph (h) (approved personal pension schemes), and

(d) paragraph (j) (authorised unit trusts which are also approved personal pension schemes or exempt approved schemes),

and the second sentence.

(4) After that subsection insert—

"(1A) A gain accruing to a person on a disposal of investments held for the purposes of a registered pension scheme is not a chargeable gain."

(5) Omit subsection (2) (superannuation funds approved before 6th April 1980).

(6) In subsection (10)—

(a) for "subsections (1)(g) and (h) and (2)" substitute "subsection (1A)", and

(b) omit the words after "options contracts".

(7) In subsection (12), for "Subsection (1)(b), (c), (d), (g) and (h) and subsection (2)" substitute "Subsections (1)(b) and (c) and (1A)".

Members' contributions

188 Relief for contributions

(1) An individual who is an active member of a registered pension scheme is entitled to relief under this section in respect of relievable pension contributions paid during a tax year if the individual is a relevant UK individual for that year.

(2) In this Part "relievable pension contributions", in relation to an individual and a pension scheme, means contributions by or on behalf of the individual under the pension scheme other than contributions to which subsection (3) applies.

(3) This subsection applies to—

(a) any contributions paid after the individual has reached the age of 75,

(b) any contributions paid by an employer of the individual (as to which see sections 196 to 201), and

(c) any amounts paid by the Board of Inland Revenue under section 42A(3) or 43 of the Pension Schemes Act 1993 (c. 48) or section 38A(3) or 39 of the Pension Schemes (Northern Ireland) Act 1993 (c. 49) (rebates and minimum contributions).

(4) For the purposes of this Part a pension credit which increases the rights of the individual under the pension scheme is only to be treated as a contribution on behalf of the individual if it derives from a pension scheme that is not a registered pension scheme.

(5) For the purposes of this Part—

(a) any other transfer of any sum held for the purposes of, or representing accrued rights under, a pension scheme so as to become held for the purposes of, or to represent rights under, another pension scheme, and

(b) any transfer lump sum death benefit,

is not to be treated as a contribution.

(6) Any amount recovered by the individual's employer under regulations made under—

(a) section 8(3) of the Pension Schemes Act 1993 (recovery of minimum payments), or

(b) section 4(3) of the Pension Schemes (Northern Ireland) Act 1993, (corresponding provision for Northern Ireland),

in respect of minimum payments made to a registered pension scheme is to be treated for the purposes of this section (and sections 191 to 194) as a contribution paid by the individual under the pension scheme.

(7) References in the Income Tax Acts to relief in respect of life assurance premiums do not include relief under this section.

(8) The following sections make further provision about relief under this section—

section 189 (relevant UK individual),

section 190 (annual limit for relief),

sections 191 to 194 (methods of giving relief), and

section 195 (transfer of certain shares to be treated as payment of contribution).

189 Relevant UK individual

(1) For the purposes of this Part an individual is a relevant UK individual for a tax year if—

(a) the individual has relevant UK earnings chargeable to income tax for that year,

(b) the individual is resident in the United Kingdom at some time during that year,

(c) the individual was resident in the United Kingdom both at some time during the five tax years immediately before that year and when the individual became a member of the pension scheme, or

(d) the individual, or the individual's spouse, has for the tax year general earnings from overseas Crown employment subject to UK tax.

(2) In this Part "relevant UK earnings" means—

(a) employment income,

(b) income which is chargeable under Schedule D and is immediately derived from the carrying on or exercise of a trade, profession or vocation (whether individually or as a partner acting personally in a partnership), and

(c) income to which section 529 of ICTA (patent income of an individual in respect of inventions) applies.

(3) For the purposes of this section and section 190 relevant UK earnings are to be treated as not being chargeable to income tax if, in accordance with arrangements having effect by virtue of section 788 of ICTA (double taxation agreements), they are not taxable in the United Kingdom.

(4) "General earnings from overseas Crown employment subject to UK tax" has the meaning given by section 28 of ITEPA 2003.

190 Annual limit for relief

(1) The maximum amount of relief to which an individual is entitled under section 188 (relief for contributions) for a tax year is (subject as follows) the amount of the individual's relevant UK earnings which are chargeable to income tax for the tax year.

(2) If the amount of the individual's relevant UK earnings which are chargeable to income tax for the tax year is less than the basic amount, the maximum amount of relief to which the individual is entitled under section 188 for the tax year is increased by the difference between—

(a) the amount of the individual's relevant UK earnings which are so chargeable, and

(b) the basic amount,

(so that, if the individual has no relevant UK earnings which are so chargeable, the maximum amount of such relief is the basic amount).

(3) Subsection (2) is subject to section 191(7) (limit on methods of giving relief to which individual is entitled by virtue of subsection (2)).

(4) "The basic amount" is £3,600 or such greater amount as the Treasury may by order specify.

(5) Subsections (1) and (2) do not apply in relation to any amount of relief to which an individual is entitled under section 188 in respect of any amount recovered by the individual's employer under regulations made under—

(a) section 8(3) of the Pension Schemes Act 1993 (c. 48) (recovery of minimum payments), or

(b) section 4(3) of the Pension Schemes (Northern Ireland) Act 1993 (c. 49) (corresponding provision for Northern Ireland).

191 Methods of giving relief

(1) Relief to which an individual is entitled under section 188 (relief for contributions) in respect of contributions is to be given as provided by this section.

(2) Subject as follows, the relief is to be given in accordance with section 192 (relief at source).

(3) Subject to subsection (7), relief in respect of contributions under a pension scheme made by a member of the pension scheme may (instead of being given in accordance with section 192) be given in accordance with section 193 (relief under net pay arrangements) if—

(a) the pension scheme is an occupational pension scheme,

(b) the member is an employee of a sponsoring employer, and

(c) relief in respect of contributions made under the pension scheme by all of the other members of the pension scheme who are employees of the sponsoring employer is given in accordance with that section.

(4) Subject to subsection (7), relief in respect of contributions under a pension scheme made by a member of the pension scheme may (instead of being given in accordance with section 192) be given in accordance with section 193 if—

(a) the pension scheme is a public service pension scheme or marine pilots' benefits fund, and

(b) the member is an employee.

(5) Subject to subsection (7), subsection (6) applies where—

(a) contributions are made under a public service pension scheme or marine pilots' benefit fund by a member who is not an employee, or

(b) contributions are made otherwise than by a member of the pension scheme under a net pay pension scheme.

(6) Relief in respect of the contributions—

(a) may (but need not) be given in accordance with section 192, but

(b) where not so given, is to be given in accordance with section 194 (relief on making of claim).

(7) Relief to which an individual is entitled by virtue of section 190(2)—

(a) may only be given in accordance with section 192, and

(b) is not required to be given in respect of contributions under a net pay pension scheme.

(8) In this section "marine pilots' benefits fund" means—

(a) a fund established under section 15(1)(i) of the Pilotage Act 1983 (c. 21), or

(b) any scheme supplementing or replacing such a fund.

(9) In this Part "net pay pension scheme" means a pension scheme in the case of which some or all of the members of the pension scheme are entitled to be given relief in accordance with section 193 in respect of the payment of contributions by them under the pension scheme.

(10) Schedule 36 contains (in Part 4) transitional provision about relief in respect of contributions to pre-commencement retirement annuity contracts.

192 Relief at source

(1) Where an individual is entitled to be given relief in accordance with this section in respect of the payment of a contribution under a pension scheme, the individual or

other person by whom the contribution is paid is entitled, on making the payment, to deduct and retain out of it a sum equal to income tax on the contribution at the basic rate for the tax year in which the payment is made.

(2) If a sum is deducted from the payment of the contribution—

(a) the scheme administrator must allow the deduction on receipt of the residue,

(b) the individual or other person is acquitted and discharged of so much money as is represented by the deduction as if the sum had actually been paid, and

(c) the sum deducted is to be treated as income tax paid by the scheme administrator.

(3) When the payment of the contribution is received—

(a) the scheme administrator is entitled to recover from the Board of Inland Revenue the amount which is treated as income tax paid by the scheme administrator in relation to the contribution, and

(b) any amount so recovered is to be treated for the purposes of the Tax Acts in the same manner as the payment of the contribution.

(4) If (apart from this subsection) income tax or capital gains tax at the higher rate is chargeable in respect of any part of the individual's total income or chargeable gains for the tax year, on the making of a claim the basic rate limit for that year in the individual's case is increased by the amount of the contribution.

(5) For the purposes of sections 257(5) and 257A(5) of ICTA (age related allowances), the individual's total income for the tax year is to be treated as reduced by the amount of the contribution.

(6) Subsections (1) and (2) have effect subject to such conditions as the Board of Inland Revenue may prescribe by regulations.

(7) The Board of Inland Revenue may by regulations make provision for carrying subsections (1) to (3) into effect, in particular by making provision—

(a) about how a sum is to be recovered under subsection (3)(a) (including the manner in which a claim for the recovery of a sum is to be made),

(b) for the giving of such information, in such form, as may be prescribed by or under the regulations,

(c) for the inspection of documents by persons authorised by the Board of Inland Revenue, and

(d) specifying the consequences of failure to comply with conditions prescribed by virtue of subsection (6).

(8) Regulations under this section may, in particular—

(a) modify the operation of any provision of the Tax Acts, or

(b) provide for the application of any provision of the Tax Acts (with or without modification).

(9) Where, after relief is given to an individual in accordance with this section for a tax year, an assessment, alteration of an assessment or other adjustment of the individual's liability to tax is made, any appropriate consequential adjustments are to be made in relief given to the individual in accordance with this section.

(10) Where relief is given to an individual in accordance with this section for a tax year in respect of a contribution, relief is not to be given—

(a) in respect of the contribution under any other provision of the Income Tax Acts, or

(b) (in the case of a contribution under an annuity contract) in respect of any other premium or consideration for an annuity under the same contract.

193 Relief under net pay arrangements

(1) This section applies where an individual is entitled to be given relief in accordance with this section in respect of the payment of a contribution under a pension scheme.

(2) The amount of the contribution is to be allowed to be deducted by the sponsoring employer from the employment income from the individual's employment with the employer for the tax year in which the payment is made.

(3) A deduction may be made only once in respect of the same contribution.

(4) A claim for excess relief may be made if—

(a) the amount of the contributions paid by an individual under one or more relevant net pay pension schemes in a tax year exceeds the employment income from the individual's employment or employments with the sponsoring employer or employers for the tax year, or

(b) it is not possible for the sponsoring employer or employers for any other reason to deduct the whole amount of the contribution from the individual's employment income.

(5) A net pay pension scheme is a relevant net pay pension scheme if the members of the pension scheme entitled to be given relief in accordance with this section in respect of the payment of contributions by them under the pension scheme include the individual.

(6) On the making of the claim for excess relief the amount of the excess may be deducted from the total income of the individual for the tax year.

(7) Where, after relief is given to an individual in accordance with this section for a tax year, an assessment, alteration of an assessment or other adjustment of the individual's liability to tax is made, any appropriate consequential adjustments are to be made in relief given to the individual in accordance with this section.

(8) Where relief is given to an individual in accordance with this section for a tax year in respect of a contribution, relief is not to be given in respect of it under any other provision of the Income Tax Acts.

194 Relief on making of claim

(1) Where an individual is entitled to be given relief in accordance with this section in respect of the payment of a contribution, on the making of a claim the amount of the contribution may be deducted from the total income of the individual for the tax year in which the payment is made.

(2) Where, after relief is given to an individual in accordance with this section for a tax year, an assessment, alteration of an assessment or other adjustment of the individual's liability to tax is made, any appropriate consequential adjustments are to be made in relief given to the individual in accordance with this section.

(3) Where relief is given to an individual in accordance with this section for a tax year in respect of a contribution, relief is not to be given—

(a) in respect of the contribution under any other provision of the Income Tax Acts, or

(b) (in the case of a contribution under an annuity contract) in respect of any other premium or consideration for an annuity under the same contract.

195 Transfer of certain shares to be treated as payment of contribution

(1) For the purposes of sections 188 to 194 (relief for contributions) references to contributions paid by an individual include contributions made in the form of the transfer by the individual of eligible shares in a company within the permitted period.

(2) For the purposes of those sections the amount of a contribution made by way of a transfer of shares is the market value of the shares at the date of the transfer.

(3) "Eligible shares", in relation to a contribution made by an individual, means shares—

(a) which the individual has exercised a right to acquire in accordance with the provisions of an SAYE option scheme, or

(b) which have been appropriated to the individual in accordance with the provisions of a share incentive plan.

(4) "The permitted period"—

(a) in relation to shares which the individual has exercised a right to acquire in accordance with the provisions of an SAYE option scheme, is the period of 90 days following the exercise of that right, and

(b) in relation to shares which have been appropriated to the individual in accordance with the provisions of a share incentive plan, is the period of 90 days following the date when the individual directed the trustees of the share incentive plan to transfer the ownership of the shares to the individual.

(5) In this section—

"SAYE option scheme" has the same meaning as in the SAYE code (see section 516 of ITEPA 2003 (approved SAYE option schemes)), and

"share incentive plan" has the same meaning as in the SIP code (see section 488 of ITEPA 2003 (approved share incentive plans)).

Employers' contributions

196 Relief for employers in respect of contributions paid

(1) This section makes provision about an employer's entitlement to relief in respect of contributions paid by the employer under a registered pension scheme in respect of any individual.

(2) For the purposes of Case I or II of Schedule D—

(a) the contributions are to be treated as not being payments of a capital nature to the extent that they otherwise would be, and

(b) if they are allowed to be deducted in computing the amount of the profits of the employer, they are deductible in computing the amount of the profits for the period of account in which they are paid.

(3) For the purposes of section 75 of ICTA (expenses of management: companies with investment business), the contributions—

(a) are to be treated as being expenses of management to the extent that they otherwise would not be, and

(b) are referable to the accounting period in which they are paid.

(4) For the purposes of section 76 of ICTA (expenses of insurance companies), the contributions—

(a) are to be brought into account at Step 1 in subsection (7) of that section to the extent that they otherwise would not be, and

(b) are referable to the accounting period in which they are paid.

(5) The references in this section to contributions include minimum payments under—

(a) section 8 of the Pension Schemes Act 1993 (c. 48), or

(b) section 4 of the Pension Schemes (Northern Ireland) Act 1993 (c. 49),

other than any part recovered from a member of the pension scheme under regulations made under subsection (3) of either of those sections.

(6) This section is subject to sections 197 and 198 (spreading of relief) (and to transitional provision contained in Part 4 of Schedule 36).

197 Spreading of relief

(1) This section applies where—

(a) contributions are paid by an employer under a registered pension scheme in two consecutive chargeable periods ("the previous chargeable period" and "the current chargeable period"), and

(b) the amount of the contributions paid in the current chargeable period otherwise than for an excepted purpose ("CCCP") exceeds 210% of the amount of the contributions paid in the previous chargeable period ("CPCP").

(2) Relief under section 196 (relief for employers in respect of contributions paid) is to be given in respect of so much of CCCP as exceeds 110% of CPCP ("the amount of the relevant excess contributions") in accordance with subsections (4) and (5).

(3) But subsection (2)—

(a) does not apply if the amount of the relevant excess contributions is less than £500,000, and

(b) has effect subject to section 198 (cessation of business).

(4) A fraction of the whole of the amount of the relevant excess contributions is to be treated for the purposes of section 196 as if it had been paid in the chargeable period, or in each of the two or three chargeable periods, immediately after the current chargeable period (leaving only the remainder to be treated as paid in the current chargeable period).

(5) The following table specifies (by reference to the amount of the relevant excess contributions)—

(a) the fraction of the whole of the amount of the relevant excess contributions which is to be treated as paid in the chargeable period, or in each of the two or three chargeable periods, immediately after the current chargeable period, and

(b) the chargeable period or periods in which it is to be treated as paid.

AMOUNT OF THE RELEVANT EXCESS CONTRIBUTIONS	*FRACTION AND CHARGEABLE PERIOD OR PERIODS*
500,000 or more but less than 1,000,000	One-half of the whole of the amount of the relevant excess contributions is to be treated as paid in the chargeable period immediately after the current chargeable period
1,000,000 or more but less than 2,000,000	One-third of the whole of the amount of the relevant excess contributions is to be treated as paid in each of the two chargeable periods immediately after the current chargeable period
2,000,000 or more	One-quarter of the whole of the amount of the relevant excess contributions is to be treated as paid in each of the three chargeable periods immediately after the current chargeable period

(6) Subsection (7) specifies for the purposes of subsection (1) when contributions paid by the employer in the current chargeable period are paid for an excepted purpose.

(7) They are paid for an excepted purpose if paid with a view to funding—

(a) an increase in the amount of pensions paid to pensioner members of the pension scheme to reflect increases in the cost of living, or

(b) benefits which may accrue under the pension scheme to or in respect of individuals who become members of the pension scheme in the current chargeable period as a result of future service as employees of the employer.

(8) Where the previous chargeable period and the current chargeable period are not of equal length, this section has effect as if CPCP were the amount it would otherwise be as adjusted by being multiplied by the appropriate factor.

(9) The appropriate factor is—

$$\frac{DCCP}{DPCP}$$

where—

DCCP is the number of days in the current chargeable period, and

DPCP is the number of days in the previous chargeable period.

(10) In this section "chargeable period" means—

(a) in a case where the contributions are deducted in computing profits to be charged under Case I or II of Schedule D, a period of account, and

(b) in a case where relief in respect of the contributions is given under section 75 or 76 of ICTA (expenses of management: companies with investment business and expenses of insurance companies), an accounting period.

198 Spreading of relief: cessation of business

(1) This section applies if—

(a) the employer ceases to carry on business in the current chargeable period or a later chargeable period in which section 197(4) would require a fraction of the amount of the relevant excess contributions to be treated as paid, and

(b) were section 197(4) to apply, relief in relation to the whole of the amount of the relevant excess contributions would not be given pre-cessation.

(2) Relief is given pre-cessation if it is given for the chargeable period in which the employer ceases to carry on business or any earlier chargeable period.

(3) The portion of the amount of the relevant excess contributions in relation to which relief would not have been given pre-cessation ("the unrelieved portion") is be treated as paid (at the option of the employer) either—

(a) in the chargeable period in which the employer ceases to carry on business, or

(b) as provided by subsection (4).

(4) This subsection provides that the amount determined under subsection (5) is to be treated as paid on each day in the period—

(a) beginning with the current chargeable period, and

(b) ending with the day on which the employer ceases to carry on business,

("the relevant period").

(5) The amount referred to in subsection (4) is—

$$\frac{UP}{DRP}$$

where—

UP is the amount of the unrelieved portion, and

DRP is the number of days in the relevant period.

(6) Expressions used in this section and section 197 have the same meaning in this section as in that section.

199 Deemed contributions

(1) This section applies where a sum is paid to the trustees or managers of a registered pension scheme by an employer in or towards the discharge of any liability of the employer under—

(a) section 75 of the Pensions Act 1995 (c. 26)(deficiencies in the assets of a pension scheme), or

(b) Article 75 of the Pensions (Northern Ireland) Order 1995 (S.I. 1995/3213 (N.I. 22)) (corresponding provision for Northern Ireland).

(2) The making of the payment is to be treated for the purposes of—

(a) Case I and II of Schedule D,

(b) section 75 of ICTA (expenses of management: companies with investment business), and

(c) section 76 of ICTA (expenses of insurance companies),

as if it were the payment of a contribution by the employer under the pension scheme.

(3) Subsections (4) and (5) apply if the employer's trade, profession, vocation or business is discontinued before the making of the payment.

(4) The payment is to be relieved—

(a) to the same extent as it would have been but for the discontinuance, and

(b) as if it had been made on the last day on which the trade, profession, vocation or business was carried on.

(5) And for the purposes of section 76 of ICTA it is to be treated (to the extent that it would not otherwise be) as part of expenses payable falling to be brought into account at Step 1 in subsection (7) of that section.

200 No other relief for employers in connection with contributions

No sums other than contributions paid by an employer under a registered pension scheme—

(a) are deductible in computing the amount of the profits of the employer for the purposes of Case I or II of Schedule D,

(b) are expenses of management for the purposes of section 75 of ICTA (expenses of management: companies with investment business), or

(c) are to be brought into account at Step 1 in section 76(7) of ICTA (expenses of insurance companies),

in connection with the cost of providing benefits under the pension scheme.

201 Relief for employees

(1) In section 307(1) of ITEPA 2003 (exemption for provision made by employer for retirement or death benefit), after "employer" insert "under a registered pension scheme or otherwise".

(2) For section 308 of ITEPA 2003 (exemption of contributions to approved personal pension arrangements) substitute—

"**308 Exemption of contributions to registered pension scheme**

No liability to income tax arises in respect of earnings where an employee's employer makes contributions under a registered pension scheme."

Inland Revenue contributions

202 Minimum contributions under pensions legislation

(1) This section applies where under—

(a) section 43 of the Pension Schemes Act 1993 (c. 48), or

(b) section 39 of the Pension Schemes (Northern Ireland) Act 1993 (c. 49),

the Board of Inland Revenue pays minimum contributions for the purposes of a registered pension scheme.

(2) The amount of the minimum contributions is to be increased by the difference between—

(a) the amount of the employee's share of the minimum contributions, and

(b) the grossed-up equivalent of that amount.

(3) The amount of the employee's share of the minimum contributions is the amount that would be the amount of the minimum contributions if—

(a) for the reference to the age-related percentage in section 45(1) of the Pension Schemes Act 1993 (amount of minimum contributions) there were substituted a reference to the percentage mentioned in section 41(1A) of that Act (percentage used to reduce primary Class 1 contribution), or

(b) for the reference to the age-related percentage in section 41(1) of the Pension Schemes (Northern Ireland) Act 1993 there were substituted a reference to the percentage mentioned in section 37(1A) of that Act (corresponding provisions for Northern Ireland).

(4) The "grossed-up equivalent" of the amount of the employee's share of the minimum contributions is the sum which, after deduction of income tax at the basic rate in force for the tax year for which the minimum contributions are paid, is equal to that amount.

(5) The Board of Inland Revenue may by regulations—

(a) prescribe circumstances in which this section does not apply, or

(b) make provision supplementing this section.

(6) The Board of Inland Revenue must—

(a) pay into the National Insurance Fund out of money provided by Parliament the amount of any increase attributable to this section in the sums paid out of that Fund under the Pension Schemes Act 1993, and

(b) pay into the Northern Ireland National Insurance Fund out of money provided by Parliament the amount of any increase attributable to this section in the sums paid out of that Fund under the Pension Schemes (Northern Ireland) Act 1993.

Inheritance tax exemptions

203 Inheritance tax exemptions

(1) The Inheritance Tax Act 1984 (c. 51) is amended as follows.

(2) In section 12 (dispositions that are not transfers of value)—

(a) in subsection (2), for the words following "if" substitute "it is a contribution under a registered pension scheme or section 615(3) scheme in respect of an employee of the person making the disposition.", and

(b) omit subsections (3) and (4).

(3) In section 58(1) (settled property in which no qualifying interest in possession subsists but which is not "relevant property"), for paragraph (d) substitute—

"(d) property which is held for the purposes of a registered pension scheme or section 615(3) scheme;".

(4) In section 151 (treatment of pension rights etc.)—

(a) omit subsections (1) and (1A),

(b) in subsections (2), (4) and (5), for "fund or scheme to which this section applies" substitute "registered pension scheme or section 615(3) scheme", and

(c) in subsection (2)(b), for the "fund or scheme" (in both places) substitute "scheme".

(5) In section 152 (cash options), for the words from the beginning to "or scheme" substitute "Where on a person's death an annuity becomes payable under a registered pension scheme or section 615(3) scheme to a widow, widower or dependant of that person and under the terms of the scheme".

(6) In section 272 (general interpretation), insert at the appropriate places—

""registered pension scheme" has the same meaning as in Part 4 of the Finance Act 2004;", and

""section 615(3) scheme" means a superannuation fund to which section 615(3)of the Taxes Act 1988 applies;".

CHAPTER 5

REGISTERED PENSION SCHEMES: TAX CHARGES

Charges on authorised payments

204 Authorised pensions and lump sums

(1) Schedule 31 contains provision about the taxation of pensions and lump sums which are authorised to be paid by this Part.

(2) Schedule 36 contains (in Part 4) transitional provision about the taxation of annuities under existing retirement annuity contracts and other relevant transitional provision.

205 Short service refund lump sum charge

(1) A charge to income tax, to be known as the short service refund lump sum charge, arises where a short service refund lump sum is paid by a registered pension scheme.

(2) The person liable to the short service refund lump sum charge is the scheme administrator.

(3) The scheme administrator is liable to the short service refund lump sum charge whether or not—

(a) the scheme administrator, and

(b) the person to whom the short service refund lump sum is paid,

are resident, ordinarily resident or domiciled in the United Kingdom.

(4) The rate of the charge is—

(a) 20% in respect of so much of the lump sum as does not exceed £10,800, and

(b) 40% in respect of so much (if any) of it as exceeds that limit.

(5) The Treasury may by order amend subsection (4) so as to—

(a) increase or decrease either or both of the rates for the time being specified in that subsection, or

(b) increase the limit for the time being specified in paragraph (a) of that subsection.

(6) Tax under this section is to be charged on the amount of the lump sum paid or, if the rules of the pension scheme permit the scheme administrator to deduct the tax before payment, on the amount of the lump sum before deduction of tax.

(7) A short service refund lump sum is not to be treated as income for any purpose of the Tax Acts.

206 Special lump sum death benefits charge

(1) A charge to income tax, to be known as the special lump sum death benefits charge, arises where—

(a) a pension protection lump sum death benefit,

(b) an annuity protection lump sum death benefit, or

(c) an unsecured pension fund lump sum death benefit,

is paid by a registered pension scheme.

(2) The person liable to the special lump sum death benefits charge is the scheme administrator.

(3) The scheme administrator is liable to the special lump sum death benefits charge whether or not—

(a) the scheme administrator, and

(b) the person to whom the lump sum death benefit is paid,

are resident, ordinarily resident or domiciled in the United Kingdom.

(4) The rate of the charge is 35% in respect of the lump sum death benefit.

(5) The Treasury may by order increase or decrease the rate for the time being specified in subsection (4).

(6) Tax under this section is to be charged on the amount of the lump sum paid or, if the rules of the pension scheme permit the scheme administrator to deduct the tax before payment, on the amount of the lump sum before deduction of tax.

(7) No pension protection lump sum death benefit, annuity protection lump sum death benefit or unsecured pension fund lump sum death benefit is to be treated as income for any purpose of the Tax Acts.

207 Authorised surplus payments charge

(1) A charge to income tax, to be known as the authorised surplus payments charge, arises where an authorised surplus payment is made to a sponsoring employer by an occupational pension scheme that is a registered pension scheme.

(2) The person liable to the authorised surplus payments charge is the scheme administrator.

(3) The scheme administrator is liable to the authorised surplus payments charge whether or not—

(a) the scheme administrator, and

(b) the sponsoring employer,

are resident, ordinarily resident or domiciled in the United Kingdom.

(4) The rate of the charge is 35% in respect of the authorised surplus payment.

(5) The Treasury may by order increase or decrease the rate for the time being specified in subsection (4).

(6) Subsection (1) does not apply to any authorised surplus payment—

(a) to the extent that (if this section had not been enacted) the sponsoring employer would have been exempt, or entitled to claim exemption, from income tax or corporation tax in respect of it, or

(b) if the sponsoring employer is a charity.

(7) An authorised surplus payment in respect of which income tax is charged under this section is not to be treated as income for any purpose of the Tax Acts.

(8) Schedule 36 contains (in Part 4) transitional provisions about the authorised surplus payments charge.

Unauthorised payments charge

208 Unauthorised payments charge

(1) A charge to income tax, to be known as the unauthorised payments charge, arises where an unauthorised payment is made by a registered pension scheme.

(2) The person liable to the charge—

(a) in the case of an unauthorised member payment made before the member's death, is the member to or in respect of whom the payment is made,

(b) in the case of an unauthorised member payment made after the member's death, is the recipient, and

(c) in the case of an unauthorised employer payment, is the sponsoring employer to or in respect of whom the payment is made.

(3) If more than one person is liable to the unauthorised payments charge in respect of an unauthorised payment, those persons are jointly and severally liable to the charge in respect of the payment.

(4) A person is liable to the unauthorised payments charge whether or not—

(a) that person,

(b) any other person who is liable to the unauthorised payments charge, and

(c) the scheme administrator,

are resident, ordinarily resident or domiciled in the United Kingdom.

(5) The rate of the charge is 40% in respect of the unauthorised payment.

(6) The Treasury may by order increase or decrease the rate for the time being specified in subsection (5).

(7) An unauthorised payment may also be subject to—

(a) the unauthorised payments surcharge under section 209, and

(b) the scheme sanction charge under section 239.

(8) An unauthorised payment is not to be treated as income for any purpose of the Tax Acts.

209 Unauthorised payments surcharge

(1) A charge to income tax, to be known as the unauthorised payments surcharge, arises where a surchargeable unauthorised payment is made by a registered pension scheme.

(2) "Surchargeable unauthorised payments" means—

(a) surchargeable unauthorised member payments (see section 210), and

(b) surchargeable unauthorised employer payments (see section 213).

(3) The person liable to the charge—

(a) in the case of a surchargeable unauthorised member payment made before the member's death, is the member in respect of whose arrangement the payment was made,

(b) in the case of a surchargeable unauthorised member payment made after the member's death, is the recipient, and

(c) in the case of a surchargeable unauthorised employer payment, is the sponsoring employer to or in respect of whom the payment was made.

(4) If more than one person is liable to the unauthorised payments surcharge in respect of a surchargeable unauthorised payment, those persons are jointly and severally liable to the surcharge in respect of the payment.

(5) A person is liable to the unauthorised payments surcharge whether or not—

(a) that person,

(b) any other person who is liable to the unauthorised payments surcharge, and

(c) the scheme administrator,

are resident, ordinarily resident or domiciled in the United Kingdom.

(6) The rate of the charge is 15% in respect of the surchargeable unauthorised payment.

(7) The Treasury may by order increase or decrease the rate for the time being specified in subsection (6).

210 Surchargeable unauthorised member payments

(1) This section identifies which unauthorised member payments made by a registered pension scheme in respect of an arrangement relating to a member under the pension scheme are surchargeable.

(2) If the surcharge threshold is reached before the end of the period of 12 months beginning with a reference date, each unauthorised member payment made in respect of the arrangement in the surcharge period is surchargeable.

(3) The surcharge period is the period—

(a) beginning with the reference date, and

(b) ending with the day on which the surcharge threshold is reached.

(4) The first reference date is the date on which the pension scheme first makes an unauthorised member payment in respect of the arrangement.

(5) Each subsequent reference date is the date, after the end of the previous reference period, on which the pension scheme next makes an unauthorised member payment in respect of the arrangement.

(6) The previous reference period is the period of 12 months beginning with the previous reference date or, if the surcharge threshold is reached in that period, is the surcharge period ending with the date on which it was reached.

(7) The surcharge threshold is reached if the unauthorised payments percentage reaches 25%.

(8) The unauthorised payments percentage is the aggregate of the percentages of the pension fund used up by each unauthorised member payment made by the pension scheme in respect of the arrangement on or after the reference date.

(9) The percentage of the pension fund used up on the occasion of an unauthorised member payment is—

$$\frac{UMP}{VR} \times 100$$

where—

UMP is the amount of the unauthorised member payment, and

VR is an amount equal to the value of the member's rights under the arrangement when the unauthorised payment is made (or, if the unauthorised payment is made after the member's death, at the date of the member's death).

(10) The value of the member's rights under the arrangement on that date is the aggregate of—

(a) the value of the member's crystallised rights under the arrangement on that date, calculated in accordance with section 211, and

(b) the value of the member's uncrystallised rights under the arrangement on that date, calculated in accordance with section 212.

211 Valuation of crystallised rights for purposes of section 210

(1) The value of the member's crystallised rights under the arrangement on any date is the aggregate of—

(a) the value of each scheme pension or lifetime annuity to which the member has an actual (rather than a prospective) entitlement under the arrangement on that date, and

(b) the aggregate of the amount of the sums, and the market value of the assets, representing the member's unsecured pension fund or alternatively secured pension fund in respect of the arrangement on that date (if any).

(2) The value of a scheme pension or lifetime annuity is—

$$RVF \times ARP$$

where—

RVF is the relevant valuation factor (see section 276), and

ARP is an amount equal to the annual rate of the pension or annuity on the date.

212 Valuation of uncrystallised rights for purposes of section 210

(1) Rights are uncrystallised if the member is not entitled to the present payment of benefits in respect of the rights.

(2) The member is to be treated as entitled to the present payment of benefits in respect of the sums and assets representing the member's unsecured pension fund or alternatively secured pension fund.

(3) The value of the member's uncrystallised rights under the arrangement on any date is to be calculated—

(a) in accordance with subsection (4) if the arrangement is a cash balance arrangement,

(b) in accordance with subsection (5) if the arrangement is a money purchase arrangement other than a cash balance arrangement,

(c) in accordance with subsection (6) if the arrangement is a defined benefits arrangement, and

(d) in accordance with subsection (7) if the arrangement is a hybrid arrangement.

(4) If this subsection applies, the value of the member's uncrystallised rights under the arrangement on the date is the amount which would, on the valuation assumptions (see section 277), be available for the provision of benefits in respect of those rights if the member became entitled to benefits in respect of those rights on the date.

(5) If this subsection applies, the value of the member's uncrystallised rights under the arrangement on the date is the aggregate of—

(a) the amount of such of the sums held for the purposes of the arrangement on the date as represent those rights, and

(b) the market value of such of the assets held for the purposes of the arrangement on the date as represent those rights.

(6) If this subsection applies, the value of the member's uncrystallised rights under the arrangement on the date is—

$$(RVF \times ARP) + LS$$

where—

RVF is the relevant valuation factor (see section 276),

ARP is the annual rate of pension to which the member would, on the valuation assumptions, be entitled under the arrangement on the date if, on the date, the member acquired an actual (rather than a prospective) right to receive a pension in respect of the rights, and

LS is the amount of any lump sum to which the member would, on the valuation assumptions, be entitled under the arrangement on the date (otherwise than by way of commutation of pension) if, on the date, the member acquired an actual (rather than a prospective) right to payment of a lump sum in respect of the rights.

(7) If this subsection applies, the value of the member's uncrystallised rights under the arrangement on the date is—

(a) if each of subsections (4), (5) and (6) is relevant, the greatest of the values of the rights calculated in accordance with each of those subsections, or

(b) if only two of those subsections are relevant, the greater of the values of the rights calculated in accordance with each of the two subsections.

(8) Subsection (4) is relevant if, in any circumstances, cash balance benefits may be provided to or in respect of the member under the arrangement.

(9) Subsection (5) is relevant if, in any circumstances, money purchase benefits other than cash balance benefits may be provided to or in respect of the member under the arrangement.

(10) Subsection (6) is relevant if, in any circumstances, defined benefits may be provided to or in respect of the member under the arrangement.

213 Surchargeable unauthorised employer payments

(1) This section identifies which unauthorised employer payments made by a registered pension scheme to or in respect of a sponsoring employer are surchargeable.

(2) If the surcharge threshold is reached before the end of the period of 12 months beginning with a reference date, each unauthorised employer payment made to or in respect of the employer in the surcharge period is surchargeable.

(3) The surcharge period is the period—

(a) beginning with the reference date, and

(b) ending with the day on which the surcharge threshold is reached.

(4) The first reference date is the date on which the pension scheme first makes an unauthorised employer payment to or in respect of the employer.

(5) Each subsequent reference date is the date, after the end of the previous reference period, on which the pension scheme next makes an unauthorised employer payment to or in respect of the employer.

(6) The previous reference period is the period of 12 months beginning with the previous reference date or, if the surcharge threshold is reached in that period, is the surcharge period ending with the date on which it was reached.

(7) The surcharge threshold is reached if the unauthorised payments percentage reaches 25%.

(8) The unauthorised payments percentage is the aggregate of the percentages of the pension fund used up by each unauthorised employer payment made by the pension scheme to or in respect of the employer on or after the reference date.

(9) The percentage of the pension fund used up on the occasion of an unauthorised employer payment is—

$$\frac{UEP}{AA} \times 100$$

where—

UEP is the amount of the unauthorised employer payment, and

AA is an amount equal to the aggregate of the amount of the sums and the market value of the assets held for the purposes of the pension scheme at the time when the unauthorised employer payment is made.

Lifetime allowance charge

214 Lifetime allowance charge

(1) A charge to income tax, to be known as the lifetime allowance charge, arises where—

(a) a benefit crystallisation event occurs in relation to an individual who is a member of one or more registered pension schemes, and

(b) either the first lifetime allowance charge condition or the second lifetime allowance charge condition is met.

(2) The first lifetime allowance charge condition is that—

(a) the whole or any part of the individual's lifetime allowance is available on the benefit crystallisation event, but

(b) the amount crystallised by the benefit crystallisation event exceeds the amount of the individual's lifetime allowance which is available on the benefit crystallisation event.

(3) The second lifetime allowance charge condition is that none of the individual's lifetime allowance is available on the benefit crystallisation event.

(4) The following sections make further provision about the lifetime allowance charge—

section 215 (amount of charge),

section 216 and Schedule 32 (benefit crystallisation events and amounts crystallised),

section 217 (persons liable to charge),

section 218 (individual's lifetime allowance and standard lifetime allowance),

section 219 (availability of individual's lifetime allowance), and

sections 220 to 226 (lifetime allowance enhancement factors).

(5) In sections 215 to 219—

(a) references to "the individual", in relation to the lifetime allowance charge, are to the individual in relation to whom the benefit crystallisation event giving rise to the charge occurs, and

(b) references to "the pension scheme", in relation to the lifetime allowance charge, are to the pension scheme to which the benefit crystallisation event giving rise to the charge, or the amount crystallised by it, relates.

(6) Schedule 36 contains (in Part 2) transitional provision about the lifetime allowance charge.

215 Amount of charge

(1) The lifetime allowance charge is a charge in respect of the chargeable amount.

(2) The lifetime allowance charge is a charge—

(a) at the rate of 55% in respect of so much (if any) of the chargeable amount as constitutes the lump-sum amount, and

(b) at the rate of 25% in respect of so much (if any) of the chargeable amount as constitutes the retained amount.

(3) The "chargeable amount" is the aggregate of—

(a) the basic amount, and

(b) any amount which is treated as forming part of the lump-sum amount under subsection (6) or of the retained amount under subsection (8).

(4) The "basic amount"—

(a) if the first lifetime allowance condition is met, is the amount by which the amount crystallised by the benefit crystallisation event exceeds the amount of the individual's lifetime allowance available on it, and

(b) if the second lifetime allowance charge condition is met, is the amount crystallised by the benefit crystallisation event.

(5) The "lump-sum amount" is the aggregate of—

(a) so much of the basic amount as is paid as a lump sum to the individual or a lump sum death benefit in respect of the individual, and

(b) any amount which is treated as forming part of the lump-sum amount under subsection (6).

(6) If and to the extent that the tax payable under this section on any of the lump-sum amount is covered by a scheme-funded tax payment, it is to be treated as itself forming part of the lump-sum amount.

(7) The "retained amount" is the aggregate of—

(a) so much of the basic amount as is not paid as a lump sum to the individual or a lump sum death benefit in respect of the individual, and

(b) any amount which is treated as forming part of the retained amount under subsection (8).

(8) If and to the extent that the tax payable under this section on any of the retained amount is covered by a scheme-funded tax payment, it is to be treated as itself forming part of the retained amount.

(9) An amount of tax payable under this section is "covered by a scheme-funded tax payment" if—

(a) the tax is paid by the scheme administrator, and

(b) the individual's rights under the pension scheme are not reduced so as fully to reflect the amount of the payment of tax.

(10) Whether the individual's rights under the pension scheme are reduced so as fully to reflect the amount of the payment of tax is to be determined in accordance with normal actuarial practice.

(11) The chargeable amount is not to be treated as income for any purpose of the Tax Acts.

216 Benefit crystallisation events and amounts crystallised

(1) This table sets out—

(a) the events which are benefit crystallisation events in relation to the individual, and

(b) the amount which is crystallised by each of those events.

BENEFIT CRYSTALLISATION EVENTS	*AMOUNT CRYSTALLISED*
1. The designation of sums or assets held for the purposes of a money purchase arrangement under any of the relevant pension schemes as available for the payment of unsecured pension to the individual	The aggregate of the amount of the sums and the market value of the assets designated
2. The individual becoming entitled to a scheme pension under any of the relevant pension schemes	RVF × P
3. The individual, having become so entitled, becoming entitled to payment of the scheme pension, otherwise than in excepted circumstances, at an increased annual rate which exceeds by more than the permitted margin the rate at which it was payable on the day on which the individual became entitled to it	RVF × XP
4. The individual becoming entitled to a lifetime annuity purchased under a money purchase arrangement under any of the relevant pension schemes	The aggregate of the amount of such of the sums, and the market value of such of the assets, representing the individual's rights under the arrangement as are applied to purchase the lifetime annuity
5. The individual reaching the age of 75 when prospectively entitled to a scheme pension or a lump sum (or both) under a defined benefits arrangement under any of the relevant pension schemes	(RVF × DP) + DSLS
6. The individual becoming entitled to a relevant lump sum under any of the relevant pension schemes	The amount of the lump sum
7. A person being paid a relevant lump sum death benefit in respect of the individual under any of the relevant pension schemes	The amount of the lump sum death benefit
8. The transfer of sums or assets held for the purposes of, or representing accrued rights under, any of the relevant pension schemes so as to become held for the purposes of or to represent rights under a qualifying recognised overseas pension scheme in connection with the individual's membership of that pension scheme	The aggregate of the amount of any sums transferred and the market value of any assets transferred

(2) Schedule 32 gives the meaning of expressions used in the table in subsection (1).

217 Persons liable to charge

(1) The persons liable to the lifetime allowance charge are—

(a) the individual, and

(b) the scheme administrator of the pension scheme,

and their liability is joint and several.

(2) But where the liability arises by reason of the payment of a relevant lump sum death benefit it is a liability of the person to whom the lump sum death benefit is paid.

(3) Subsection (4) applies if—

(a) more than one relevant lump sum death benefit is paid in respect of an individual, and

(b) tax is not chargeable on the whole amount of all of them.

(4) In that case each of the persons to whom any of the relevant lump sum death benefits is paid is liable under subsection (2) to such portion of the total amount of the tax payable by reason of their having been paid as appears to the Inland Revenue to be just and reasonable.

(5) A person is liable to the lifetime allowance charge whether or not—

(a) that person,

(b) any other person who is liable to the lifetime allowance charge, and

(c) the scheme administrator (if not so liable),

are resident, ordinarily resident or domiciled in the United Kingdom.

218 Individual's lifetime allowance and standard lifetime allowance

(1) Subject as follows, the individual's lifetime allowance is the standard lifetime allowance.

(2) The standard lifetime allowance for the tax year 2006-07 is £1,500,000.

(3) The standard lifetime allowance for each subsequent tax year is such amount, not being less than the standard lifetime allowance for the immediately preceding tax year, as is specified by order made by the Treasury.

(4) Where one or more lifetime allowance enhancement factors operate in relation to a benefit crystallisation event occurring in relation to the individual, the individual's lifetime allowance at the time of the benefit crystallisation event is—

$$SLA + (SLA \times LAEF)$$

where—

SLA is the standard lifetime allowance at the time of the benefit crystallisation event, and

LAEF is the lifetime allowance enhancement factor which operates with respect to the benefit crystallisation event and the individual or (where more than one so operates) the aggregate of them.

(5) The following make provision for the operation of lifetime allowance enhancement factors—

section 220 (pension credits from previously crystallised rights),

sections 221 to 223 (individuals who are not always relevant UK individuals),

sections 224 to 226 (transfers from recognised overseas pension schemes),
paragraphs 7 to 11 of Schedule 36 (primary protection), and
paragraph 18 of that Schedule (pre-commencement pension credits).

(6) Paragraph 19 of that Schedule makes provision for the reduction of what would otherwise be the individual's lifetime allowance in certain cases where the individual is permitted to take pension before normal minimum pension age.

(7) In this Part references (however expressed) to a person's lifetime allowance at any time are to what would be the person's lifetime allowance, calculated in accordance with this section, if a benefit crystallisation event occurred in relation to the person at that time.

219 Availability of individual's lifetime allowance

(1) This section is about the availability of the individual's lifetime allowance on the occurrence of a benefit crystallisation event in relation to the individual ("the current benefit crystallisation event").

(2) If no benefit crystallisation event has occurred in relation to the individual before the current benefit crystallisation event, the whole of the individual's lifetime allowance is available on the current benefit crystallisation event.

(3) If one or more benefit crystallisation events have occurred in relation to the individual before the current benefit crystallisation event—

(a) in a case in which the previously-used amount is equal to or greater than the amount of the individual's lifetime allowance, none of the individual's lifetime allowance is available on the current benefit crystallisation event, and

(b) in any other case, so much of the individual's lifetime allowance as is left after deducting the previously-used amount is available on the current benefit crystallisation event.

(4) The previously-used amount is—

(a) where one benefit crystallisation event has occurred in relation to the individual before the current benefit crystallisation event, the amount crystallised by the previous benefit crystallisation event as adjusted under subsection (5), or

(b) where two or more benefit crystallisation events have occurred in relation to the individual before the current benefit crystallisation event, the aggregate of the amounts crystallised by each previous benefit crystallisation event as adjusted under subsection (5).

(5) The adjustment of the amount crystallised by a previous benefit crystallisation event referred to in subsection (4)(a) and (b) is the multiplication of that amount by—

$$\frac{\text{CSLA}}{\text{PSLA}}$$

where—

CSLA is the standard lifetime allowance at the time of the current benefit crystallisation event, and

PSLA is the standard lifetime allowance at the time of the previous benefit crystallisation event.

(6) Where more than one benefit crystallisation event occurs in relation to an individual on the same day, it is for the individual to decide the order in which they are to be treated as occurring for the purposes of this section; but this subsection is subject to section 166(2) (entitlement to pension commencement lump sum to arise immediately before entitlement to associated pension).

(7) Where more than one benefit crystallisation event occurs by reason of the payment of lump sum death benefits in respect of an individual the benefit crystallisation events are to be treated for the purposes of this section as occurring immediately before the individual's death.

(8) Paragraph 20 of Schedule 36 makes provision affecting this section in relation to pre-commencement pensions.

(9) In this Part references (however expressed) to the portion of a person's lifetime allowance that is available at any time are to the portion of the person's lifetime allowance that would be available, calculated in accordance with this section, if a benefit crystallisation event occurred in relation to the person at that time.

220 Pension credits from previously crystallised rights

(1) This section makes provision for the operation of a lifetime allowance enhancement factor with respect to a benefit crystallisation event occurring in relation to an individual where—

(a) the individual has (at any time after 5th April 2006 but before the benefit crystallisation event) acquired rights under a registered pension scheme by reason of having become entitled to a pension credit,

(b) the pension credit derived from the same or another registered pension scheme, and

(c) the rights under that registered pension scheme which became subject to the corresponding pension debit consisted of or included rights to a post-commencement pension in payment.

(2) "Post-commencement pension in payment" means a pension to which a person became (actually) entitled on or after 6th April 2006.

(3) The lifetime allowance enhancement factor is the pension credit factor.

(4) The pension credit factor is—

$$\frac{APC}{SLA}$$

where—

APC is the amount which is the appropriate amount for the purposes of section 29(1) of WRPA 1999 or Article 26(1) of WRP(NI)O 1999 in relation to the pension credit, and

SLA is the standard lifetime allowance at the time when the rights were acquired.

(5) This section only applies if notice of intention to rely on it is given to the Inland Revenue in accordance with regulations made by the Board of Inland Revenue.

221 Non-residence: general

(1) This section makes provision for the operation of a lifetime allowance enhancement factor with respect to a benefit crystallisation event occurring in relation to an individual where, during any part of the period that is the active membership period in relation to an arrangement relating to the individual under a registered pension scheme, the individual is a relevant overseas individual.

(2) Section 222 provides the lifetime allowance enhancement factor in the case of an arrangement that is a money purchase arrangement; and section 223 provides the lifetime allowance enhancement factor in the case of any other arrangement.

(3) For the purposes of this Part an individual is a relevant overseas individual at any time if, at that time, the individual either is not a relevant UK individual or—

(a) is a relevant UK individual only by virtue of paragraph (c) of section 189(1) (individuals resident in UK at some time in previous five tax years), and

(b) is not employed by a person resident in the United Kingdom.

(4) In this section and sections 222 and 223 "the active membership period", in relation to a benefit crystallisation event occurring in relation to an arrangement relating to the individual, is the period—

(a) beginning with the date on which the benefits first began to accrue to or in respect of the individual under the arrangement or, if later, 6th April 2006, and

(b) ending immediately before the benefit crystallisation event.

(5) But if benefits ceased to accrue to or in respect of the individual under the arrangement before the benefit crystallisation event, the active membership period is to be treated as having ended then.

(6) This section only applies if notice of intention to rely on it is given to the Inland Revenue in accordance with regulations made by the Board of Inland Revenue.

222 Non-residence: money purchase arrangements

(1) This section applies in the case of an arrangement that is a money purchase arrangement.

(2) The lifetime allowance enhancement factor is—

(a) if the arrangement is a cash balance arrangement, the cash balance arrangement non-residence factor (see subsections (3) to (5)), and

(b) if the arrangement is any other sort of money purchase arrangement, the other money purchase arrangement non-residence factor (see subsections (6) and (7)).

(3) The cash balance arrangement non-residence factor is—

(a) the factor arrived at by the application of subsection (4) in relation to the part of the active membership period during which the individual was a relevant overseas individual, or

(b) if there have been two or more parts of that period during which the individual was a relevant overseas individual, the aggregate of the factors arrived at by the application of subsection (4) in relation to each of those parts of that period.

(4) The factor arrived at by the application of this subsection in relation to any part of the active membership period is—

$$\frac{CV - OV}{SLA}$$

where—

CV is the closing value of the individual's rights under the arrangement,

OV is the opening value of the individual's rights under the arrangement, and

SLA is the standard lifetime allowance at the time when that part of that period ended.

(5) For the purposes of subsection (4)—

(a) the closing value of the individual's rights under the arrangement is the amount which would, on the valuation assumptions (see section 277), be available for the provision of benefits to or in respect of the individual under the arrangement if the individual became entitled to the benefits at the end of that part of that period, and

(b) the opening value of the individual's rights under the arrangement is the amount which would, on the valuation assumptions, be available for the provision of benefits to or in respect of the individual under the arrangement if the individual became entitled to the benefits at the beginning of that part of that period.

(6) The other money purchase arrangement non-residence factor is—

(a) the factor arrived at by the application of subsection (7) in relation to the part of the active membership period during which the individual was a relevant overseas individual, or

(b) if there have been two or more parts of that period during which the individual was a relevant overseas individual, the aggregate of the factors arrived at by the application of subsection (7) in relation to each of those parts of that period.

(7) The factor arrived at by the application of this subsection in relation to any part of the active membership period is—

$$\frac{ROIC}{SLA}$$

where—

ROIC is the amount of the contributions made under the arrangement by or in respect of the individual in any part of the active membership period during which the individual is a relevant overseas individual, and

SLA is the standard lifetime allowance at the time when that part of that period ended.

223 Non-residence: other arrangements

(1) This section applies in the case of an arrangement that is not a money purchase arrangement.

(2) The lifetime allowance enhancement factor is—

(a) if the arrangement is a defined benefits arrangement, the defined benefits arrangement non-residence factor (see subsections (3) and (4)), and

(b) if the arrangement is a hybrid arrangement, the hybrid arrangement non-residence factor (see subsections (5) to (7)).

(3) The defined benefits arrangement non-residence factor is—

(a) the factor arrived at by the application of subsection (4) in relation to the part of the active membership period during which the individual was a relevant overseas individual, or

(b) if there have been two or more parts of that period during which the individual was a relevant overseas individual, the aggregate of the factors arrived at by the application of subsection (4) in relation to each of those parts of that period.

(4) The factor arrived at by the application of this subsection in relation to any part of the active membership period is—

$$\frac{(RVF \times PE + LSE) - (RVF \times PB + LSB)}{SLA}$$

where—

RVF is the relevant valuation factor (see section 276),

PE is the amount of the annual rate of the pension which would, on the valuation assumptions (see section 277), be payable to the individual under the arrangement if the individual became entitled to payment of it at the end of that part of that period,

LSE is the amount of the lump sum to which the individual would, on the valuation assumptions, be entitled under the arrangement (otherwise than by commutation of pension) if the individual became entitled to payment of it at the end of that part of that period,

PB is the amount of the annual rate of the pension which would, on the valuation assumptions, be payable to the individual under the arrangement if the individual became entitled to payment of it at the beginning of that part of that period,

LSB is the amount of the lump sum to which the individual would, on the valuation assumptions, be entitled under the arrangement (otherwise than by commutation of pension) if the individual became entitled to payment of it at the beginning of that part of that period, and

SLA is the standard lifetime allowance at the time when that part of that period ended.

(5) The hybrid arrangement non-residence factor is the greater or greatest of such of—

(a) what would be the cash balance arrangement non-residence factor (under section 222) if the arrangement were a cash balance arrangement,

(b) what would be the other money purchase arrangement non-residence factor (under that section) if the arrangement were any other sort of money purchase arrangement, and

(c) what would be the defined benefits arrangement non-residence factor (under subsections (3) and (4)) if the arrangement were a defined benefits arrangement,

as are relevant factors in relation to the arrangement.

(6) A factor is a relevant factor in relation to a hybrid arrangement if, in any circumstances, the benefits that may be provided to or in respect of the individual under the arrangement may be benefits linked to that factor.

(7) For that purpose—

(a) cash balance benefits are linked to the cash balance arrangement non-residence factor,

(b) other money purchase benefits are linked to the other money purchase arrangement non-residence factor, and

(c) defined benefits are linked to the defined benefits arrangement non-residence factor.

224 Transfers from recognised overseas pension scheme: general

(1) This section makes provision for the operation of a lifetime allowance enhancement factor with respect to a benefit crystallisation event occurring in relation to an individual where (at any time after 5th April 2006 but before the benefit crystallisation event) there has been a recognised overseas scheme transfer.

(2) There is a "recognised overseas scheme transfer" if any sums or assets—

(a) held for the purposes of an arrangement under a recognised overseas pension scheme, or

(b) representing accrued rights under such an arrangement,

are transferred so as to become held for the purposes of, or to represent rights under, an arrangement under a registered pension scheme relating to the individual.

(3) The arrangement specified in subsection (2)(a) or (b) is referred to in this section and sections 225 and 226 as the "recognised overseas scheme arrangement".

(4) The lifetime allowance enhancement factor is the recognised overseas scheme transfer factor.

(5) The recognised overseas scheme transfer factor is—

$$\frac{AAT - RRA}{SLA}$$

where—

AAT is the aggregate of the amount of any sums transferred, and the market value of any assets transferred, on the recognised overseas scheme transfer,

RRA is the relevant relievable amount, and

SLA is the standard lifetime allowance at the time when the recognised overseas scheme transfer took place.

(6) Section 225 specifies the relevant relievable amount in the case of a recognised overseas scheme arrangement that was a money purchase arrangement; and section 226 specifies the relevant relievable amount in the case of an recognised overseas scheme arrangement that was any other sort of arrangement.

(7) In this section and sections 225 and 226 "overseas arrangement active membership period" is the period—

(a) beginning with the date on which the benefits first began to accrue to or in respect of the individual under the recognised overseas scheme arrangement or, if later, 6th April 2006, and

(b) ending immediately before the recognised overseas scheme transfer.

(8) But if benefits ceased to accrue to or in respect of the individual under the recognised overseas scheme arrangement before the recognised overseas scheme transfer, the overseas arrangement active membership period is to be treated as having ended then.

(9) This section only applies if notice of intention to rely on it is given to the Inland Revenue in accordance with regulations made by the Board of Inland Revenue.

225 Overseas scheme transfers: money purchase arrangements

(1) This section applies in the case of a recognised overseas scheme arrangement that was a money purchase arrangement.

(2) The relevant relievable amount is—

(a) if the recognised overseas scheme arrangement was a cash balance arrangement, the cash balance relevant relievable amount (see subsections (3) to (5)), and

(b) if the recognised overseas scheme arrangement was any other sort of money purchase arrangement, the other money purchase relevant relievable amount (see subsections (6) and (7)).

(3) The cash balance relevant relievable amount is—

(a) the amount arrived at by the application of subsection (4) in relation to the part of the overseas arrangement active membership period during which the individual was not a relevant overseas individual, or

(b) if there have been two or more parts of that period during which the individual was not a relevant overseas individual, the aggregate of the amounts arrived at by the application of subsection (4) in relation to each of those parts of that period.

(4) The amount arrived at by the application of this subsection in relation to any part of the overseas arrangement active membership period is—

$$CV - OV$$

where—

CV is the closing value of the individual's rights under the arrangement, and

OV is the opening value of the individual's rights under the arrangement.

(5) For the purposes of subsection (4)—

(a) the closing value of the individual's rights under the recognised overseas scheme arrangement is the amount which would, on the valuation assumptions (see section 277), be available for the provision of benefits to or in respect of the individual under the arrangement if the individual became entitled to the benefits at the end of that part of that period, and

(b) the opening value of the individual's rights under the arrangement is the amount which would, on the valuation assumptions, be available for the provision of benefits to or in respect of the individual under the arrangement if the individual became entitled to the benefits at the beginning of that part of that period.

(6) The other money purchase relevant relievable amount is—

(a) the amount arrived at by the application of subsection (7) in relation to the part of the overseas arrangement active membership period during which the individual was not a relevant overseas individual, or

(b) if there have been two or more parts of that period during which the individual was not a relevant overseas individual, the aggregate of the amounts arrived

at by the application of subsection (7) in relation to each of those parts of that period.

(7) The amount arrived at by the application of this subsection in relation to any part of the overseas arrangement active membership period is the amount of the contributions made under the arrangement by or in respect of the individual in any part of the overseas arrangement active membership period during which the individual was not a relevant overseas individual.

226 Overseas scheme transfers: other arrangements

(1) This section applies in the case of a recognised overseas scheme arrangement that was not a money purchase arrangement.

(2) The relevant relievable amount is—

(a) if the recognised overseas scheme arrangement was a defined benefits arrangement, the defined benefits relevant relievable amount (see subsections (3) and (4)), and

(b) if the recognised overseas scheme arrangement was a hybrid arrangement, the hybrid relevant relievable amount (see subsections (5) to (7)).

(3) The defined benefits relevant relievable amount is—

(a) the amount arrived at by the application of subsection (4) in relation to the part of the overseas arrangement active membership period during which the individual was not a relevant overseas individual, or

(b) if there have been two or more parts of that period during which the individual was not a relevant overseas individual, the aggregate of the amounts arrived at by the application of subsection (4) in relation to each of those parts of that period.

(4) The amount arrived at by the application of this subsection in relation to any part of the overseas arrangement active membership period is—

$$(RVF \times PE + LSE) - (RVF \times PB + LSB)$$

where—

RVF is the relevant valuation factor (see section 276),

PE is the annual rate of the pension which would, on the valuation assumptions (see section 277), be payable to the individual under the recognised overseas scheme arrangement if the individual became entitled to payment of it at the end of that part of that period,

LSE is the amount of the lump sum to which the individual would, on the valuation assumptions, be entitled under the arrangement (otherwise than by commutation of pension) if the individual became entitled to payment of it at the end of that part of that period,

PB is the annual rate of the pension which would, on the valuation assumptions, be payable to the individual under the arrangement if the individual became entitled to payment of it at the beginning of that part of that period, and

LSB is the amount of the lump sum to which the individual would, on the valuation assumptions, be entitled under the arrangement (otherwise than by commutation of pension) if the individual became entitled to payment of it at the beginning of that part of that period.

(5) The hybrid relevant relievable amount is the greater or greatest of such of—

(a) what would be the cash balance relevant relievable amount (under section 225) if the recognised overseas scheme arrangement had been a cash balance arrangement,

(b) what would be the other money purchase relevant relievable amount (under that section) if that arrangement had been any other sort of money purchase arrangement, and

(c) what would be the defined benefits relevant relievable amount (under subsections (3) and (4)) if that arrangement had been a defined benefits arrangement,

as are relevant to that arrangement.

(6) An amount is relevant to a hybrid arrangement if, in any circumstances, the benefits that may be provided to or in respect of the individual under the arrangement may be benefits linked to that amount.

(7) For that purpose—

(a) cash balance benefits are linked to the cash balance relevant relievable amount,

(b) other money purchase benefits are linked to the other money purchase relevant relievable amount, and

(c) defined benefits are linked to the defined benefits relevant relievable amount.

Annual allowance charge

227 Annual allowance charge

(1) A charge to income tax, to be known as the annual allowance charge, arises where—

(a) the total pension input amount for a tax year in the case of an individual who is a member of one or more registered pension schemes, exceeds

(b) the amount of the annual allowance for the tax year.

(2) The person liable to the annual allowance charge is the individual.

(3) The individual is liable to the annual allowance charge whether or not—

(a) the individual, and

(b) the scheme administrator of the pension scheme or schemes concerned,

are resident, ordinarily resident or domiciled in the United Kingdom.

(4) The annual allowance charge is a charge at the rate of 40% in respect of the amount by which the total pension input amount exceeds the amount of the annual allowance.

(5) That excess is not to be treated as income for any purpose of the Tax Acts.

(6) The following sections make further provision about the annual allowance charge—

section 228 (annual allowance),

section 229 (total pension input amount to be aggregate of pension input amounts for pension input periods ending in tax year),

sections 230 to 237 (pension input amounts), and

section 238 (pension input period).

(7) Schedule 36 contains (in Part 4) transitional provision about the annual allowance charge.

228 Annual allowance

(1) The annual allowance for the tax year 2006-07 is £215,000.

(2) The annual allowance for each subsequent tax year is such amount, not being less than the annual allowance for the immediately preceding tax year, as is specified by order made by the Treasury.

229 Total pension input amount

(1) The total pension input amount is arrived at by aggregating the pension input amounts in respect of each arrangement relating to the individual under a registered pension scheme of which the individual is a member.

(2) The pension input amount in respect of an arrangement—

(a) is the amount arrived at under sections 230 to 232 if it is a cash balance arrangement,

(b) is the amount arrived at under section 233 if it is any other sort of money purchase arrangement,

(c) is the amount arrived at under sections 234 to 236 if it is a defined benefits arrangement, and

(d) is the amount arrived at under section 237 if it is a hybrid arrangement.

(3) But there is no pension input amount in respect of an arrangement if, before the end of the tax year, the individual—

(a) has become entitled to all the benefits which may be provided to the individual under the arrangement, or

(b) has died.

230 Cash balance arrangements

(1) The pension input amount in respect of a cash balance arrangement is the amount of any increase in the value of the individual's rights under the arrangement during the pension input period of the arrangement that ends in the tax year.

(2) There is an increase in the value of the individual's rights under the arrangement during the pension input period if—

(a) the opening value of the individual's rights under the arrangement, is exceeded by

(b) the closing value of the individual's rights under the arrangement.

(3) The amount of the increase in the value of the individual's rights under the arrangement during the pension input period is the amount of that excess.

(4) The opening value of the individual's rights under the arrangement is the amount which would, on the valuation assumptions (see section 277), be available for the provision of benefits to or in respect of the individual under the arrangement if the individual became entitled to the benefits at the beginning of the pension input period.

(5) The closing value of the individual's rights under the arrangement is the amount which would, on the valuation assumptions, be available for the provision of benefits to or in respect of the individual under the arrangement if the individual became entitled to the benefits at the end of the pension input period.

(6) Section 231 (uprating of opening value) and section 232 (adjustments of closing value) supplement this section.

231 Cash balance arrangements: uprating of opening value

(1) This section applies for adjusting the opening value of the individual's rights as calculated under section 230(4).

(2) The opening value is to be increased by the appropriate percentage.

(3) The appropriate percentage is whichever is the greatest of—

(a) 5%,

(b) the percentage (if any) by which the retail prices index for the month in which the pension input period ends is higher than it was for the month in which it began, and

(c) if provision made by regulations made by the Board of Inland Revenue applies in relation to the arrangement, the percentage to which the regulations refer.

232 Cash balance arrangements: adjustments of closing value

(1) This section applies for adjusting the closing value of the individual's rights under the arrangement as calculated under section 230(5).

(2) If, during the pension input period, the rights of the individual under the arrangement have been reduced by having become subject to a pension debit, the amount of the debit is to be added.

(3) If, during the pension input period, the rights of the individual under the arrangement have been increased by the individual having become entitled to a pension credit deriving from the same or another registered pension scheme, the amount of the credit is to be subtracted.

(4) Subsection (5) applies if, during the pension input period, the rights of the individual under the arrangement have been reduced by virtue of a transfer of any sum or asset held for the purposes of, or representing accrued rights under, the arrangement so as to become held for the purposes of, or to represent rights under, any other pension scheme that is—

(a) a registered pension scheme, or

(b) a qualifying recognised overseas pension scheme.

(5) The aggregate of the amount of any sums transferred and the market value of any assets transferred is to be added.

(6) Subsection (7) applies if, during the pension input period, the rights of the individual under the arrangement have been increased by virtue of a transfer of any sums or assets held for the purposes of, or representing accrued rights under, any pension scheme so as to become held for the purposes of, or to represent rights under, the arrangement.

(7) The aggregate of the amount of any sums transferred and the market value of any assets transferred is to be subtracted.

(8) If, during the pension input period, a benefit crystallisation event occurs in relation to the individual and the arrangement, the amount crystallised is to be added (but this is subject to section 229(3)).

(9) If, during the pension input period, minimum payments are made under—

(a) section 8 of the Pension Schemes Act 1993 (c. 48), or

(b) section 4 of the Pension Schemes (Northern Ireland) Act 1993 (c. 49),

in relation to the individual in connection with the arrangement, the amount paid is to be subtracted.

233 Other money purchase arrangements

(1) The pension input amount in respect of a money purchase arrangement other than a cash balance arrangement is the total of—

(a) any relievable pension contributions paid by or on behalf of the individual under the arrangement, and

(b) contributions paid in respect of the individual under the arrangement by an employer of the individual,

during the pension input period of the arrangement that ends in the tax year.

(2) The references to contributions in subsection (1)(a) and (b) do not include minimum payments under—

(a) section 8 of the Pension Schemes Act 1993, or

(b) section 4 of the Pension Schemes (Northern Ireland) Act 1993 (c. 49),

or any amount recovered under regulations made under subsection (3) of either of those sections.

(3) When at any time contributions paid under a pension scheme by an employer otherwise than in respect of any individual become held for the purposes of the provision under an arrangement under the pension scheme of benefits to or in respect of an individual, they are to be treated as being contributions paid at that time in respect of the individual under the arrangement.

234 Defined benefits arrangements

(1) The pension input amount in respect of a defined benefits arrangement is the amount of any increase in the value of the individual's rights under the arrangement during the pension input period of the arrangement that ends in the tax year.

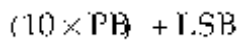
(2) There is an increase in the value of the individual's rights under the arrangement during the pension input period if—

(a) the opening value of the individual's rights under the arrangement, is exceeded by

(b) the closing value of the individual's rights under the arrangement.

(3) The amount of the increase in the value of the individual's rights under the arrangement during the pension input period is the amount of that excess.

(4) The opening value of the individual's rights under the arrangement is—

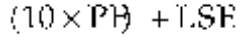


where—

PB is the annual rate of the pension which would, on the valuation assumptions (see section 277), be payable to the individual under the arrangement if the individual became entitled to payment of it at the beginning of the pension input period, and

LSB is the amount of the lump sum to which the individual would, on the valuation assumptions, be entitled under the arrangement (otherwise than by commutation of pension) if the individual became entitled to the payment of it at that time.

(5) The closing value of the individual's rights under the arrangement is—



where—

PE is the annual rate of the pension which would, on the valuation assumptions, be payable to the individual under the arrangement if the individual became entitled to payment of it at the end of the pension input period, and

LSE is the amount of the lump sum to which the individual would, on the valuation assumptions, be entitled under the arrangement (otherwise than by commutation of pension) if the individual became entitled to the payment of it at that time.

(6) Section 235 (uprating of opening value) and section 236 (adjustments of closing value) supplement this section.

235 Defined benefits arrangements: uprating of opening value

(1) This section applies for adjusting the opening value of the individual's rights as calculated under section 234(4) in a case where rights do not accrue to the individual under the arrangement during the pension input period.

(2) The opening value is to be increased by the appropriate percentage.

(3) The appropriate percentage is whichever is the greatest of—

(a) 5%,

(b) the percentage (if any) by which the retail prices index for the month in which the pension input period ends is higher than it was for the month in which it began, and

(c) if provision made by regulations made by the Board of Inland Revenue applies in relation to the arrangement, the percentage to which the regulations refer.

236 Defined benefits arrangements: adjustments of closing value

(1) This section applies for adjusting the closing value of the individual's rights as calculated under section 234(5).

(2) If, during the pension input period, the rights of the individual under the arrangement have been reduced by having become subject to a pension debit, the amount of the debit is to be added.

(3) If, during the pension input period, the rights of the individual under the arrangement have been increased by the individual having become entitled to a pension credit deriving from the same or another registered pension scheme, the amount of the credit is to be subtracted.

(4) Subsection (5) applies if, during the pension input period, there is a transfer relating to the individual of any sum or asset held for the purposes of, or representing accrued rights under, the arrangement so as to become held for the purposes of, or to represent rights under, any other pension scheme that is—

(a) a registered pension scheme, or

(b) a qualifying recognised overseas pension scheme.

(5) The aggregate of the amount of any sums transferred and the market value of any assets transferred is to be added.

(6) Subsection (7) applies if, during the pension input period, there is a transfer relating to the individual of any sums or assets held for the purposes of, or representing accrued rights under, any pension scheme so as to become held for the purposes of, or to represent rights under, the arrangement.

(7) The aggregate of the amount of any sums transferred and the market value of any assets transferred is to be subtracted.

(8) If, during the pension input period, a benefit crystallisation event occurs in relation to the individual and the arrangement, the amount crystallised is to be added (but this is subject to section 229(3)).

(9) If, during the pension input period, minimum payments are made under—

(a) section 8 of the Pension Schemes Act 1993 (c. 48), or

(b) section 4 of the Pension Schemes (Northern Ireland) Act 1993 (c. 49),

in relation to the individual in connection with the arrangement, the amount paid is to be subtracted.

237 Hybrid arrangements

(1) The pension input amount in respect of a hybrid arrangement is the greater or greatest of such of input amounts A, B and C as are relevant input amounts.

(2) An input amount is a relevant input amount in the case of a hybrid arrangement if, in any circumstances, the benefits that may be provided to or in respect of the individual under the arrangement may be benefits of the variety mentioned in the definition of that input amount.

(3) Input amount A is what would be the pension input amount under sections 230 to 232 if the benefits provided to or in respect of the individual under the arrangement were cash balance benefits.

(4) Input amount B is what would be the pension input amount under section 233 if the benefits provided to or in respect of the individual under the arrangement were other money purchase benefits.

(5) Input amount C is what would be the pension input amount under sections 234 to 236 if the benefits provided to or in respect of the individual under the arrangement were defined benefits.

238 Pension input period

(1) In the case of an arrangement under a registered pension scheme the following are pension input periods—

(a) the period beginning with the relevant commencement date and ending with the earlier of a nominated date and the anniversary of the relevant commencement date, and

(b) each subsequent period beginning immediately after the end of a period which is a pension input period (under paragraph (a) or this paragraph) and ending with the appropriate date.

(2) "The relevant commencement date" means—

(a) in the case of a cash balance arrangement or a defined benefits arrangement, or a hybrid arrangement the only benefits under which may be cash balance benefits or defined benefits, the date on which rights under the arrangement begin to accrue to or in respect of the individual,

(b) in the case of a money purchase arrangement other than a cash balance arrangement, the first date on which a contribution within section 233(1) is made, and

(c) in the case of a hybrid arrangement not within paragraph (a), whichever is the earlier of the date mentioned in that paragraph and the date mentioned in paragraph (b).

(3) "Nominated date" means—

(a) in the case of a money purchase arrangement other than a cash balance arrangement, such date as the individual or scheme administrator nominates, and

(b) in the case of any other arrangement, such date as the scheme administrator nominates.

(4) A nomination for the purposes of subsection (3)—

(a) if by the individual, is to be made by notice to the scheme administrator, and

(b) if by the scheme administrator, is to be made by notice to the individual.

(5) If more than one date is nominated for the purposes of subsection (3)—

(a) in relation to the period beginning with the relevant commencement date, or

(b) in relation to a tax year following that in which the pension input period beginning with that date ends,

the date nominated first is the nominated date.

(6) "The appropriate date" means the earlier of—

(a) a nominated date falling in the tax year immediately after that in which the last pension input period ended, and

(b) the anniversary of the date on which that period ended.

(7) Once the individual has become entitled to all the benefits which may be provided to the individual under an arrangement, the last pension input period in the case of the arrangement is to be treated as having ended when that was first so.

Scheme sanction charge

239 Scheme sanction charge

(1) A charge to income tax, to be known as the scheme sanction charge, arises where in any tax year one or more scheme chargeable payments are made by a registered pension scheme.

(2) The person liable to the scheme sanction charge is the scheme administrator.

(3) But in the case of a payment treated by virtue of section 161(3) and (4) (payments under investments acquired with scheme assets) as having been made by a pension scheme which has been wound up, the person liable to the scheme sanction charge is the person who was, or each of the persons who were, the scheme administrator immediately before the pension scheme was wound up.

(4) A person liable to the scheme sanction charge is liable whether or not—

(a) that person, and

(b) any other person who is liable to the scheme sanction charge,

are resident, ordinarily resident or domiciled in the United Kingdom.

(5) The following sections make further provision about the scheme sanction charge—

section 240 (amount of charge), and

section 241 (scheme chargeable payment).

240 Amount of charge

(1) The scheme sanction charge for any tax year is a charge at the rate of 40% in respect of the scheme chargeable payment, or the aggregate of the scheme chargeable payments, made by the pension scheme in the tax year.

(2) But if—

(a) the scheme chargeable payment is an unauthorised payment, or any of the scheme chargeable payments are unauthorised payments, and

(b) tax charged in relation to that payment, or any of those payments, under section 208 (unauthorised payments charge) has been paid,

a deduction is to be made from the amount of tax that would otherwise be chargeable for the tax year by virtue of subsection (1).

(3) The amount of the deduction is the lesser of—

(a) 25% of the amount of the scheme chargeable payment, or of the aggregate amount of such of the scheme chargeable payments as are tax-paid, and

(b) the amount of the tax which has been paid under section 208 in relation to the scheme chargeable payment, or in relation to such of the scheme chargeable payments as are tax-paid.

(4) A scheme chargeable payment is "tax-paid" if the whole or any part of the tax chargeable in relation to it under section 208 has been paid.

241 Scheme chargeable payment

(1) In this Part "scheme chargeable payment", in relation to a registered pension scheme, means—

(a) an unauthorised payment by the pension scheme, other than one which is exempt from being scheme chargeable, and

(b) a scheme chargeable payment which the pension scheme is to be treated as having made by section 183 or 185 (unauthorised borrowing).

(2) An unauthorised payment is exempt from being scheme chargeable if—

(a) it is treated as having been made by section 173 (use of scheme assets to provide benefits) and the asset used to provide the benefit in question is not a wasting asset,

(b) it is a compensation payment (see section 178),

(c) it is made to comply with an order of a court or of a person or body with power to order the making of the payment,

(d) it is made on the ground that a court or any such person or body is likely to order the making of the payment (or would be were it asked to do so), or

(e) it is of a description prescribed by regulations made by the Board of Inland Revenue.

(3) "Wasting asset" has the same meaning as in section 44 of TCGA 1992.

(4) Schedule 36 contains (in Part 3) transitional provision about scheme chargeable payments.

De-registration charge

242 De-registration charge

(1) A charge to income tax, to be known as the de-registration charge, arises where the registration of a registered pension scheme is withdrawn.

(2) The liability to the de-registration charge is a liability of the person who was, or each of the persons who were, the scheme administrator immediately before the registration was withdrawn.

(3) That person, or each of those persons, is liable to the de-registration charge whether or not—

(a) that person, and

(b) any other person who is liable to the de-registration charge,

are resident, ordinarily resident or domiciled in the United Kingdom.

(4) The de-registration charge is a charge at the rate of 40% in respect of the aggregate of—

(a) the amount of any sums held for the purposes of the pension scheme immediately before it ceased to be a registered pension scheme, and

(b) the market value at that time of any assets held for the purposes of the pension scheme.

CHAPTER 6

SCHEMES THAT ARE NOT REGISTERED PENSION SCHEMES

Non-UK schemes

243 Overseas pension schemes: migrant member relief

Schedule 33 contains provision about migrant member relief in respect of contributions under overseas pension schemes.

244 Non-UK schemes: application of certain charges

Schedule 34 contains provision applying certain charges under this Part in relation to non-UK schemes.

Employer-financed retirement benefit schemes

245 Restriction of deduction for contributions by employer

(1) Schedule 24 to the Finance Act 2003 (c. 14) (restriction of deductions for employee benefit contributions) is amended as follows.

(2) In paragraph 1(2)(b) (when employer makes "employee benefit contribution"), after "benefits to" insert "or in respect of present or former".

(3) In sub-paragraph (1) of paragraph 2 ("qualifying benefits"), insert at the end "or

(c) is made under an employer-financed retirement benefits scheme."

(4) In sub-paragraph (5) of that paragraph (when qualifying benefit treated as provided), after "payment of money" insert "otherwise than under an employer-financed retirement benefits scheme".

(5) In paragraph 8 (deductions to which Schedule does not apply), for paragraphs (b) and (c) substitute—

"(b) in respect of contributions under a registered pension scheme or a section 615(3) scheme,

(c) in respect of contributions under a qualifying overseas pension scheme in respect of an individual who is a relevant migrant member of the pension scheme in relation to the contributions,".

(6) In sub-paragraph (1) of paragraph 9 (interpretation), in the definition of "employee benefit scheme", after "include," insert "present or former".

(7) In that sub-paragraph, after the definition of "the employer" insert—

""employer-financed retirement benefits scheme" has the same meaning as in Chapter 2 of Part 6 of the Income Tax (Earnings and Pensions) Act 2003 (see section 393A of that Act);".

(8) In that sub-paragraph, after the definition of "qualifying expenses" insert—

""qualifying overseas pension scheme" has the same meaning as in Schedule 33 to the Finance Act 2004 (see paragraphs 5 and 6 of that Schedule);

"registered pension scheme" has the same meaning as in Part 4 of that Act (see section 150 of that Act);

"relevant migrant member" has the same meaning as in Schedule 33 to that Act (see paragraph 4 of that Schedule);

"section 615(3) scheme" means a superannuation fund to which section 615(3) of the Taxes Act 1988 applies;".

246 Restriction of deduction for non-contributory provision

(1) This section applies in relation to an employer's expenses of providing benefits to or in respect of present or former employees under an employer-financed retirement benefits scheme in a case where—

(a) the expenses do not consist of the making of contributions under the scheme, but

(b) in accordance with generally accepted accounting practice they are shown in the employer's accounts.

(2) Unless the benefits are ones in respect of which a person is, on receipt, chargeable to income tax, the expenses—

(a) are not deductible in computing the amount of the profits of the employer for the purposes of Case I or II of Schedule D,

(b) are not expenses of management of the employer for the purposes of section 75 of ICTA (expenses of management: companies with investment business), and

(c) are not to be brought into account at Step 1 in section 76(7) of ICTA (expenses of insurance companies) in respect of the employer.

(3) But where the benefits are ones in respect of which a person is, on receipt, chargeable to income tax—

(a) if the expenses are allowed to be deducted in computing the amount of the profits of the employer to be charged under Case I or II of Schedule D, they are deductible in computing the amount of the profits for the period of account in which they are paid, and

(b) for the purposes of the operation of section 75 or 76 of ICTA in relation to the employer, the expenses are referable to the accounting period in which they are paid.

(4) In this section "employer-financed retirement benefits scheme" has the same meaning as in Chapter 2 of Part 6 of ITEPA 2003 (see section 393A of that Act).

247 Abolition of income tax charge in respect of employer payments

In Part 6 of ITEPA 2003, omit Chapter 1 (payments by employer for the provision of benefits for an employee under certain schemes to count as employment income of employee).

248 Employer's cost of insuring against non-payment of benefit

(1) Section 307 of ITEPA 2003 (no liability to income tax in respect of chargeable benefit on provision made by employer for a retirement or death benefit) is amended as follows.

(2) After subsection (1) insert—

"(1A) Subsection (1) does not apply to provision made for insuring against the risk that a retirement or death benefit under an employer-financed retirement benefits scheme cannot be paid or given because of the employer's insolvency.

(1B) In subsection (1A) "employer-financed retirement benefits scheme" has the same meaning as in Chapter 2 of Part 6 (see section 393A)."

(3) In subsection (2), for "subsection (1)" substitute "this section".

249 Taxation of non-pension benefits

(1) Chapter 2 of Part 6 of ITEPA 2003 (taxation of non-pension benefits from certain pension schemes) is amended as follows.

(2) In the heading of the Chapter, for "NON-APPROVED PENSION" substitute "EMPLOYER-FINANCED RETIREMENT BENEFITS".

(3) For section 393 substitute—

"**393 Application of this Chapter**

(1) This Chapter applies to relevant benefits provided under an employer-financed retirement benefits scheme.

(2) Section 393A defines "employer-financed retirement benefits scheme" and section 393B defines "relevant benefits".

393A Employer-financed retirement benefits scheme

(1) In this Chapter "employer-financed retirement benefits scheme" means a scheme for the provision of benefits consisting of or including relevant benefits to or in respect of employees or former employees of an employer.

(2) But neither—

(a) a registered pension scheme, nor

(b) a section 615(3) scheme,

is an employer-financed retirement benefits scheme.

(3) "Section 615(3) scheme" means a superannuation fund to which section 615(3) of ICTA applies.

(4) "Scheme" includes a deed, agreement, series of agreements, or other arrangements.

393B Relevant benefits

(1) In this Chapter "relevant benefits" means any lump sum, gratuity or other benefit (including a non-cash benefit) provided (or to be provided)—

(a) on or in anticipation of the retirement of an employee or former employee,

(b) on the death of an employee or former employee,

(c) after the retirement or death of an employee or former employee in connection with past service,

(d) on or in anticipation of, or in connection with, any change in the nature of service of an employee, or

(e) to any person by virtue of a pension sharing order or provision relating to an employee or former employee.

(2) But—

(a) benefits charged to tax under Part 9 (pension income),

(b) benefits chargeable to tax by virtue of Schedule 34 to FA 2004 (which applies certain charges under Part 4 of that Act in relation to non-UK schemes), and

(c) excluded benefits,

are not relevant benefits.

(3) The following are "excluded benefits"—

(a) benefits in respect of ill-health or disablement of an employee during service,

(b) benefits in respect of the death by accident of an employee during service,

(c) benefits under a relevant life policy, and

(d) benefits of any description prescribed by regulations made by the Board of Inland Revenue.

(4) In subsection (3)(c) "relevant life policy" means—

(a) a group life policy as defined in section 539(3) of ICTA (life policies excluded from charges on gains) with respect to which the conditions in section 539A of that Act are met,

(b) a policy of life insurance the terms of which provide for the payment of benefits on the death of a single individual and with respect to which condition 1 in that section would be met if it referred to that individual (rather than each of the individuals insured under the policy) and conditions 3, 4, 5 and 7 in that section are met, or

(c) a policy of life insurance that would be within paragraph (a) or (b) but for the fact that it provides for a benefit which is an excluded benefit under or by virtue of paragraph (a), (b) or (d) of subsection (3).

(5) In subsection (1)(e) "pension sharing order or provision" means any such order or provision as is mentioned in section 28(1) of WRPA 1999 or Article 25(1) of WRP(NI)O 1999."

(4) Section 394 (charge on benefit) is amended as follows.

(5) After subsection (1) insert—

"(1A) Subsection (1) does not apply in relation to the benefit if the total amount of the benefits to which this Chapter applies received by the individual in the relevant tax year does not exceed £100."

(6) In subsection (2), for "administrator of" substitute "person who is (or persons who are) the responsible person in relation to".

(7) In subsection (3), for "subsections (1) and (2)" substitute "this section".

(8) For sections 395 to 397 substitute—

"**395 Reduction where employee has contributed**

(1) This section applies in relation to a relevant benefit under an employer-financed retirement benefits scheme in the form of a lump sum where, under the scheme, an employee has paid any sum or sums by way of contribution to the provision of the lump sum.

(2) The amount which, by virtue of section 394, counts as employment income, or is chargeable to tax under Case VI of Schedule D, is the amount of the lump sum reduced by the sum, or the aggregate of the sums, paid by the employee by way of contribution to the provision of the lump sum.

(3) A reduction under this section may not be claimed in respect of the same contribution in relation to more than one lump sum.

(4) It is to be assumed, unless the contrary is shown, that no reduction is applicable under this section."

(9) In subsection (1) of section 399 (valuation of benefit in form of loan), for "administrator of" substitute "person who is (or any of the persons who are) the responsible person in relation to".

(10) In subsection (2) of that section, for "administrator" substitute "responsible person".

(11) For section 400 substitute—

"**399A Responsible person**

(1) The following heads specify the person who is, or persons who are, the responsible person in relation to an employer-financed retirement benefits scheme for the purposes of this Chapter.

(2) But if a person is, or persons are, the responsible person in relation to the scheme by virtue of being specified under one head, no-one is the responsible person in relation to the scheme by virtue of being specified under a later head.

Head 1

If there are one or more trustees of the scheme who are resident in the United Kingdom, that trustee or each of those trustees.

Head 2

If there are one or more persons who control the management of the scheme, that person or each of those persons.

Head 3

If alive or still in existence, the employer, or any of the employers, who established the scheme and any person by whom that employer, or any of those employers, has been directly or indirectly succeeded in relation to the provision of benefits under the scheme.

Head 4

Any employer of employees to or in respect of whom benefits are, or are to be, provided under the scheme.

Head 5

If there are one or more trustees of the scheme who are not resident in the United Kingdom, that trustee or each of those trustees.

400 Interpretation

In this Chapter—

"employer-financed retirement benefits scheme" has the meaning given by section 393A;

"relevant benefits" has the meaning given by section 393B; and

"responsible person" has the meaning given by section 399A."

(12) In Part 2 of Schedule 1 to ITEPA 2003 (defined expressions), insert at the appropriate places—

"employer-financed retirement benefits scheme (in Chapter 2 of Part 6)	section 393A"
"relevant benefits (in Chapter 2 of Part 6)	section 393B"
"responsible person (in Chapter 2 of Part 6)	section 399A".

CHAPTER 7

COMPLIANCE

Information

250 Registered pension scheme return

(1) The Inland Revenue may, in relation to any tax year, by notice require the scheme administrator of a registered pension scheme—

(a) to make and deliver to the Inland Revenue a return containing any information reasonably required by the notice, and

(b) to deliver with the return any accounts, statements or other documents relating to information contained in the return which may reasonably be required by the notice.

(2) The information that may be required to be included in the return is any information relating to—

(a) contributions made under the pension scheme,

(b) transfers of sums or assets held for the purposes of, or representing accrued rights under, another pension scheme so as to become held for the purposes of, or to represent rights under, the pension scheme,

(c) income and gains derived from investments or deposits held for the purposes of the pension scheme,

(d) other receipts of the pension scheme,

(e) the sums and other assets held for the purposes of the pension scheme,

(f) the liabilities of the pension scheme,

(g) the provision of benefits by the pension scheme,

(h) transfers of sums or assets held for the purposes of, or representing accrued rights under, the pension scheme so as to become held for the purposes of, or to represent rights under, another pension scheme,

(i) other expenditure of the pension scheme,

(j) the membership of the pension scheme, or

(k) any other matter relating to the administration of the pension scheme.

(3) The information that may be required to be included in the return may be limited to information concerning any particular arrangement or arrangements under the pension scheme.

(4) The notice must specify the period to be covered by the return.

(5) The period may be—

(a) the whole or any specified part of the tax year, or

(b) if audited accounts of the pension scheme have been prepared for any period or periods ending in the tax year, the period or periods covered by the accounts.

(6) "Audited accounts" means accounts audited by a person of a description specified in regulations made by the Board of Inland Revenue.

(7) A return relating to the whole or part of, or to a period or periods ending in, a tax year must be delivered—

(a) where the notice requiring the return is given after the 31st October in the next tax year, before the end of the period of three months beginning with the day on which the notice is given, and

(b) otherwise, not later than the 31st January in the next tax year (but subject as follows).

(8) If, in a case within paragraph (b) of subsection (7), the winding-up of the pension scheme has been completed before 31st October in the next tax year, the return must be delivered before the end of the period of three months beginning with the day on which the winding-up is completed.

(9) But subsection (8) does not apply if the end of that period is before the end of the period of three months beginning with the day on which the notice is given; and in that case the return must be delivered before the end of that period.

251 Information: general requirements

(1) The Board of Inland Revenue may by regulations make provision requiring persons of a prescribed description—

(a) to provide to the Inland Revenue, in a form specified by the Board of Inland Revenue, information of a prescribed description relating to any of the matters mentioned in subsection (2), and

(b) to preserve for a prescribed period any documents relating to such information.

(2) Those matters are—

(a) any matter relating to a registered pension scheme,

(b) any matter relating to a pension scheme which has ceased to be a registered pension scheme,

(c) any matter relating to a pension scheme in relation to which an application for registration has been made,

(d) any matter relating to an annuity purchased with sums or assets held for the purposes of a registered pension scheme,

(e) the coming into operation of an employer-financed retirement benefits scheme, and

(f) the provision of relevant benefits under an employer-financed retirement benefits scheme.

(3) In subsection (2)—

"employer-financed retirement benefits scheme", and

"relevant benefits",

have the same meaning as in Chapter 2 of Part 6 of ITEPA 2003 (see sections 393A and 393B of that Act).

(4) The Board of Inland Revenue may by regulations make provision—

(a) requiring scheme administrators of registered pension schemes or other persons of a prescribed description to provide information of a prescribed description to persons of such of the descriptions mentioned in subsection (5) as are prescribed, or

(b) requiring persons of such of the descriptions specified in subsection (5) as are prescribed to provide information of a prescribed description to the scheme administrators of registered pension schemes.

(5) Those persons are—

(a) members of a registered pension scheme,

(b) persons who have ceased to be members of a registered pension scheme,

(c) persons to whom benefits under a registered pension scheme are being, or have been, provided,

(d) the personal representatives of any person within paragraphs (a) to (c), and

(e) insurance companies who pay annuities purchased with sums or assets held for the purposes of registered pension schemes.

(6) "Prescribed", in relation to regulations, means prescribed by the regulations.

252 Notices requiring documents or particulars

(1) The Inland Revenue may by notice require any person of a description prescribed by regulations made by the Board of Inland Revenue—

(a) to produce to the Inland Revenue, or to make available for inspection by the Inland Revenue, any documents within the person's possession or power relating to any of the matters mentioned in subsection (3) which the Inland Revenue may reasonably require, and

(b) to provide to the Inland Revenue any particulars relating to any of those matters which the Inland Revenue may reasonably require.

(2) The Inland Revenue may by notice require any other person to produce to the Inland Revenue, or to make available for inspection by the Inland Revenue, any documents within the person's possession or power which—

(a) relate to any of the matters mentioned in subsection (3), and

(b) were created not more than six years before the day on which the notice is given,

and which the Inland Revenue may reasonably require.

(3) The matters referred to in subsections (1) and (2) are—

(a) any matter relating to a registered pension scheme,

(b) any matter relating to a pension scheme which has ceased to be a registered pension scheme,

(c) any matter relating to a pension scheme in relation to which an application for registration has been made,

(d) any matter relating to an annuity purchased with sums or assets held for the purposes of a registered pension scheme,

(e) the coming into operation of an employer-financed retirement benefits scheme, and

(f) the provision of relevant benefits under an employer-financed retirement benefits scheme.

(4) In subsection (3)—

"employer-financed retirement benefits scheme", and

"relevant benefits",

have the same meaning as in Chapter 2 of Part 6 of ITEPA 2003 (see sections 393A and 393B of that Act).

(5) A notice under this section must specify the period within which it is to be complied with; and that period may not end earlier than the period of 30 days beginning with the day on which the notice is given.

(6) A notice under subsection (2) must specify the pension scheme or employer-financed retirement benefits scheme to which it relates.

(7) The Inland Revenue must notify the scheme administrator of the pension scheme, or the responsible person in relation to theemployer-financed retirement benefits scheme, to which such a notice relates that the notice has been given no later than the end of the period of 30 days beginning with the day on which it is given.

(8) In subsection (7) "responsible person" has the same meaning as in Chapter 2 of Part 6 of ITEPA 2003 (see section 399A of that Act).

(9) A person may comply with a notice under this section requiring the production of a document by producing a copy of the document.

(10) But where a person produces a copy of a document in compliance with a notice under this section the Inland Revenue may by notice require the production of the original for inspection within a period specified in the notice; and that period may not end earlier than the period of 30 days beginning with the day on which the notice is given.

(11) The Inland Revenue may take copies of, or make extracts from, any document produced in compliance with a notice under this section.

(12) A notice under this section does not require a person—

(a) to produce or make available for inspection any document, or

(b) to provide any particulars,

relating to any pending appeal by the person relating to tax.

253 Appeal against notices

(1) The person to whom a notice under section 252(1) or (2) (notices requiring documents or particulars) is given may appeal against any requirement imposed by the notice.

(2) The appeal must be brought within the period of 30 days beginning with the date on which the notice is given.

(3) The appeal is to the General Commissioners, except that the appellant may elect (in accordance with section 46(1) of TMA 1970) to bring the appeal before the Special Commissioners instead of the General Commissioners.

(4) Paragraphs 1, 2, 8 and 9 of Schedule 3 to TMA 1970 (rules for assigning proceedings to General Commissioners) have effect to identify the General Commissioners before whom an appeal under this section is to be brought, but subject to modifications specified in an order made by the Board of Inland Revenue.

(5) An appeal under this section against a requirement imposed by a notice must be brought within the period of 30 days beginning with the day on which the notice was given.

(6) The Commissioners before whom an appeal under this section is brought must consider whether the production of the document, or provision of the particulars, to which the appeal relates was reasonably required by the Inland Revenue.

(7) If they decide that it was, they must confirm the notice so far as relating to that requirement.

(8) If they decide that it was not, they must set aside the notice so far as relating to that requirement.

(9) If the notice is confirmed it has effect in relation to the requirement to which the appeal relates as if it specified as the period within which it must be complied with the period of 30 days beginning with the day on which the appeal was determined.

(10) The determination of the Commissioners is final and conclusive.

Accounting and assessment

254 Accounting for tax by scheme administrators

(1) A scheme administrator of a registered pension scheme must make returns to the Inland Revenue of the income tax to which the scheme administrator is liable under this Part.

(2) A return is to be made for each period of three months ending with 31st March, 30th June, 30th September or 31st December if tax has been charged on the scheme administrator by virtue of this Part in that period.

(3) A return for any period must be made before the end of the period of 45 days beginning with the day immediately following the end of that period.

(4) A return must—

(a) show the income tax to which the scheme administrator is liable, and

(b) include such particulars of the events or other circumstances giving rise to the liability (including particulars as to the persons to whom the events or other circumstances relate) as are required to be included in returns under this section by regulations made by the Board of Inland Revenue.

(5) The income tax required to be shown in a return is due at the time by which the return is to be made and is payable without the making of an assessment.

(6) The Board of Inland Revenue may by regulations make provision for and in connection with—

(a) the charging of interest on tax due under this section which is not paid on or before the due date,

(b) the making of amended returns by scheme administrators in the event of error in a return under this section,

(c) the making of assessments, repayments or adjustments in cases where the correct tax due under this section has not been paid on or before the due date, and

(d) otherwise for supplementing this section.

(7) The regulations may, in particular—

(a) modify the operation of any provision of the Tax Acts, or

(b) provide for the application of any provision of the Tax Acts (with or without modifications).

(8) References in this section to the income tax to which a scheme administrator is liable under this Part do not include any to which the scheme administrator is liable under section 239 (scheme sanction charge).

(9) Where the registration of a registered pension scheme has been withdrawn, this section has effect as if references to the scheme administrator were to the person who was, or each of the persons who were, the scheme administrator immediately before the registration was withdrawn.

255 Assessments under this Part

(1) The Board of Inland Revenue may by regulations make provision for and in connection with the making of assessments in respect of—

(a) the unauthorised payments charge,
(b) the unauthorised payments surcharge,
(c) liability to the lifetime allowance charge under section 217(2) (person to whom lump sum death benefit paid),
(d) the scheme sanction charge,
(e) liability under section 272 (trustees etc. liable as scheme administrator),
(f) liability under section 273 (member liable as scheme administrator), and
(g) liability under section 394 of ITEPA 2003 (benefit under employer-financed retirement benefits scheme: charge on responsible person).

(2) The provision that may be made by the regulations includes (in particular) provision for the charging of interest on tax due under such assessments which remains unpaid.

(3) The regulations may, in particular—
(a) modify the operation of any provision of the Tax Acts, or
(b) provide for the application of any provision of the Tax Acts (with or without modification).

Registration regulations

256 Enhanced lifetime allowance regulations

(1) This section applies to regulations made by the Board of Inland Revenue under—
(a) section 220(5) (lifetime allowance enhancement: registration of pension credits),
(b) section 221(6) (lifetime allowance enhancement: individuals who are not always relevant UK individuals),
(c) section 224(9) (lifetime allowance enhancement: transfers from recognised overseas pension scheme),
(d) paragraph 7(1)(b) of Schedule 36 (lifetime allowance enhancement: primary protection),
(e) paragraph 12(1) of that Schedule (lifetime allowance: enhanced protection), and
(f) paragraph 18(6) of that Schedule (lifetime allowance enhancement: pre-commencement pension credits).

(2) The regulations to which this section applies are referred to in this Part as "enhanced lifetime allowance regulations".

(3) Enhanced lifetime allowance regulations may include any provision that appears appropriate for securing that the correct tax is charged—
(a) by way of the lifetime allowance charge in respect of amounts crystallised by benefit crystallisation events, and
(b) in respect of the payment of lump sums by registered pension schemes.

(4) Enhanced lifetime allowance regulations may, for that purpose, in particular contain provision—
(a) requiring any person to produce or make available documents, produce certificates or provide information, and
(b) for the review from time to time of any matter registered in accordance with the regulations.

Penalties

257 Registered pension scheme return

(1) If the scheme administrator of a registered pension scheme fails to comply with a notice under section 250 (registered pension scheme return), the scheme administrator is liable to a penalty of £100.

(2) If the failure continues after a penalty is imposed under subsection (1), the scheme administrator is liable to a further penalty not exceeding £60 for each day on which the failure continues after the day on which that penalty was imposed (but excluding any day for which a penalty under this subsection has already been imposed).

(3) No penalty may be imposed under subsection (1) or (2) in respect of a failure after it has been remedied.

(4) If the scheme administrator of a registered pension scheme fraudulently or negligently—

(a) makes an incorrect return required by a notice under section 250, or

(b) delivers any incorrect accounts, statements or other documents with such a return,

the scheme administrator is liable to a penalty not exceeding £3,000.

258 Information required by regulations

(1) In section 98 of TMA 1970 (penalties for failure to provide information and providing false information), in the second column of the Table, insert at the appropriate place—

"regulations under section 251(1)(a) or (4) of the Finance Act 2004;".

(2) A person who fails to comply with regulations under section 251(1)(b) (preservation of documents) is liable to a penalty not exceeding £3,000.

259 Documents and particulars required by notice

(1) A person who fails to comply with a notice under section 252 (notice requiring documents or particulars) is liable to a penalty not exceeding £300.

(2) If the failure continues after a penalty is imposed under subsection (1), the person is liable to a further penalty not exceeding £60 for each day on which the failure continues after the day on which that penalty was imposed (but excluding any day for which a penalty under this subsection has already been imposed).

(3) No penalty may be imposed under subsection (1) or (2) in respect of a failure after it has been remedied.

(4) If a person fraudulently or negligently—

(a) produces or makes available for inspection any incorrect documents, or

(b) provides any incorrect particulars,

in response to a notice under section 252, the person is liable to a penalty not exceeding £3,000.

260 Accounting return

(1) If the scheme administrator of a registered pension scheme fails to make a return for a quarter in accordance with section 254 (return of tax charged), the scheme administrator is liable—

(a) to a penalty or penalties of the relevant quarterly amount for each quarter (or part of a quarter) for which the failure continues, excluding any quarter after the fourth or for which a penalty under this paragraph has already been imposed, and

(b) if the failure continues beyond the fourth quarter (whether or not any penalty under paragraph (a) is imposed), to a penalty not exceeding the amount of income tax to which the scheme administrator is liable (otherwise than under section 239: scheme sanction charge) for the quarter for which the return is not made.

(2) In subsection (1)—

"quarter" means a period of three months ending with 31st March, 30th June, 30th September or 31st December, and

"the relevant quarterly amount"—

(a) if the number of persons in respect of whom particulars should be included in the return by virtue of section 254(4)(b) is ten or less, is £100, and

(b) if that number is greater than ten, is £100 for each ten such persons and an additional £100 where that number is not a multiple of ten.

(3) The Treasury may from time to time by order amend the amounts specified in the definition of "the relevant quarterly amount" in subsection (2).

(4) No penalty under subsection (1)(b) may be imposed unless—

(a) the amount of income tax to which the scheme administrator is liable (otherwise than under section 239) for the quarter concerned has been determined by the Inland Revenue, and

(b) the scheme administrator has been notified of that amount.

(5) In section 100(6)(a) of TMA 1970 (excessive penalty), after "1998" insert "or section 260(1)(b) of the Finance Act 2004".

(6) If the scheme administrator of a registered pension scheme fraudulently or negligently makes an incorrect return under section 254, the scheme administrator is liable to a penalty not exceeding the difference between—

(a) the amount of the tax shown in the return, and

(b) the amount of the tax which should have been shown in the return,

or, if no tax is shown in the return, the amount of the tax which should have been shown in the return.

(7) Where the registration of a registered pension scheme has been withdrawn, this section has effect as if references to the scheme administrator were to the person who was or the persons who were the scheme administrator immediately before the registration was withdrawn.

261 Enhanced lifetime allowance regulations: documents and information

(1) This section applies where an individual fraudulently or negligently—

(a) produces or makes available an incorrect document, or produces an incorrect certificate, in connection with any matter registered in accordance with enhanced lifetime allowance regulations, or

(b) provides false information in connection with any such matter,

and the condition in subsection (2) is met.

(2) The condition is that—

(a) the amount of the individual's lifetime allowance at the time which is relevant for the purposes of this paragraph, or

(b) the amount of the pension commencement lump sums to which the individual may be entitled at the time which is relevant for the purposes of this paragraph,

would be greater than it actually is were the document or certificate correct or the information true.

(3) The individual is liable to a penalty not exceeding 25% of the relevant excess.

(4) In a case within paragraph (a) of subsection (2), the relevant excess is the difference between what would be the amount of the individual's lifetime allowance at the time which is relevant for the purposes of that paragraph (were the document or certificate correct or the information true) and whichever is the higher of—

(a) the actual amount of the individual's lifetime allowance at that time, and

(b) the standard lifetime allowance at that time.

(5) The time which is relevant for the purposes of paragraph (a) of subsection (2)—

(a) where a benefit crystallisation event has occurred in relation to the individual since the document was produced or made available, the certificate produced or the information provided (but before a penalty under this section is imposed), is the time when the benefit crystallisation event occurred, and

(b) otherwise, is the time when the document was produced or made available, the certificate produced or the information provided.

(6) In a case within paragraph (b) of subsection (2), the relevant excess is the difference between—

(a) what would be the amount of the pension commencement lump sums to which the individual may be entitled at the time which is relevant for the purposes of that paragraph (were the document or certificate correct or the information true), and

(b) the actual amount at that time of the pension commencement lump sums to which the individual may be entitled.

(7) The time which is relevant for the purposes of paragraph (b) of subsection (2) is the time when the document was produced or made available, the certificate produced or the information provided.

262 Enhanced lifetime allowance regulations: failures to comply

An individual who fails—

(a) to produce or make available any document required to be produced by enhanced lifetime allowance regulations,

(b) to produce any certificate required to be produced by enhanced lifetime allowance regulations, or

(c) to provide any information required to be provided by enhanced lifetime allowance regulations,

is liable to a penalty not exceeding £3,000.

263 Lifetime allowance enhanced protection: benefit accrual

(1) This section applies where—

(a) paragraph 12 of Schedule 36 (lifetime allowance charge: enhanced protection) applies in relation to an individual, and

(b) relevant benefit accrual occurs in relation to the individual (as to which see paragraph 13 of that Schedule).

(2) If the individual fails to notify the Inland Revenue of the relevant benefit accrual within the period of 90 days beginning with the day on which it occurs, the individual is liable to a penalty not exceeding £3,000.

264 False statements etc

(1) A person who fraudulently or negligently makes a false statement or representation is liable to a penalty not exceeding £3,000 if, in consequence of the statement or representation—

(a) that person or any other person obtains relief from, or repayment of, tax chargeable under this Part, or

(b) a registered pension scheme makes a payment which is an unauthorised payment.

(2) A person who assists in or induces the preparation of any document which the person knows—

(a) is incorrect, and

(b) will, or is likely to, cause a registered pension scheme to make an unauthorised payment,

is liable to a penalty not exceeding £3,000.

265 Winding-up to facilitate payment of lump sums

(1) This section applies where the winding-up of a registered pension scheme has begun and the Inland Revenue considers the pension scheme is being wound up wholly or mainly for the purpose specified in subsection (2).

(2) That purpose is facilitating the payment of winding-up lump sums or winding-up lump sum death benefits (or both) under the pension scheme.

(3) The scheme administrator is liable to a penalty not exceeding the relevant amount.

(4) The relevant amount is £3,000 in respect of—

(a) each member to whom a winding-up lump sum is paid under the pension scheme, and

(b) each member in respect of whom a winding-up lump sum death benefit is paid under the pension scheme.

266 Transfers to insured schemes

(1) This section applies where sums held for the purposes of, or representing accrued rights under, a registered pension scheme ("the transferor scheme") are transferred so as to become held for the purposes of, or to represent rights under, a registered pension scheme that is an insured scheme ("the transferee scheme").

(2) The scheme administrator of the transferor scheme is liable to a penalty not exceeding £3,000 unless the sums are transferred either to the scheme administrator of the transferee scheme or to a relevant insurance company.

(3) In this section—

"insured scheme" means a pension scheme all the income and other assets of which are invested in policies of insurance, and

"relevant insurance company" means an insurance company that issued any of the policies of insurance.

Discharge of tax liability: good faith

267 Lifetime allowance charge

(1) This section applies where the scheme administrator of a registered pension scheme is liable to the lifetime allowance charge in respect of a benefit crystallisation event.

(2) The scheme administrator may apply to the Inland Revenue for the discharge of the scheme administrator's liability to the lifetime allowance charge in respect of the benefit crystallisation event on the ground mentioned in subsection (3).

(3) The ground is that—

(a) the scheme administrator reasonably believed that there was no liability to the lifetime allowance charge in respect of the benefit crystallisation event, and

(b) in all the circumstances of the case, it would not be just and reasonable for the scheme administrator to be liable to the lifetime allowance charge in respect of the benefit crystallisation event.

(4) On receiving an application under subsection (2), the Inland Revenue must decide whether to discharge the scheme administrator's liability to the lifetime allowance charge in respect of the benefit crystallisation event.

(5) The scheme administrator may apply to the Inland Revenue for the discharge of part of the scheme administrator's liability to the lifetime allowance charge in respect of the benefit crystallisation event on the ground mentioned in subsection (6).

(6) The ground is that—

(a) the scheme administrator reasonably believed that the amount of the lifetime allowance charge in respect of the benefit crystallisation event was less than the actual amount, and

(b) in all the circumstances of the case, it would not be just and reasonable for the scheme administrator to be liable to an amount ("the excess amount") equal to the difference between the amount which the scheme administrator believed to be the amount of the charge and the actual amount.

(7) On receiving an application under subsection (5), the Inland Revenue must decide whether to discharge the scheme administrator's liability to the lifetime allowance charge in respect of the excess amount (or part of the excess amount).

(8) The discharge of the scheme administrator's liability to the lifetime allowance charge (or to the excess amount or part of the excess amount) does not affect the liability of any other person to the lifetime allowance charge.

(9) The Inland Revenue must notify the scheme administrator of the decision on an application under this section.

(10) Regulations made by the Board of Inland Revenue may make provision supplementing this section; and the regulations may in particular make provision as to the time limits for the making of an application.

268 Unauthorised payments surcharge and scheme sanction charge

(1) This section applies where—

(a) a person is liable to the unauthorised payments surcharge in respect of an unauthorised payment, or

(b) the scheme administrator of a registered pension scheme is liable to the scheme sanction charge in respect of a scheme chargeable payment.

(2) The person liable to the unauthorised payments surcharge may apply to the Inland Revenue for the discharge of the person's liability to the unauthorised payments surcharge in respect of the unauthorised payment on the ground mentioned in subsection (3).

(3) The ground is that in all the circumstances of the case, it would be not be just and reasonable for the person to be liable to the unauthorised payments surcharge in respect of the payment.

(4) On receiving an application by a person under subsection (2) the Inland Revenue must decide whether to discharge the person's liability to the unauthorised payments surcharge in respect of the payment.

(5) The scheme administrator may apply to the Inland Revenue for the discharge of the scheme administrator's liability to the scheme sanction charge in respect of a scheme chargeable payment on the ground mentioned in subsection (6) or (7).

(6) In the case of a scheme chargeable payment which is treated as being an unauthorised member payment by section 172 (assignment), the ground is that, in all the circumstances of the case, it would not be just and reasonable for the scheme administrator to be liable to the scheme sanction charge.

(7) In any other case, the ground is that—

(a) the scheme administrator reasonably believed that the unauthorised payment was not a scheme chargeable payment, and

(b) in all the circumstances of the case, it would not be just and reasonable for the scheme administrator to be liable to the scheme sanction charge in respect of the unauthorised payment.

(8) On receiving an application under subsection (5), the Inland Revenue must decide whether to discharge the scheme administrator's liability to the scheme sanction charge in respect of the unauthorised payment.

(9) The Inland Revenue must notify the applicant of the decision on an application under this section.

(10) Regulations made by the Board of Inland Revenue may make provision supplementing this section; and the regulations may in particular make provision as to the time limits for the making of an application.

269 Appeal against decision on discharge of liability

(1) This section applies where the Inland Revenue—

(a) decides to refuse an application under section 267(2) (discharge of liability to lifetime allowance charge) or section 268 (discharge of liability to unauthorised payments surcharge or scheme sanction charge), or

(b) on an application under section 267(5), decides to refuse the application or to discharge the applicant's liability to the lifetime allowance charge in respect of part only of the excess amount.

(2) The applicant may appeal against the decision.

(3) The appeal is to the General Commissioners, except that the person may elect (in accordance with section 46(1) of TMA 1970) to bring the appeal before the Special Commissioners instead of the General Commissioners.

(4) Paragraphs 1, 2, 8 and 9 of Schedule 3 to TMA 1970 (rules for assigning proceedings to General Commissioners) have effect to identify the General Commissioners before whom an appeal under this section is to be brought, but subject to modifications specified in an order made by the Board of Inland Revenue.

(5) An appeal under this section against a decision must be brought within the period of 30 days beginning with the day on which the applicant was given notification of the decision.

(6) The Commissioners before whom an appeal under subsection (1)(a) is brought must consider whether the applicant's liability to the lifetime allowance charge, unauthorised payments surcharge or scheme sanction charge ought to have been discharged.

(7) If they consider that the applicant's liability ought not to have been discharged, they must dismiss the appeal.

(8) If they consider that the applicant's liability ought to have been discharged, they must grant the application.

(9) The Commissioners before whom an appeal under subsection (1)(b) is brought must consider whether the applicant's liability to the lifetime allowance charge ought to have been discharged in respect of the excess amount or a greater part of the excess amount.

(10) If they consider that the applicant's liability ought not to have been discharged in respect of the excess amount or a greater part of the excess amount, they must dismiss the appeal.

(11) If they consider that the applicant's liability ought to have been discharged in respect of the excess amount or a greater part of the excess amount, they must discharge the applicant's liability in respect of the excess amount or that part of the excess amount.

Scheme administrator

270 Meaning of "scheme administrator"

(1) References in this Part to the scheme administrator, in relation to a pension scheme, are to the person who is, or persons who are, appointed in accordance with the rules of the pension scheme to be responsible for the discharge of the functions conferred or imposed on the scheme administrator of the pension scheme by and under this Part.

(2) But a person cannot be the person who is, or one of the persons who are, the scheme administrator of a pension scheme unless the person—

(a) is resident in the United Kingdom or another state which is a member State or a non-member EEA State, and

(b) has made the required declaration to the Inland Revenue.

(3) "The required declaration" is a declaration that the person—

(a) understands that the person will be responsible for discharging the functions conferred or imposed on the scheme administrator of the pension scheme by and under this Part, and

(b) intends to discharge those functions at all times, whether resident in the United Kingdom or another state which is a member State or a non-member EEA State.

(4) "Non-member EEA State" means a State which is a contracting party to the Agreement on the European Economic Area signed at Oporto on 2nd May 1992 (as adjusted by the Protocol signed at Brussels on 17th March 1993) but which is not a member State.

271 Liability of scheme administrator

(1) Any liability of a person who is, or of any of the persons who are, the scheme administrator of a registered pension scheme ceases to be a liability of that person on the person ceasing to be, or to be one of the persons who is, the scheme administrator of the pension scheme.

This subsection does not apply to a liability to pay a penalty and is subject to subsection (4).

(2) Where a person becomes, or becomes one of the persons who is, the scheme administrator of a registered pension scheme, the person assumes any existing liabilities of the scheme administrator of the pension scheme, other than any liability to pay a penalty.

(3) Subsection (4) applies where, on the person who is or the persons who are the scheme administrator of a registered pension scheme ceasing to be the scheme administrator, there is no scheme administrator of the pension scheme.

(4) Any liability of the person or persons as scheme administrator remains a liability of that person or those persons as if still the scheme administrator (unless dead or having ceased to exist) until another person becomes, or other persons become, the scheme administrator of the pension scheme.

(5) But a person who retains, or persons who retain, any liability by virtue of subsection (4) may apply to the Inland Revenue to be released from the liability.

(6) On receipt of the application the Inland Revenue must decide whether or not to release the applicant or applicants from the liability and must notify the applicant, or each of the applicants, of the decision.

(7) If the decision is not to release the applicant or applicants from the liability the applicant or applicants may appeal against the decision.

(8) The appeal is to the General Commissioners, except that the applicant or applicants may elect (in accordance with section 46(1) of TMA 1970) to bring the appeal before the Special Commissioners instead of the General Commissioners.

(9) The appeal must be brought within the period of 30 days beginning with the day on which the applicant was notified of the decision.

(10) Paragraphs 1, 2, 8 and 9 of Schedule 3 to TMA 1970 (rules for assigning proceedings to General Commissioners) have effect to identify the General Commissioners before whom an appeal under this section is to be brought, but subject to modifications specified in an order made by the Board of Inland Revenue.

(11) The Commissioners before whom an appeal under this section is brought must consider whether the applicant or applicants ought to have been released from the liability.

(12) If they decide that the applicant or applicants ought not to have been released from the liability, they must dismiss the appeal.

(13) If they decide that the applicant or applicants ought to have been released from the liability, the applicant is, or applicants are, to be treated as having been released from the liability (but subject to any further appeal or any determination on, or in consequence of, a case stated).

272 Trustees etc. liable as scheme administrator

(1) This section applies in relation to a registered pension scheme if—

(a) there is no scheme administrator of the pension scheme and no-one who remains subject to the liabilities of the scheme administrator by virtue of section 271(4) (continuation of liability where no scheme administrator),

(b) the person who is, or all the persons who are, the scheme administrator of the pension scheme or remain so subject cannot be traced, or

(c) the person who is, or all the persons who are, the scheme administrator of the pension scheme or remain so subject are in serious default.

(2) Any person who assumes liability by reason of this section applying in relation to the pension scheme—

(a) is liable to pay any tax (and any interest on tax) due from the scheme administrator of the pension scheme by virtue of this Part, and

(b) is responsible for the discharge of all other obligations imposed on the scheme administrator of the pension scheme by or under this Part.

(3) In subsection (2)—

(a) the references in paragraph (a) to tax, and interest on tax, include any that has become due before this section applied in relation to the pension scheme and remains unpaid, and

(b) the reference in paragraph (b) to obligations includes any that have become due before this section applied in relation to the pension scheme and remain unsatisfied, other than any liability to pay a penalty which has become due before this section so applied.

(4) The following heads specify the persons who assume liability by reason of this section applying in relation to the pension scheme; but if—

(a) a person assumes, or persons assume, liability by virtue of being specified under one head, and

(b) that person, or any of those persons, can be traced and is not in default,

no-one assumes liability by virtue of being specified under a later head.

Head 1

If there are one or more trustees of the pension scheme who are resident in the United Kingdom, that trustee or each of those trustees.

Head 2

If there are one or more persons who control the management of the pension scheme, that person or each of those persons.

Head 3

If alive or still in existence, the person, or any of the persons, who established the pension scheme and any person by whom that person, or any of those persons, has been directly or indirectly succeeded in relation to the provision of benefits under the pension scheme.

Head 4

If the pension scheme is an occupational pension scheme, any sponsoring employer.

Head 5

If there are one or more trustees of the pension scheme who are not resident in the United Kingdom, that trustee or each of those trustees.

(5) Where a person assumes liability by reason of this section applying in relation to the pension scheme, the Inland Revenue must, as soon as is reasonably practicable, notify the person of that fact; but failure to do so does not affect the person's liability.

(6) For the purposes of this section a person is in default if the person—

(a) has failed to pay all or any of the tax (or interest on tax) due from the person by virtue of this Part, or

(b) has failed to discharge any other obligation imposed on the person by or under this Part,

and a person in default is in serious default if the Inland Revenue considers the failure to be of a serious nature.

273 Members liable as scheme administrator

(1) This section applies in relation to a registered pension scheme if—

(a) a person has, or persons have, assumed liability by reason of section 272 (trustees etc.) applying in relation to the pension scheme,

(b) the person has, or the persons have, become liable to pay tax (or interest on tax) which became due by virtue of section 239 (scheme sanction charge) or section 242 (de-registration charge) before section 272 applied in relation to the pension scheme,

(c) that person, or each of those persons, has failed (in whole or in part) to satisfy the liability, and

(d) that person, or each of those persons, has either died or ceased to exist or is a person in whose case the Inland Revenue considers the person's failure to satisfy the liability to be of a serious nature.

(2) Any person who was a member of the pension scheme at any time during the relevant three-year period is liable to pay the appropriate share of the unpaid amount if—

(a) any of the conditions in subsection (5) is met, and

(b) the Inland Revenue notifies the person of the person's liability to do so.

(3) "The relevant three-year period" is the period of three years ending with the date on which the liability to pay the tax arose.

(4) The "appropriate share of the unpaid amount", in the case of a person, is—

$$\frac{AAP}{AA} \times UT$$

where—

AA is an amount equal to aggregate of the amount of the sums and the market value of the assets held for the purposes of the pension scheme at the time when the liability to pay the tax arose,

AAP is an amount equal to so much of AA as is held for the purposes of such of the arrangements under the pension scheme as relate to the person or a person connected with the person, and

UT is so much of the tax (and any interest on it) as remains unpaid.

(5) The conditions referred to in subsection (2)(a) are—

(a) that the pension scheme was established by a person or body specified in section 154(1)(a) to (g) (insurance companies etc.) and was not an occupational pension scheme,

(b) that at any time during the relevant three-year period the pension scheme received a transfer value in which there were represented relevant personal pension contributions made by or in respect of the person,

(c) that the pension scheme was an occupational pension scheme and at any time during the relevant three-year period the person was a controlling director of a company that was a sponsoring employer, and

(d) that at any time during the relevant three-year period the pension scheme received a transfer value in which there were represented relevant controlling director contributions made by or in respect of the person.

(6) A notification under subsection (2)(b) may be included in an assessment in respect of a liability under this section; and such an assessment made in relation to an amount is not out of time if made within the period of three years beginning with the date on which the person assessed first became liable to pay the amount.

(7) "Relevant personal pension contributions" means contributions under a pension scheme (whether or not the pension scheme from which the transfer value was received) which was established by a person or body specified in section 154(1)(a) to (g) and was not an occupational pension scheme.

(8) "Relevant controlling director contributions" means contributions under an occupational pension scheme (whether or not the pension scheme from which the

transfer value was received) made by reference to service (or remuneration in respect of service) as a controlling director of a company that was a sponsoring employer.

(9) A person is a "controlling director" of a company if the person is a director of the company and is within section 417(5)(b) of ICTA (director able to control 20% of ordinary share capital) in relation to the company.

(10) References to receipt of a transfer value by the pension scheme are to the transfer, so as to become held for the purposes of or to represent rights under the pension scheme, of any sums or assets held for the purposes of or representing accrued rights under any other pension scheme.

(11) Section 839 of ICTA (connected persons) applies for the purposes of this section.

274 Supplementary

(1) The fact that any person is liable to pay any tax or interest, or is responsible for the discharge of any other obligation, under section 272 (trustees etc.) or section 273 (members) does not relieve any other person of any liability to pay the tax or interest, or any obligation to discharge the obligation, arising—

(a) by reason of that other person being, or being one of the persons who is, the scheme administrator of the pension scheme, or

(b) under section 271(4) (continuation of liability where no scheme administrator).

(2) Where a liability imposed on the scheme administrator of a registered pension scheme falls to be satisfied by two or more persons (whether or not they constitute the scheme administrator), they are jointly and severally liable.

(3) No liability to pay tax or interest, or other obligation, of any person in relation to a registered pension scheme arising—

(a) by reason of the person being, or being one of the persons who is, the scheme administrator of the pension scheme concerned, or

(b) under section 271(4), 272 or 273,

is affected by the termination of the pension scheme or by its ceasing to be a registered pension scheme.

CHAPTER 8

SUPPLEMENTARY

Interpretation

275 Insurance company

(1) In this Part "insurance company" means—

(a) a person who has permission under Part 4 of FISMA 2000 to effect or carry out contracts of long-term insurance, or

(b) an EEA firm of the kind mentioned in paragraph 5(d) of Schedule 3 to FISMA 2000 (certain direct insurance undertakings) which has permission under paragraph 15 of that Schedule (as a result of qualifying for authorisation

under paragraph 12 of that Schedule) to effect or carry out contracts of long-term insurance.

(2) "Contracts of long-term insurance" means contracts which fall within Part 2 of Schedule 1 to the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (S.I. 2001/544).

276 Relevant valuation factor

(1) For the purposes of this Part the relevant valuation factor in relation to any registered pension scheme, or any arrangement under a registered pension scheme, is 20.

(2) But the Inland Revenue and the scheme administrator of any registered pension scheme may agree that the relevant valuation factor in relation to the pension scheme, or any arrangement under the pension scheme, is to be a number greater than 20.

277 Valuation assumptions

For the purposes of this Part the valuation assumptions in relation to a person, benefits and a date are—

(a) if the person has not reached such age (if any) as must have been reached to avoid any reduction in the benefits on account of age, that the person reached that age on the date, and

(b) that the person's right to receive the benefits had not been occasioned by physical or mental impairment.

278 Market value

(1) For the purposes of this Part the market value of an asset held for the purposes of a pension scheme is to be determined in accordance with section 272 of TCGA 1992.

(2) Where an asset held for the purposes of a pension scheme is a right or interest in respect of any money lent (directly or indirectly) to any relevant associated person, the value of the asset is to be treated as being the amount owing (including any unpaid interest) on the money lent.

(3) The following are "relevant associated persons"—

(a) any employer who has at any time (whether or not before the making of the loan) made contributions under the pension scheme,

(b) any company connected (at the time of the making of the loan or subsequently) with any such employer,

(c) any person who has at any time (whether or not before the making of the loan) been a member of the pension scheme, and

(d) any person connected (at the time of the making of the loan or subsequently) with any such person.

(4) Section 839 of ICTA (connected persons) applies for the purposes of this section.

279 Other definitions

(1) In this Part—

"the Board of Inland Revenue" means the Commissioners of Inland Revenue,

"charity" has the same meaning as in section 506 of ICTA,

"employee" and "employer" have the same meaning as in the employment income Parts of ITEPA 2003 (see sections 4 and 5 of that Act) but include (respectively) a former employee and a former employer (and "employment" is to be read accordingly),

"the Inland Revenue" means any officer of the Board of Inland Revenue,

"normal minimum pension age" means—

(a) before 6th April 2010, 50, and

(b) on and after that date, 55,

"pension credit" and "pension debit" have the same meaning as in Chapter 1 of Part 4 of WRPA (see section 46(1) of that Act) or Chapter 1 of Part 5 of WRP(NI)O 1999 (see Article 43(1) of that Order),

"pension sharing order or provision" means any order or provision mentioned in section 28(1) of WRPA 1999 or Article 25(1) of WRP(NI)O 1999,

"personal representatives", in relation to a person who has died, means—

(a) in the United Kingdom, persons responsible for administering the estate of the deceased, and

(b) in a country or territory outside the United Kingdom, the persons having functions under its law equivalent to those of administering the estate of the deceased,

"retail prices index" means the general index (for all items) published by the Office for National Statistics or, if that index is not published for a relevant month, any substituted index or index figures published by that Office,

"tax year" means, in relation to income tax, a year for which any Act provides for income tax to be charged, and

"the tax year 2006-07" means the tax year beginning on 6th April 2006 (and any corresponding expression in which two years are simultaneously mentioned is to be read in the same way).

(2) In this Part references to payments made, or benefits provided, by a pension scheme are to payments made or benefits provided from sums or assets held for the purposes of the pension scheme.

(3) For the purposes of this Part the sums and assets held for the purposes of an arrangement under a pension scheme are so much of the sums and assets held for the purposes of the pension scheme under which the arrangement is made as are properly attributable, in accordance with the provisions of the pension scheme and any just and reasonable apportionment, to the arrangement.

280 Abbreviations and general index

(1) In this Part—

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

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

"TMA 1970" means the Taxes Management Act 1970 (c. 9),

"ICTA 1970" means the Income and Corporation Taxes Act 1970 (c. 10),

"ICTA" means the Income and Corporation Taxes Act 1988 (c. 1),

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

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

"TCGA 1992" means the Taxation of Chargeable Gains Act 1992 (c. 12),

"WRPA 1999" means the Welfare Reform and Pensions Act 1999 (c. 30),

"WRP(NI)O 1999" means the Welfare Reform and Pensions (Northern Ireland) Order 1999 (S.I. 1999/ 3147 (N.I. 11)),

"FISMA 2000" means the Financial Services and Markets Act 2000 (c. 8), and

"ITEPA 2003" means the Income Tax (Earnings and Pensions) Act 2003 (c. 1).

(2) In this Part the following expressions are defined or otherwise explained by the provisions indicated—

accounting period	section 834(1) of ICTA
active member (of a pension scheme)	section 151(2)
active membership period (insections 221 to 223)	section 221(4) and (5)
amount crystallised	section 216
annual allowance	section 228
annual allowance charge	section 227(1)
annuity protection lump sum death benefit	paragraph 16 of Schedule 29
arrangement	section 152(1)
authorised surplus payment	section 177
available (in relation to a person's lifetime allowance)	section 219
basic rate	section 832(1) of ICTA
basic rate limit	section 832(1) of ICTA
benefits (provided by pension scheme)	section 279(2)
benefit crystallisation event	section 216
the Board of Inland Revenue	section 279(1)
borrowing (in Chapter 3)	section 163
cash balance arrangement	section 152(3)
cash balance benefits	section 152(5)
chargeable gain	section 832(1) of ICTA
charity	section 279(1)
company	section 832(1) of ICTA
compensation payment	section 178

contribution	sections188(4) to (6) and 195
defined benefits	section 152(7)
defined benefits arrangement	section 152(6)
defined benefits lump sum death benefit	paragraph 13 of Schedule 29
dependant’s alternatively secured pension fund	paragraph 25 of Schedule 28
dependants' scheme pension	paragraph 16 of Schedule 28
dependant’s unsecured pension fund	paragraph 22 of Schedule 28
employee and employer (and employment)	section 279(1)
employment income	section 7(2) of ITEPA 2003
enhanced lifetime allowance regulations	section 256(2)
entitled (in relation to a lump sum)	section 166(2)
entitled (in relation to a pension)	section 165(3)
higher rate	section 832(1) of ICTA
hybrid arrangement	section 152(8)
ill-health condition	paragraph 1 of Schedule 28
the individual (in sections 215 to 219)	section 214(5)
the Inland Revenue	section 279(1)
insurance company	section 275
investments (in relation to a pension scheme)	section186(3) and (4)
liability (in Chapter 3)	section 163
lifetime allowance (in relation to a person)	section 218
lifetime allowance charge	section 214(1)
lifetime allowance enhancement factors	section 218(5)
lifetime allowance excess lump sum	paragraph 11 of Schedule 29
lifetime annuity	paragraph 3 of Schedule 28
loan (in Chapter 3)	section 162
lump sum death benefit	section 168(2)
market value	section 278
member (of a pension scheme)	section 151(1)
member’s alternatively secured pension fund	paragraph 11 of Schedule 28
member’s unsecured pension fund	paragraph 8 of Schedule 28
money purchase arrangement	section 152(2)
money purchase benefits	section 152(4)
net pay pension scheme	section 191(9)

normal minimum pension age	section 279(1)
occupational pension scheme	section 150(5)
overseas arrangement active membership period (in sections 224 to 226)	section 224(7) and (8)
overseas pension scheme	section 150(7)
payment (in Chapter 3)	section 161
payments (made by pension scheme)	section 279(2)
pension	section 165(2)
pension commencement lump sum	paragraph 1of Schedule 29
pension credit and pension debit	section 279(1)
pension input amount	section 229
pension input period	section 238
pension protection lump sum death benefit	paragraph 14 of Schedule 29
pension scheme	section 150(1)
the pension scheme (in sections 215 to 219)	section 214(5)
pension sharing order or provision	section 279(1)
pensioner member (of a pension scheme)	section 151(3)
period of account	section 832(1) of ICTA
personal representatives	section 279(1)
property investment LLP	section 842B of ICTA
public service pension scheme	section 150(3)
qualifying recognised overseas pension scheme	section 169(2)
recognised overseas pension scheme	section 150(8)
recognised overseas scheme arrangement (insections 224 to 226)	section 224(2) and (3)
registered pension scheme	section 150(2)
relevant overseas individual	section 221(3)
relevant UK earnings	section 189(2)
relevant UK individual	section 189
relevant valuation factor	section 276
relievable pension contributions	section 188(2) and (3)
retail prices index	section 279(1)
scheme administrator	section 270 (but see also sections 271 to 274)
scheme chargeable payment	section 241
scheme manager	section 169(3)

scheme pension	paragraph 2 of Schedule 28
scheme sanction charge	section 239(1)
serious ill-health lump sum	paragraph 4 of Schedule 29
short service refund lump sum	paragraph 5 of Schedule 29
short service refund lump sum charge	section 205(1)
special lump sum death benefits charge	section 206(1)
sponsoring employer	section 150(6)
standard lifetime allowance	section 218(2) and (3)
sums and assets held for the purposes of an arrangement	section 279(3)
tax year	section 279(1)
the tax year 2006-07 etc.	section 279(1)
total income	section 835 of ICTA
total pension input amount	section 229
transfer lump sum death benefit	paragraph 19 of Schedule 29
trivial commutation lump sum	paragraph 7 of Schedule 29
unauthorised employer payment	section 160(4)
unauthorised member payment	section 160(2)
unauthorised payment	section 160(5)
unauthorised payments charge	section 208(1)
unauthorised payments surcharge	section 209(1)
uncrystallised funds lump sum death benefit	paragraph 15 of Schedule 29
unsecured pension fund lump sum death benefit	paragraph17of Schedule 29
valuation assumptions (in relation to a person)	section 277
winding-up lump sum	paragraph 10 of Schedule 29
winding-up lump sum death benefit	paragraph 21 of Schedule 29

Other supplementary provisions

281 Minor and consequential amendments

(1) Schedule 35 contains minor and consequential amendments of enactments in consequence of, or otherwise in connection with, this Part.

(2) The Treasury may by order make such other amendments (including repeals and revocations) as may appear appropriate in consequence of, or otherwise in connection with, this Part—

(a) in any enactment contained in an Act passed before 6th April 2006 or in the Session in which that date falls, and

(b) in any instrument made before that date or in the Session in which that date falls.

(3) An order under subsection (2) may include any transitional provisions or savings appearing to the Treasury to be appropriate.

282 Orders and regulations

(1) Any power of the Treasury or the Board of Inland Revenue to make any order or regulations under this Part is exercisable by statutory instrument.

(2) Any statutory instrument containing any order or regulations made by the Treasury or the Board of Inland Revenue under this Part is subject to annulment in pursuance of a resolution of the House of Commons.

283 Transitionals and savings

(1) Schedule 36 contains miscellaneous transitional provisions and savings.

(2) The Treasury may by order make any other transitional provision which may appear appropriate in consequence of, or otherwise in connection with, this Part or the repeals made by this Act in consequence of this Part.

(3) An order under subsection (2) may, in particular, include savings from the effect of any amendment made by this Part or any repeal made by this Act in consequence of this Part.

(4) Nothing in Schedule 36 limits the power conferred by subsection (2).

(5) Nothing in that Schedule or in any provision made by virtue of subsection (2) prejudices the operation of sections 16 and 17 of the Interpretation Act 1978 (c. 30) (effect of repeals).

284 Commencement

(1) Chapters 3 to 7 and section 281 (with Schedule 35) do not come into force until 6th April 2006.

(2) But any power to make an order or regulations under any of those provisions may be exercised at any time after this Act is passed.

PART 5

OIL

285 Certain receipts not to be tariff receipts

(1) The Oil Taxation Act 1983 (c. 56) is amended as follows.

(2) In section 6(2) (meaning of tariff receipts) after "Subject to the provisions of this section" insert "and section 6A below".

(3) After section 6 insert—

"**6A Tax-exempt tariffing receipts**

(1) An amount which is a tax-exempt tariffing receipt (see subsection (2) below) does not constitute a tariff receipt for the purposes of the Oil Taxation Acts.

(2) An amount is a "tax-exempt tariffing receipt" for the purposes of the Oil Taxation Acts if—

(a) it would, apart from this section, be a tariff receipt of a participator in an oil field,

(b) it is received or receivable by the participator in a chargeable period ending on or after 30th June 2004 under a contract entered into on or after 9th April 2003, and

(c) it is in respect of tax-exempt business (see subsection (3) below).

(3) For the purposes of this section an amount is in respect of tax-exempt business if it is an amount received or receivable by a participator in an oil field in respect of—

(a) the use of a qualifying asset, or

(b) the provision of services or other business facilities of whatever kind in connection with the use, otherwise than by the participator himself, of a qualifying asset,

and that use of the qualifying asset falls within subsection (4) below.

(4) Use of a qualifying asset falls within this subsection if it is—

(a) use in relation to a new field (see subsection (5) below) or oil won from such a field, or

(b) use in relation to a qualifying existing field (see subsection (5) below) or oil won from such a field.

(5) In this section—

"existing field" means any oil field or foreign field which is not a new field;

"foreign field" means, subject to subsection (6) below (treatment of transmedian fields), any hydrocarbon accumulation which is not under the jurisdiction of the government of the United Kingdom;

"licensee", in relation to a foreign field, means a person who has rights, interests or obligations in respect of the foreign field under a licence or other authority granted by the government of a country other than the United Kingdom;

"new field" means—

(a) an oil field for no part of which had—

(i) consent for development been granted to a licensee by the Secretary of State before 9th April 2003; or

(ii) a programme of development been served on a licensee or approved by the Secretary of State before that date; or

(b) a foreign field for no part of which had—

(i) any consent for development been granted to a licensee by the government of a country other than the United Kingdom before 9th April 2003; or

(ii) a programme of development been served on a licensee or approved by such a government before that date;

and subsections (4) and (5) of section 36 of the Finance Act 1983 (which define "development" for the purposes of subsections (2) and (3) of that section) shall apply also for the purposes of this definition;

"the Oil Taxation Acts" means—

(a) Parts 1 and 3 of the principal Act;

(b) this Act; and

(c) any other enactment relating to petroleum revenue tax;

"qualifying existing field" means an existing field as respects which the condition in section 6B(1) below is satisfied.

(6) For the purposes of this section, in the case of an oil field which, by virtue of section 107 of the Finance Act 1980 (transmedian fields), is deemed to include the sector mentioned in subsection (1)(a)(ii) of that section—

(a) that sector shall be treated as a foreign field, and

(b) the remainder of that field shall be treated as a separate oil field.

(7) In the application of provisions of the Oil Taxation Acts relating to tax-exempt tariffing receipts, references to oil, in relation to a foreign field, are references to any substance that would be oil within the meaning of the principal Act if the enactments mentioned in section 1(1) of that Act extended to the foreign field.

(8) This section is subject to the transitional provisions in Part 2 of Schedule 37 to the Finance Act 2004 (expenditure incurred between 9th April and 31st December 2003: treatment of initial portion of tax-exempt tariffing receipts as tariff receipts).

6B The condition for being a qualifying existing field

(1) The condition for an existing field to be a qualifying existing field for the purposes of section 6A above is that at no time in the period of 6 years ending with 8th April 2003 ("the 6 year period") was there—

(a) any use of a disqualifying asset (see subsection (2) below) in a UK area (see subsection (11) below) in relation to the field or oil won from it, or

(b) any provision of any services or other business facilities of whatever kind in connection with the use of a disqualifying asset in a UK area in relation to the field or oil won from it.

(2) For the purposes of subsection (1) above "disqualifying asset", in relation to an existing field and any time in the 6 year period, means an asset which at that time—

(a) was a qualifying asset in relation to a participator in an oil field; and

(b) was not an excepted asset (see subsection (3) below).

(3) For the purposes of subsection (2) above "excepted asset", in relation to an existing field and any time in the 6 year period, means any of the following—

(a) any asset (other than a tanker) which at that time was wholly situated in the existing field;

(b) any tanker which at that time was a non-dedicated tanker (see subsection (10) below) being used for transporting from the existing field oil which had been won from that field;

(c) any asset which at that time was being used in relation to oil which had been won from the existing field and transported from that field by a non-dedicated tanker;

(d) if the existing field is an oil field and is expected not to be a tanker loading field (see subsection (7) below)—

(i) any tanker which at that time was a dedicated tanker (see subsection (9) below) being used for transporting from the existing field oil which had been won from that field;

(ii) any asset which at that time was being used in relation to oil which had been won from the existing field and transported from that field by a dedicated tanker;

(iii) any asset which at that time was being used to transport from the existing field oil consisting of gas won from that field to another oil field for the purpose of enabling that oil to be used for assisting the extraction of oil from that other field;

(e) if at that time the existing field was not a taxable field, any asset by reference to which an election under section 231 of the Finance Act 1994 (election by reference to asset with excess capacity) was at that time in operation with respect to an oil field.

(4) Where any use of an asset is, by virtue of subsection (3) above, use of an excepted asset, the provision of any services or other business facilities of whatever kind in connection with that use of that asset accordingly falls to be disregarded for the purposes of subsection (1)(b) above.

(5) Where an asset in a UK area—

(a) is a qualifying asset in relation to a participator in such an oil field as is mentioned in section 107 of the Finance Act 1980 (a "participator in the UK sector"), and

(b) is also, by virtue of paragraph 3 of Schedule 4 to this Act, a chargeable asset in relation to a participator in a foreign field (a "participator in the foreign sector"),

subsection (6) below applies in relation to use of the asset in relation to the existing field or oil won from it.

(6) Where this subsection applies, then, in determining for the purposes of subsection (1) above whether there has been any use of a disqualifying asset in relation to the existing field or oil won from it, any use of the asset in relation to that field or oil won from it shall be treated—

(a) as use of a qualifying asset in relation to a participator in an oil field, if or to the extent that the use is attributable, on a just and reasonable basis, to a participator in the UK sector, or

(b) as use of an asset which was not a qualifying asset in relation to a participator in an oil field, if or to the extent that the use is attributable, on a just and reasonable basis, to a participator in the foreign sector.

(7) For the purposes of subsection (3) above, the existing field is expected not to be a tanker loading field if, at the time when the relevant contract is entered into, it is expected that all (or virtually all) of the oil (other than oil consisting

of gas) to be won from that field and transported from it after the beginning of the operational period will be so transported otherwise than by tanker.

(8) For the purposes of subsection (7) above—

(a) "the relevant contract" means the contract mentioned in section 6A(2)(b) above; and

(b) "the beginning of the operational period" means the time at which the qualifying asset to which that contract relates begins to be used under that contract in relation to the existing field or oil won from that field.

(9) For the purposes of subsection (3) above a tanker is a dedicated tanker at any time if—

(a) the existing field mentioned in that subsection is an oil field, and

(b) at that time the tanker is a mobile asset dedicated to that oil field (see section 2 above).

(10) For the purposes of subsection (3) above a tanker is a non-dedicated tanker—

(a) at any time, if the existing field mentioned in that subsection is not an oil field, or

(b) where that field is an oil field, at any time when the tanker is not a mobile asset dedicated to that oil field.

(11) In this section "UK area" means each of the following—

(a) the United Kingdom;

(b) the territorial sea of the United Kingdom;

(c) a designated area, to the extent that it does not fall to be treated by virtue of section 6A(6) above as a foreign field.

(12) This section shall be construed as one with section 6A above.".

(4) In Schedule 2 (supplemental provisions in relation to receipts from qualifying assets) in paragraph 12 (purchase at place of extraction)—

(a) in sub-paragraph (1), for "Subject to sub-paragraphs (4) and (5)" substitute "Subject to sub-paragraphs (4) to (6)", and

(b) at the end of the paragraph add—

"(6) In any chargeable period ending on or after 30th June 2004, sub-paragraph (1) above does not apply to oil in a case where—

(a) had the operation or operations to which the oil was subjected as mentioned in paragraph (b) of that sub-paragraph been carried out under a contract entered into on or after 9th April 2003, and

(b) had an amount been received or receivable under the contract in that chargeable period by the participator,

that amount would have been a tax-exempt tariffing receipt.".

(5) Schedule 37 to this Act has effect; and in that Schedule—

Part 1 makes amendments to the Oil Taxation Act 1983 (c. 56) relating to allowable expenditure and disposal receipts;

Part 2 makes transitional provision;

Part 3 makes amendments to the Taxes Act 1988;

Part 4 makes amendments to other enactments.

(6) In Part 1 of Schedule 37 to this Act—

(a) the amendments made by paragraph 5 (which relate to disposal receipts) have effect in relation to disposals in chargeable periods ending on or after 30th June 2004, and

(b) the other amendments made by that Part have effect in relation to expenditure incurred on or after 1st January 2004.

(7) The amendments made by Part 3 of that Schedule have effect in relation to chargeable periods, within the meaning of the Taxes Act 1988, ending on or after 1st January 2004.

(8) The amendments made by Part 4 of that Schedule have effect in relation to chargeable periods (within the meaning of section 98 of the Finance Act 1999 (c. 16)) ending on or after 30th June 2004.

286 Petroleum extraction activities: exploration expenditure supplement

(1) Chapter 5 of Part 12 of the Taxes Act 1988 (petroleum extraction activities) is amended as follows.

(2) After section 496 (tariff receipts) insert—

"**496A Exploration expenditure supplement**

Schedule 19B to this Act (exploration expenditure supplement) shall have effect.".

(3) Before Schedule 20 insert the Schedule 19B set out in Schedule 38 to this Act.

287 Restrictions on expenditure allowable

(1) In Schedule 4 to the Oil Taxation Act 1975 (c. 22), paragraph 2 (restrictions on expenditure allowable where acquisition etc from connected person or otherwise not at arm's length) is amended as follows.

(2) In sub-paragraph (1), for the words following paragraph (b) (which limit the expenditure allowable to the cost in a transaction to which paragraph 2 does not apply) substitute—

"as having incurred that expenditure only to the extent that it does not exceed the lowest of the amounts described in sub-paragraph (1ZA) below which is applicable in the particular case.".

(3) After sub-paragraph (1) insert—

"(1ZA) Those amounts are—

(a) the amount of expenditure (other than loan expenditure) incurred up to the time mentioned in sub-paragraph (1) above in a transaction to which this paragraph does not apply (or, if there has been more than one such transaction, the later or latest of them) in acquiring, bringing into existence, or enhancing the value of, the asset;

(b) the amount of the open market consideration for the acquisition, bringing into existence, or enhancement of the value, of the asset;

(c) in a case where the other party to the transaction is a participator in a taxable field and in the case of that participator either—

(i) an amount is brought into account under section 2 of this Act in accordance with section 7(1) of the Oil Taxation Act 1983 as disposal receipts in respect of the transaction, or

(ii) no amount is so brought into account by reason of reductions falling to be made in the amount that would have been so brought into account apart from those reductions,

the amount so brought into account or, as the case may be, nil;

(d) in a case where the other party to the transaction is not a participator in a taxable field but—

(i) the transaction is the latest in a series of transactions in respect of the asset (or in respect of an asset or assets in which the asset was comprised),

(ii) those transactions are transactions to which this paragraph applies,

(iii) in the case of at least one of those transactions, there is a party who is a participator in an oil field, and

(iv) in the case of any such party, an amount either is brought into account as mentioned in paragraph (c)(i) above in respect of the transaction or would have been so brought into account but for such reductions as are mentioned in paragraph (c)(ii) above,

so much of the amount so brought into account in respect of that transaction (or, where there are two or more such transactions, the later or latest of them) as is justly and reasonably referable to the asset mentioned in sub-paragraph (1) above (taking that amount as being nil in the case of any transaction where no amount is so brought into account by reason of any such reductions).".

(4) In sub-paragraph (1B) (meaning of "loan expenditure" in sub-paragraph (1)) for "(1)" substitute "(1ZA)(a)".

(5) After sub-paragraph (1B) insert—

"(1C) The reference in sub-paragraph (1ZA)(b) above to the open market consideration for the acquisition, bringing into existence, or enhancement of the value, of an asset is a reference to the consideration which might reasonably have been given for the acquisition, bringing into existence, or enhancement of the value, of the asset (whatever the nature of the acquisition, bringing into existence or enhancement of the value) had it been made in a transaction to which this paragraph does not apply.".

(6) The amendments made by this section have effect in relation to expenditure incurred on or after 17th March 2004.

288 Terminal losses

(1) Schedule 17 to the Finance Act 1980 (c. 48) (transfers of interests in oil fields) is amended as follows.

(2) For paragraph 15 (terminal losses) substitute—

"Terminal losses

15 (1) This paragraph applies in any case where—

(a) such an allowable loss as falls to be relieved under section 7(3) accrues to the new participator from the field in a chargeable period ending after 17th March 2004, but

(b) some or all of the loss cannot be relieved under section 7(3) against assessable profits accruing to him from the field.

(2) So much of the loss as cannot be so relieved ("the remaining loss") shall be regarded as an allowable unrelievable field loss in relation to the new participator ("the loss-maker") only to the extent that—

(a) so much of it as cannot be relieved in accordance with sub-paragraphs (3) to (6) below,

exceeds

(b) the aggregate of any relevant previous participators' expenditure unrelated to the field (see sub-paragraphs (10) and (11) below).

(3) The remaining loss shall be treated as an allowable loss which falls to be relieved under section 7(3) against so much of any assessable profits accruing to the old participator from the field as is attributable to his represented interest (see sub-paragraphs (9) and (12) below).

(4) Where a person is the new participator in relation to two or more old participators—

(a) the remaining loss shall be apportioned between those old participators in such manner as is just and reasonable having regard to the interests respectively transferred by them to the new participator,

(b) sub-paragraph (3) above shall have effect separately in relation to each of them (and the part of the remaining loss apportioned to him).

(5) Any relief by virtue of sub-paragraph (3) above shall be given against the assessable profits accruing to the old participator in an earlier chargeable period only to the extent to which it cannot be given against the assessable profits accruing to him in a later chargeable period.

(6) If—

(a) the old participator acquired some or all of his interest in the field by a previous transfer in relation to which he was the new participator,

(b) Parts 2 and 3 of this Schedule applied in relation to that previous transfer, and

(c) some or all of the part of the remaining loss treated as an allowable loss of his cannot be relieved in accordance with sub-paragraph (3) above,

sub-paragraphs (3) to (5) above shall apply in relation to so much of that part of the remaining loss as cannot be so relieved as they apply in

relation to the remaining loss, but construing the references in those sub-paragraphs to the new participator and the old participator by reference to that previous transfer and the parties to it, and then applying this sub-paragraph accordingly (and so on).

(7) But where—

(a) the person who is the old participator in relation to a transfer made before 17th March 2004 ("the later transfer") is also the new participator in relation to a previous transfer, and

(b) Parts 2 and 3 of this Schedule applied in relation to both of those transfers,

sub-paragraph (3) above shall not apply by virtue of sub-paragraph (6) above in relation to so much of the assessable profits of the person who is the old participator in relation to that previous transfer as is attributable to so much of his interest as constitutes the whole or part of his represented interest by virtue of the later transfer.

(8) Where losses accruing to each of two or more participators fall to be relieved by virtue of sub-paragraph (3) above against the same assessable profits, a loss accruing to the person who last had an interest representing the whole or part of the transferred interest at an earlier time shall be so relieved before one accruing to a person who last had such an interest at a later time.

In this sub-paragraph "the transferred interest" means the interest transferred by the person against whose assessable profits the losses fall to be relieved.

(9) In determining for the purposes of this paragraph the assessable profits of a participator that are attributable to his represented interest, the assessable profits shall be apportioned between—

(a) the represented interest, and

(b) the remainder of the participator's interest,

using such method as is just and reasonable, having regard to the respective sizes of those interests.

(10) For the purposes of this paragraph "relevant previous participators' expenditure unrelated to the field" means so much of each relevant previous participator's allowed expenditure unrelated to the field as is referable to his represented interest, other than excepted old expenditure.

(11) For the purposes of sub-paragraph (10) above—

"allowed expenditure unrelated to the field", in relation to a participator, is expenditure unrelated to the field which is allowed on a claim or election made by the participator;

"excepted old expenditure" is expenditure which has been allowed in pursuance of a claim or election for its allowance received by the Board before 17th March 2004;

"relevant previous participator" means a participator against any of whose assessable profits relief is given in accordance with sub-paragraphs (3) to (6) above;

and sub-paragraph (9) above shall apply in relation to allowed expenditure unrelated to the field as it applies in relation to assessable profits.

(12) In this paragraph—

"expenditure unrelated to the field" has the meaning given by section 6(9);

"the loss-maker" shall be construed in accordance with sub-paragraph (2) above;

"previous owner" means a person from whom the loss-maker directly or indirectly derives his title to the whole or any part of his interest;

"represented interest", in the case of a previous owner, means so much of the interest which that previous owner transferred, by a transfer to which Parts 2 and 3 of this Schedule apply, as is represented in the loss-maker's interest by virtue only of—

(a) that transfer, or

(b) that transfer and one or more subsequent transfers to which those Parts apply,

making, for the purposes of paragraph (b) above, such apportionments as are just and reasonable, having regard to the interests transferred by each of the transferors.".

(3) The amendment made by this section has effect in relation to losses accruing in chargeable periods ending after 17th March 2004.

PART 6

OTHER TAXES

Climate change levy

289 Supplies to producers of commodities

(1) Schedule 6 to the Finance Act 2000 (c. 17) (climate change levy) is amended as set out in subsections (2) to (5).

(2) In paragraph 13 (exemption for supplies to producers of commodities), in paragraph (b), after sub-paragraph (ii) insert—

"(iia) in producing biodiesel for chargeable use within the meaning of section 6AA of the Hydrocarbon Oil Duties Act 1979 (excise duty on biodiesel),

(iib) in producing bioblend for delivery for home use from any place mentioned in section 6AB(1)(b) of that Act (excise duty on bioblend),

(iic) in producing bioethanol for chargeable use within the meaning of section 6AD of that Act (excise duty on bioethanol),

(iid) in producing bioethanol blend for delivery for home use from any place mentioned in section 6AE(1)(b) of that Act (excise duty on bioethanol blend),".

(3) In paragraph 13(b)(iii), for "liquids that are not hydrocarbon oil" substitute "liquids (within the meaning of that section) in respect of which a charge is capable of arising under that section".

(4) In paragraph 13, for the words from "For this purpose" to the end substitute—

"Expressions which are used in this paragraph and the Hydrocarbon Oil Duties Act 1979 have the same meaning in this paragraph as they have in that Act."

(5) After paragraph 13 insert—

"13A (1) The Commissioners may by regulations make provision amending paragraph 13 for the purpose of—

(a) extending the circumstances in which a supply of a taxable commodity is exempt from the levy, or

(b) restricting the circumstances in which a supply of a taxable commodity is exempt from the levy.

(2) Regulations under this paragraph that include provision made for the purpose mentioned in sub-paragraph (1)(a) may provide for the provision to have retrospective effect.

(3) A statutory instrument that contains (whether alone or with other provisions) regulations under this paragraph made for the purpose mentioned in sub-paragraph (1)(b) shall not be made unless a draft of the instrument has been laid before Parliament and approved by a resolution of the House of Commons."

(6) The amendments made by subsections (2) to (4) have effect—

(a) as regards biodiesel and bioblend, in relation to supplies made on or after the day on which this Act is passed;

(b) as regards bioethanol and bioethanol blend, in relation to supplies made on or after 1st January 2005.

Aggregates levy

290 Transitional tax credit in Northern Ireland: changes to existing scheme

(1) In section 30A of the Finance Act 2001 (c. 9) (aggregates levy: transitional tax credit in Northern Ireland) after subsection (3) insert—

"(4) The Treasury may by order made by statutory instrument amend subsection (2) above so as to—

(a) change the period in relation to which the amount of a tax credit is to be reduced;

(b) change the amount by which a tax credit is to be reduced.

(5) An order under subsection (4) above shall not be made unless a draft of the order has been laid before Parliament and approved by a resolution of the House of Commons."

(2) This section shall be deemed to have come into force on 1st April 2004.

291 Transitional tax credit in Northern Ireland: new scheme

(1) Part 2 of the Finance Act 2001 (aggregates levy) is amended as set out in subsections (2) and (3).

(2) For section 30A substitute—

"**30A Transitional tax credit in Northern Ireland**

(1) The Commissioners may by regulations make provision of the kind described in section 30(2) above (entitlement to tax credit) in relation to cases within subsection (2) below.

(2) The cases are those where a charge to aggregates levy has arisen on a quantity of aggregate which has been subjected to commercial exploitation in Northern Ireland during a period—

(a) starting on the prescribed date, and

(b) ending on 31st March 2011.

(3) The date prescribed for the purposes of subsection (2)(a) above may be earlier than the date on which this section comes into force.

(4) The amount of a tax credit to which a person is entitled under the regulations must not be more than 80% of any aggregates levy charged on the aggregate in question.

(5) Regulations under this section may in particular make provision—

(a) for a person operating a site to be entitled to a tax credit under the regulations in respect of a period for which he holds an aggregates levy credit certificate which has been issued in respect of the site and which has not been withdrawn;

(b) for an aggregates levy credit certificate to be issued to a person in respect of a site only if an aggregates levy credit agreement is in force in respect of the site;

(c) for the withdrawal of an aggregates levy credit certificate where the aggregates levy credit agreement in respect of which it was issued is no longer in force;

(d) for the form and content of aggregates levy credit certificates and aggregates levy credit agreements.

(6) Regulations under this section which make provision such as is mentioned in subsection (5)(d) above may be framed by reference to any provisions of a notice published by the Commissioners in pursuance of the regulations and not withdrawn by a further notice.

(7) If regulations under this section make provision such as is mentioned in subsection (5) above, the Commissioners or the Northern Ireland Department may—

(a) enter into aggregates levy credit agreements;

(b) issue and withdraw aggregates levy credit certificates;

(c) take such other steps as the Commissioners or the Northern Ireland Department consider appropriate in relation to aggregates levy credit agreements and aggregates levy credit certificates.

(8) Regulations under this section which make provision such as is mentioned in subsection (5) above must include provision requiring the Northern Ireland Department to inform the Commissioners if the Northern Ireland Department issues or withdraws an aggregates levy credit certificate.

(9) Subsections (3) to (5) of section 30 above apply to regulations under this section as they apply to regulations under that section.

(10) The Treasury may by order made by statutory instrument amend subsection (4) above by substituting for the percentage for the time being specified in that subsection a percentage lower than 80%.

(11) An order under subsection (10) above shall not be made unless a draft of the order has been laid before Parliament and approved by a resolution of the House of Commons.

(12) Any expenses of the Northern Ireland Department under this section shall be charged on the Consolidated Fund of Northern Ireland.

(13) In this section—

"aggregates levy credit agreement" means an agreement entered into in respect of a site by the person operating the site and the Commissioners or the Northern Ireland Department;

"aggregates levy credit certificate" means a certificate issued to the person operating a site by the Commissioners or the Northern Ireland Department as evidence of the fact that an aggregates levy credit agreement has been entered into in respect of the site;

"the Northern Ireland Department" means the Department of the Environment in Northern Ireland."

(3) In section 48(1) (interpretation), in the definition of "tax credit regulations" after "section 30" insert "or 30A".

(4) The preceding provisions of this section come into force on such day as the Treasury may by order made by statutory instrument appoint.

(5) An order under subsection (4) may—

(a) make different provision for different purposes;

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

Lorry road-user charge

292 Lorry road-user charge

(1) Section 137 of the Finance Act 2002 (c. 23) (lorry road-user charge) is amended as follows.

(2) For subsection (4) substitute—

"(4) Lorry road-user charge—

(a) shall be under the care and management of the Commissioners of Customs and Excise, and

(b) shall be administered and enforced in accordance with such provisions as Parliament may determine.".

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

"(5) All money and securities for money collected or received for or on account of lorry road-user charge shall—

(a) if collected or received in Great Britain, be placed to the general account of the Commissioners of Customs and Excise kept at the Bank of England under section 17 of the Customs and Excise Management Act 1979;

(b) if collected or received in Northern Ireland, be paid into the Consolidated Fund of the United Kingdom in such manner as the Treasury may direct.".

Inheritance tax

293 Delivery of accounts etc

(1) Section 256 of the Inheritance Tax Act 1984 (c. 51) (regulations about information to be furnished to the Board) is amended as follows.

(2) In subsection (1)—

(a) in paragraph (a), after "specified in" insert "or determined under";

(b) after paragraph (a) insert—

"(aa) requiring persons who by virtue of regulations under paragraph (a) above are not required to deliver accounts under section 216 above to produce to the Board, in such manner as may be specified in or determined under the regulations, such information or documents as may be so specified or determined";

(c) in paragraph (b), after "so specified" insert "or determined";

(d) paragraph (c) shall cease to have effect.

(3) After subsection (1) insert—

"(1A) Regulations under subsection (1)(aa) may in particular—

(a) provide that information or documents must be produced to the Board by producing it or them to—

(i) a probate registry in England and Wales;

(ii) the sheriff in Scotland;

(iii) the Probate and Matrimonial Office in Northern Ireland;

(b) provide that information or documents produced as specified in paragraph (a) is or are to be treated for any or all purposes of this Act as produced to the Board;

(c) provide for the further transmission to the Board of information or documents produced as specified in paragraph (a)."

(4) Subsection (2) shall cease to have effect.

(5) In subsection (3), at the end insert "and may make different provision for different cases".

(6) After subsection (3) insert—

"(3A) Regulations under this section may only be made—

(a) in relation to England and Wales or Northern Ireland, after consulting the Lord Chancellor;

(b) in relation to Scotland, after consulting the Scottish Ministers."

294 Grant of probate

(1) In section 109 of the Supreme Court Act 1981 (c. 54) (refusal of grant of probate where inheritance tax unpaid)—

(a) for subsection (1) substitute—

"(1) No grant shall be made, and no grant made outside the United Kingdom shall be resealed, except—

(a) on the production of information or documents under regulations under section 256(1)(aa) of the Inheritance Tax Act 1984 (excepted estates); or

(b) on the production of an account prepared in pursuance of that Act showing by means of such receipt or certification as may be prescribed by the Commissioners either—

(i) that the inheritance tax payable on the delivery of the account has been paid; or

(ii) that no such tax is so payable.";

(b) in subsection (2), for "this section" substitute "subsection (1)(b)";

(c) after subsection (2) insert—

"(2A) In this section and the following section, "the Commissioners" means the Commissioners of Inland Revenue";

(d) subsection (3) shall cease to have effect.

(2) In section 42 of the Probate and Legacy Duties Act 1808 (c. 149) (grant of confirmation)—

(a) the existing text shall become subsection (1) of that section;

(b) at the beginning of that subsection, for "And" substitute "Subject to subsection (2) below,"; and

(c) after that subsection insert—

"(2) In a case to which regulations under section 256(1)(aa) of the Inheritance Tax Act 1984 (c. 51) apply (excepted estates), it shall not be lawful to grant confirmation such as is mentioned in subsection (1) above except on the production of information or documents in accordance with those regulations."

(3) In Article 20 of the Administration of Estates (Northern Ireland) Order 1979 (S.I.1979/1575 (N.I.14)) (inheritance tax accounts)—

(a) for paragraph (1) substitute—

"(1) The High Court shall not make any grant, or reseal any grant made outside the United Kingdom, except—

(a) on the production of information or documents under regulations under section 256(1)(aa) of the Inheritance Tax Act 1984 (excepted estates); or

(b) on the production of an account prepared in pursuance of that Act showing by means of such receipt or certification as may be prescribed by the Commissioners of Inland Revenue either—

(i) that the inheritance tax payable on the delivery of the account has been paid; or

(ii) that no such tax is so payable.";

(b) in paragraph (2) of that Article, for "this Article" substitute "paragraph (1)(b)".

(4) Subsection (1) shall come into force on such day as the Treasury may after consulting the Lord Chancellor by order made by statutory instrument appoint.

(5) Subsection (2) shall come into force on such day as the Treasury may after consulting the Scottish Ministers by order made by statutory instrument appoint.

(6) Subsection (3) shall come into force on such day as the Treasury may after consulting the Lord Chancellor by order made by statutory instrument appoint.

295 Amendments to penalty regime

(1) The Inheritance Tax Act 1984 (c. 51) is amended as specified in subsections (2) to (4).

(2) In section 245 (failure to deliver accounts)—

(a) in subsections (2)(a) and (3), for "not exceeding" substitute "of";

(b) after subsection (4) insert—

"(4A) Without prejudice to any penalties under subsections (2) and (3) above, if—

(a) the failure by the taxpayer to deliver the account continues after the anniversary of the end of the period given by section 216(6) or (7) (whichever is applicable), and

(b) there would have been a liability to tax shown in the account,

the taxpayer shall be liable to a penalty of an amount not exceeding £3,000."

(3) In section 245A (failure to provide information etc)—

(a) after subsection (1A) insert—

"(1B) Without prejudice to any penalties under subsection (1A) above, if a person continues to fail to comply with the requirements of section 218A after the anniversary of the end of the period of six months referred to in section 218A(1), he shall be liable to a penalty of an amount not exceeding £3,000.";

(b) in subsection (5)—

(i) after "failing to make a return" insert ", to comply with the requirements of section 218A";

(ii) after "fails to make the return" insert ", to comply with the requirements of section 218A".

(4) In section 247 (provision of incorrect information)—

(a) in subsection (1), for the words from ", in the case of fraud" to the end substitute "to a penalty not exceeding the difference mentioned in subsection (2) below";

(b) in subsection (3), for the words from ", in the case of fraud" to the end substitute "to a penalty not exceeding £3,000".

(5) Subsection (2)(a) above has effect in relation to a failure by any person to deliver an account under section 216 or 217 of the Inheritance Tax Act 1984 (c. 51) where the period under section 216(6) or (7) or 217 of that Act (whichever is applicable) within which the person is required to deliver the account expires after six months from the day on which this Act is passed.

(6) Subsection (2)(b) above has effect—

(a) in relation to a failure by any person to deliver an account under section 216 of the Inheritance Tax Act 1984 where the period under section 216(6) or (7) of that Act (whichever is applicable) within which the person is required to deliver the account expires after the day on which this Act is passed; and

(b) in relation to such a failure to deliver such an account where that period expires on or before the day on which this Act is passed, as if, in the subsection (4A) inserted in section 245 of that Act by subsection (2)(b) above, for the words "anniversary of the end of the period given by section 216(6) or (7) (whichever is applicable)" there were substituted "end of the period of twelve months beginning with the day on which the Finance Act 2004 is passed".

(7) Subsection (3)(a) above has effect—

(a) in relation to a failure to comply with the requirements of section 218A of the Inheritance Tax Act 1984 where the period of six months referred to in subsection (1) of that section expires after the day on which this Act is passed; and

(b) in relation to such a failure to comply with those requirements where that period expires on or before the day on which this Act is passed, as if, in the subsection (1B) inserted in section 245A of that Act by subsection (3)(a) above, for the words "anniversary of the end of the period of six months referred to in section 218A(1)" there were substituted "end of the period of twelve months beginning with the day on which the Finance Act 2004 is passed".

(8) Subsection (3)(b) above has effect in relation to a failure to comply with the requirements of section 218A of the Inheritance Tax Act 1984 where the period of six months referred to in subsection (1) of that section expires after the day on which this Act is passed.

(9) Subsection (4) above has effect in relation to incorrect accounts, information or documents delivered, furnished or produced after the day on which this Act is passed.

Stamp duty land tax and stamp duty

296 Miscellaneous amendments

Schedule 39 to this Act, which makes amendments to Part 4 (stamp duty land tax) and Part 5 (stamp duty) of the Finance Act 2003 (c. 14), has effect.

Stamp duty land tax

297 Leases

(1) Part 4 of the Finance Act 2003 (c. 14) (stamp duty land tax) is amended as follows.

(2) In subsection (3) of section 43 (land transactions), in paragraph (d) (inserted by paragraph 2(b) of Schedule 39 to this Act), after "where" insert "(i)" and at the end insert ", or

(ii) paragraph 15A of Schedule 17A (reduction of rent or term) applies.".

(3) In section 48 (chargeable interests), at the end of subsection (7) (inserted by paragraph 4(2) of that Schedule) insert "and to paragraph 15A of Schedule 17A (reduction of rent or term of lease)".

(4) In section 53 (deemed market value where transaction involves connected company), for subsection (1) substitute—

"(1) This section applies where the purchaser is a company and—

(a) the vendor is connected with the purchaser, or

(b) some or all of the consideration for the transaction consists of the issue or transfer of shares in a company with which the vendor is connected.

(1A) The chargeable consideration for the transaction shall be taken to be not less than—

(a) the market value of the subject-matter of the transaction as at the effective date of the transaction, and

(b) if the acquisition is the grant of a lease at a rent, that rent.".

(5) In section 79 (registration of land transactions etc), in subsection (2) (transactions to which section does not apply) (as amended by paragraph 7 of Schedule 39 to this Act)—

(a) in paragraph (a) for the words from "by virtue of" to the end substitute "by virtue of—

(i) section 45 (contract and conveyance: effect of transfer of rights), or

(ii) paragraph 12B of Schedule 17A (assignment of agreement for lease),";

(b) at the end insert—

"(c) under paragraph 12A(2) or 19(3) of Schedule 17A (agreement for lease), or

(d) under paragraph 13 (increase of rent) or 15A (reduction of rent or term) of that Schedule.".

(6) After that subsection insert—

"(2A) Subsection (1), so far as relating to the entry of a notice under section 34 of the Land Registration Act 2002 or section 38 of the Land Registration Act (Northern Ireland) 1970 (notice in respect of interest affecting registered land), does not apply where the land transaction in question is the variation of a lease.".

(7) In subsection (3) of that section, after "The certificate" insert "referred to in subsection (1)".

(8) In Schedule 4 (chargeable consideration), in paragraph 10 (carrying out of works), in sub-paragraph (2A) (inserted by paragraph 9(2) of Schedule 39 to this Act), for the words from the beginning to "completion)," substitute—

"Where by virtue of—

(a) subsection (8) of section 44 (contract and conveyance),

(b) paragraph 12A of Schedule 17A (agreement for lease), or

(c) paragraph 19(3) to (6) of Schedule 17A (missives of let etc in Scotland),

there are two notifiable transactions (the first being the contract or agreement and the second being the transaction effected on completion or, as the case may be, the grant or execution of the lease),".

(9) Subsections (2) to (4) and (8) apply in relation to any transaction of which the effective date is on or after the day on which this Act is passed.

(10) Subsections (5) to (7) apply in relation to any transaction or deemed transaction of which the effective date is on or after 17th March 2004.

(11) In this section "effective date" has the same meaning as in Part 4 of the Finance Act 2003 (c. 14).

298 Notification, registration and penalties

(1) Part 4 of the Finance Act 2003 (stamp duty land tax) is amended as follows.

(2) In section 77 (notifiable transactions)—

(a) after subsection (2) insert—

"(2A) The assignment of a lease is notifiable if—

(a) the grant of the lease, if occurring at the time of the assignment, would be notifiable, or

(b) there is consideration for the assignment that is chargeable at a rate of 1% or higher, or would be so chargeable but for a relief.";

(b) in subsection (3), for "unless it is exempt from charge under Schedule 3" substitute "unless—

(a) the acquisition is exempt from charge under Schedule 3, or

(b) the land consists entirely of residential property and the chargeable consideration for the acquisition, together with that of any linked transactions, is less than £1,000";

(c) after subsection (5) (inserted by paragraph 4(3) of Schedule 39 to this Act) insert—

"(6) In this section "relief" does not include any exemption from charge under Schedule 3.".

(3) In section 79 (registration of land transactions etc), in subsection (1)(b), after "any register maintained by the Keeper of the Registers of Scotland" insert "(other than the Register of Community Interests in Land)".

(4) In section 99 (general provisions about penalties), after subsection (2) insert—

"(2A) Where a person is liable to more than one tax-related penalty in respect of the same land transaction, each penalty after the first shall be reduced so that his liability to such penalties, in total, does not exceed the amount of whichever is (or, but for this subsection, would be) the greatest one.".

(5) In Schedule 6 (disadvantaged areas relief)—

(a) for the heading of Part 4 substitute "SUPPLEMENTARY";

(b) after paragraph 12 insert—

"Notification of transactions

13 For the purposes of section 77 (which specifies what land transactions are notifiable) no account shall be taken of any provision of this Schedule to the effect that consideration does not count as chargeable consideration.".

299 Claims not included in returns

(1) Part 4 of the Finance Act 2003 (c. 14) (stamp duty land tax) is amended as follows.

(2) After section 82 insert—

"**82A Claims not included in returns**

Schedule 11A has effect with respect to claims not included in returns.".

(3) After Schedule 11 insert the Schedule set out in Schedule 40 to this Act.

(4) In section 80 (adjustment where contingency ceases or consideration is ascertained), in subsection (4) (claim for repayment), for the words from "the amount" to the end substitute—

"(a) the purchaser may, within the period allowed for amendment of the land transaction return, amend the return accordingly;

(b) after the end of that period he may (if the land transaction return is not so amended) make a claim to the Inland Revenue for repayment of the amount overpaid".

(5) In section 111 (claim for repayment if regulations under general power not approved) in subsection (1), for the words from "any amount" to the end substitute "a claim may be made to the Inland Revenue for repayment of any tax, interest or penalty that would not have been payable but for the regulations".

(6) In section 113 (functions conferred on "the Inland Revenue"), after subsection (3) insert—

"(3A) The following functions of the Inland Revenue under Schedule 11A (claims not included in returns) are functions of the Board—

(a) functions under paragraph 2(1) (form of claims),

(b) functions relating to a claim made to the Board.".

(7) In Schedule 10 (returns, enquiries, assessments and appeals), in paragraph 33 (relief in case of double assessment)—

(a) in sub-paragraph (1), for "for relief under this paragraph" substitute "to the Inland Revenue for relief against any double charge";

(b) omit sub-paragraphs (2) and (3).

(8) In paragraph 34 of that Schedule (relief in case of mistake in return)—

(a) in sub-paragraph (1), for "for relief under this paragraph" substitute "to the Inland Revenue for relief against any excessive charge";

(b) in sub-paragraph (2), omit "by notice in writing given to the Inland Revenue";

(c) omit sub-paragraph (3).

300 Assents and appropriations by personal representatives

(1) In Schedule 3 to the Finance Act 2003 (c. 14) (stamp duty land tax: transactions exempt from charge), after paragraph 3 insert—

"Assents and appropriations by personal representatives

3A (1) The acquisition of property by a person in or towards satisfaction of his entitlement under or in relation to the will of a deceased person, or on the intestacy of a deceased person, is exempt from charge.

(2) Sub-paragraph (1) does not apply if the person acquiring the property gives any consideration for it, other than the assumption of secured debt.

(3) Where sub-paragraph (1) does not apply because of sub-paragraph (2), the chargeable consideration for the transaction is determined in accordance with paragraph 8A(1) of Schedule 4.

(4) In this paragraph—

"debt" means an obligation, whether certain or contingent, to pay a sum of money either immediately or at a future date, and

"secured debt" means debt that, immediately after the death of the deceased person, is secured on the property.".

(2) The amendment made by this section is deemed always to have had effect.

301 Chargeable consideration

(1) In Schedule 3 to the Finance Act 2003 (transactions exempt from charge), in paragraph 4 (variation of testamentary dispositions etc) after sub-paragraph (2) insert—

"(2A) Where the condition in sub-paragraph (2)(b) is not met, the chargeable consideration for the transaction is determined in accordance with paragraph 8A(2) of Schedule 4.".

(2) Schedule 4 to that Act (stamp duty land tax: chargeable consideration) is amended as follows.

(3) In paragraph 8 (debt as consideration), after sub-paragraph (1) insert—

"(1A) Where—

(a) debt is secured on the subject-matter of a land transaction immediately before and immediately after the transaction, and

(b) the rights or liabilities in relation to that debt of any party to the transaction are changed as a result of or in connection with the transaction,

then for the purposes of this paragraph there is an assumption of that debt by the purchaser, and that assumption of debt constitutes chargeable consideration for the transaction.

(1B) Where in a case in which sub-paragraph (1)(b) applies—

(a) the debt assumed is or includes debt secured on the property forming the subject-matter of the transaction, and

(b) immediately before the transaction there were two or more persons each holding an undivided share of that property, or there are two or more such persons immediately afterwards,

the amount of secured debt assumed shall be determined as if the amount of that debt owed by each of those persons at a given time were the proportion of it corresponding to his undivided share of the property at that time.

(1C) For the purposes of sub-paragraph (1B), in England and Wales and Northern Ireland each joint tenant of property is treated as holding an equal undivided share of it.".

(4) In sub-paragraph (2) of that paragraph, for "sub-paragraph (1)" substitute "this paragraph".

(5) After paragraph 8 insert—

"Cases where conditions for exemption not fully met

8A (1) Where a land transaction would be exempt from charge under paragraph 3A of Schedule 3 (assents and appropriations by personal representatives) but for sub-paragraph (2) of that paragraph (cases where person acquiring property gives consideration for it), the chargeable consideration for the transaction does not include the amount of any secured debt assumed.

"Secured debt" has the same meaning as in that paragraph.

(2) Where a land transaction would be exempt from charge under paragraph 4 of Schedule 3 (variation of testamentary dispositions etc) but for a failure to meet the condition in sub-paragraph (2)(b) of that paragraph (no consideration other than variation of another disposition), the chargeable consideration for the transaction does not include the making of any such variation as is mentioned in that sub-paragraph.".

(6) The amendments made by subsections (3) and (4) apply in relation to any transaction of which the effective date (within the meaning of Part 4 of the Finance Act 2003 (c. 14)) is on or after the day on which this act is passed.

(7) The other amendments made by this section are deemed always to have had effect.

302 Charities relief

(1) In Schedule 8 to the Finance Act 2003 (stamp duty land tax: charities relief), after paragraph 2 insert—

"Cases where first condition not fully met

3 (1) This paragraph applies where—

(a) a land transaction is not exempt from charge under paragraph 1 because the first condition in that paragraph is not met, but

(b) the purchaser ("C") intends to hold the greater part of the subject-matter of the transaction for qualifying charitable purposes.

(2) In such a case—

(a) the transaction is exempt from charge, but

(b) for the purposes of paragraph 2 (withdrawal of charities relief) "disqualifying event" includes—

(i) any transfer by C of a major interest in the whole or any part of the subject-matter of the transaction, or

(ii) any grant by C at a premium of a low-rental lease of the whole or any part of that subject-matter,

that is not made in furtherance of the charitable purposes of C.

(3) For the purposes of sub-paragraph (2)(b)(ii)—

(a) a lease is granted "at a premium" if there is consideration other than rent, and

(b) a lease is a "low-rental" lease if the annual rent (if any) does not exceed £600 a year.

(4) In relation to a transaction that, by virtue of this paragraph, is a disqualifying event for the purposes of paragraph 2—

(a) the date of the event for those purposes is the effective date of the transaction;

(b) paragraph 2 has effect as if—

(i) in sub-paragraph (1)(b), for "at the time of" there were substituted "immediately before",

(ii) in sub-paragraph (4)(a), for "at the time of" there were substituted "immediately before and immediately after", and

(iii) sub-paragraph (4)(b) were omitted.

(5) In this paragraph—

"qualifying charitable purposes" has the same meaning as in paragraph 1;

"rent" has the same meaning as in Schedule 5 (amount of tax chargeable: rent) and "annual rent" has the same meaning as in paragraph 9(2) of that Schedule.".

(2) After paragraph 3 of that Schedule (inserted by subsection (1) above) insert—

"Charitable trusts

4 (1) This Schedule applies in relation to a charitable trust as it applies in relation to a charity.

(2) In this paragraph "charitable trust" means—

(a) a trust of which all the beneficiaries are charities, or

(b) a unit trust scheme in which all the unit holders are charities,

and "charity" has the same meaning as in paragraph 1.

(3) In this Schedule as it applies by virtue of this paragraph—

(a) references to the purchaser in paragraphs (a) and (b) of paragraph 1(2) are to the beneficiaries or unit holders, or any of them;

(b) the reference to the purchaser in paragraph 2(3)(a) is to any of the beneficiaries or unit holders;

(c) the reference in paragraph 3(2)(b) to the charitable purposes of C is to those of the beneficiaries or unit holders, or any of them."

(3) In paragraph 1(1) of that Schedule, for "this paragraph" substitute "this Schedule".

(4) In paragraph 2(1) of that Schedule, for "paragraph 1 (charities relief)" substitute "this Schedule".

(5) In section 81 (further return where relief withdrawn), in paragraph (c) of subsection (4) (meaning of "the disqualifying event"), after "paragraph 2(3)" insert "or 3(2)".

(6) In section 87 (interest on unpaid tax), in paragraph (c) of subsection (4) (meaning of "the disqualifying event"), after "paragraph 2(3)" insert "or 3(2)".

(7) This section applies in relation to any transaction of which the effective date (within the meaning of Part 4 of the Finance Act 2003 (c. 14)) is on or after the day on which this Act is passed.

303 Shared ownership leases

(1) In Schedule 9 to the Finance Act 2003 (stamp duty land tax: right to buy, shared ownership leases etc), after paragraph 4 insert—

"Shared ownership lease: treatment of staircasing transaction

4A (1) This paragraph applies where under a shared ownership lease—

(a) the lessee or lessees have the right, on the payment of a sum, to require the terms of the lease to be altered so that the rent payable under it is reduced, and

(b) by exercising that right the lessee or lessees acquire an interest, additional to one already held, calculated by reference to the market value of the dwelling and expressed as a percentage of the dwelling or its value (a "share of the dwelling").

(2) Such an acquisition is exempt from charge if—

(a) an election was made for tax to be charged in accordance with paragraph 2 or, as the case may be, paragraph 4 and any tax chargeable in respect of the grant of the lease has been paid, or

(b) immediately after the acquisition the total share of the dwelling held by the lessee or lessees does not exceed 80%.

(3) In this paragraph "shared ownership lease" means a lease granted—

(a) by a qualifying body, or

(b) in pursuance of the preserved right to buy,

in relation to which the conditions in paragraph 2(2) or 4(2) are met.

(4) Section 118 (meaning of "market value") does not apply in relation to the references in this paragraph to the market value of the dwelling.".

(2) In sub-paragraph (1) of paragraph 5 of that Schedule (meaning of "qualifying body" and "preserved right to buy") for "2 and 4" substitute "2, 4 and 4A".

(3) In Schedule 19 to that Act (stamp duty land tax: commencement and transitional provisions), in paragraph 7 (earlier related transactions under stamp duty), for sub-paragraph (2) substitute—

"(2) In paragraph 3 of Schedule 9 (relief for transfer of reversion under shared ownership lease where election made for market value treatment) and paragraph 4A of that Schedule (shared ownership lease: treatment of staircasing transaction) as they apply in a case where the original lease was granted before the implementation date—

(a) a reference to a lease to which paragraph 2 of that Schedule applies shall be read as a reference to a lease to which section 97 of the Finance Act 1980 applied (which made provision for stamp duty corresponding to that paragraph), and

(b) a reference to an election having been made for tax to be charged in accordance with paragraph 2 or 4 of that Schedule shall be read as a reference to the lease having contained a statement of the parties' intention such as is mentioned in section 97(2)(d) of the Finance Act 1980 or, as the case may be, paragraph (d) of section 108(5) of the Finance Act 1981 (which made provision for stamp duty corresponding to paragraph 4).".

(4) Subsections (1) and (2) apply in relation to an acquisition after 17th March 2004.

(5) Subsection (3) is deemed to have come into force on 1st December 2003.

304 Application to certain partnership transactions

Schedule 41 to this Act (which makes provision with respect to the application of stamp duty land tax to certain transactions involving partnerships) has effect.

305 Liability of partners

In paragraph 7 of Schedule 15 to the Finance Act 2003 (c. 14) (stamp duty land tax: joint and several liability of responsible partners) after sub-paragraph (1) insert—

"(1A) No amount may be recovered by virtue of sub-paragraph (1)(a) or (b) from a person who did not become a responsible partner until after the effective date of the transaction in respect of which the tax is payable."

PART 7

DISCLOSURE OF TAX AVOIDANCE SCHEMES

306 Meaning of "notifiable arrangements" and "notifiable proposal"

(1) In this Part "notifiable arrangements" means any arrangements which—

(a) fall within any description prescribed by the Treasury by regulations,

(b) enable, or might be expected to enable, any person to obtain an advantage in relation to any tax that is so prescribed in relation to arrangements of that description, and

(c) are such that the main benefit, or one of the main benefits, that might be expected to arise from the arrangements is the obtaining of that advantage.

(2) In this Part "notifiable proposal" means a proposal for arrangements which, if entered into, would be notifiable arrangements (whether the proposal relates to a particular person or to any person who may seek to take advantage of it).

307 Meaning of "promoter"

(1) For the purposes of this Part a person is a promoter—

(a) in relation to a notifiable proposal, if, in the course of a relevant business—

(i) he is to any extent responsible for the design of the proposed arrangements, or

(ii) he makes the notifiable proposal available for implementation by other persons, and

(b) in relation to notifiable arrangements, if he is by virtue of paragraph (a)(ii) a promoter in relation to a notifiable proposal which is implemented by those arrangements or if, in the course of a relevant business, he is to any extent responsible for—

(i) the design of the arrangements, or

(ii) the organisation or management of the arrangements.

(2) In this section "relevant business" means any trade, profession or business which—

(a) involves the provision to other persons of services relating to taxation, or

(b) is carried on by a bank, as defined by section 840A of the Taxes Act 1988, or by a securities house, as defined by section 209A(4) of that Act.

(3) For the purposes of this section anything done by a company is to be taken to be done in the course of a relevant business if it is done for the purposes of a relevant business falling within subsection (2)(b) carried on by another company which is a member of the same group.

(4) Section 170 of the Taxation of Chargeable Gains Act 1992 (c. 12) has effect for determining for the purposes of subsection (3) whether two companies are members of the same group, but as if in that section—

(a) for each of the references to a 75 per cent subsidiary there were substituted a reference to a 51 per cent subsidiary, and

(b) subsection (3)(b) and subsections (6) to (8) were omitted.

(5) A person is not to be treated as a promoter for the purposes of this Part by reason of anything done in prescribed circumstances.

308 Duties of promoter

(1) The promoter must, within the prescribed period after the relevant date, provide the Board with prescribed information relating to any notifiable proposal.

(2) In subsection (1) "the relevant date" means the earlier of the following—

(a) the date on which the promoter makes a notifiable proposal available for implementation by any other person, or

(b) the date on which the promoter first becomes aware of any transaction forming part of notifiable arrangements implementing the notifiable proposal.

(3) The promoter must, within the prescribed period after the date on which he first becomes aware of any transaction forming part of any notifiable arrangements, provide the Board with prescribed information relating to those arrangements, unless those arrangements implement a proposal in respect of which notice has been given under subsection (1).

(4) Where two or more persons are promoters in relation to the same notifiable proposal or notifiable arrangements, compliance by any of them with subsection (1) or (3) discharges the duty under either of those subsections of the other or others.

(5) Where a person is a promoter in relation to two or more notifiable proposals or sets of notifiable arrangements which are substantially the same (whether they relate to the same parties or different parties), he need not provide information under subsection (1) or (3) if he has already provided information under either of those subsections in relation to any of the other proposals or arrangements.

309 Duty of person dealing with promoter outside United Kingdom

(1) Any person ("the client") who enters into any transaction forming part of any notifiable arrangements in relation to which—

(a) a promoter is resident outside the United Kingdom, and

(b) no promoter is resident in the United Kingdom,

must, within the prescribed period after doing so, provide the Board with prescribed information relating to the notifiable arrangements.

(2) Compliance with section 308(1) by any promoter in relation to the notifiable arrangements discharges the duty of the client under subsection (1).

310 Duty of parties to notifiable arrangements not involving promoter

Any person who enters into any transaction forming part of notifiable arrangements as respects which neither he nor any other person in the United Kingdom is liable to comply with section 308 (duties of promoter) or section 309 (duty of person dealing with promoter outside the United Kingdom) must at the prescribed time provide the Board with prescribed information relating to the notifiable arrangements.

311 Arrangements to be given reference number

(1) Where a person complies with section 308(1) or (3), 309(1) or 310 in relation to any notifiable proposal or notifiable arrangements, the Board may within 30 days—

(a) allocate a reference number to the notifiable arrangements or, in the case of a notifiable proposal, to the proposed notifiable arrangements, and

(b) if it does so, notify the person of that number.

(2) The allocation of a reference number to any notifiable arrangements (or proposed notifiable arrangements) is not to be regarded as constituting any indication by the Board that the arrangements could as a matter of law result in the obtaining by any person of a tax advantage.

(3) In this Part "reference number", in relation to any notifiable arrangements, means the reference number allocated under this section.

312 Duty of promoter to notify client of number

(1) Any promoter who is providing services to any person ("the client") in connection with notifiable arrangements must, within 30 days after the relevant date, provide the client with prescribed information relating to any reference number that has been notified to the promoter by the Board—

(a) in relation to those arrangements, or

(b) in relation to arrangements which are substantially the same as those arrangements (whether made between the same parties or different parties).

(2) In subsection (1) "the relevant date" means—

(a) the date on which the promoter first becomes aware of any transaction forming part of the notifiable arrangements, or

(b) if later, the date on which the number is notified to the promoter under section 311.

313 Duty of parties to notifiable arrangements to notify Board of number, etc.

(1) Any person who is a party to any notifiable arrangements must provide the Board with prescribed information relating to—

(a) any reference number notified to him under section 311 by the Board or under section 312 by the promoter, and

(b) the time when he obtains or expects to obtain by virtue of the arrangements an advantage in relation to any relevant tax.

(2) For the purposes of subsection (1) a tax is a "relevant tax" in relation to any notifiable arrangements if it is prescribed in relation to arrangements of that description by regulations under section 306.

(3) Regulations under subsection (1) may—

(a) in prescribed cases, require the number and other information to be included in any return or account which the person is required by or under any enactment to deliver to the Board, and

(b) in prescribed cases, require the number and other information to be provided separately to the Board at the prescribed time or times.

(4) A person is not liable to a penalty under—

(a) section 95 of the Taxes Management Act 1970 (c. 9) (incorrect return or accounts for income tax or capital gains tax),

(b) paragraph 8 of Schedule 2 to the Oil Taxation Act 1975 (c. 22) (incorrect returns and accounts for purposes of petroleum revenue tax),

(c) section 247 of the Inheritance Tax Act 1984 (c. 51) (provision of incorrect information for purposes of inheritance tax),

(d) any provision relating to incorrect or uncorrected returns made under section 98 of the Finance Act 1986 (c. 41) (administration of stamp duty reserve tax),

(e) paragraph 20 of Schedule 18 to the Finance Act 1998 (c. 36) (incorrect or uncorrected return for corporation tax),

(f) paragraph 8 of Schedule 10 to the Finance Act 2003 (c. 14) (incorrect or uncorrected return for purposes of stamp duty land tax), or

(g) any other prescribed provision,

by reason of any failure to include in any return or account any reference number or other information required by virtue of subsection (3)(a) (but see section 98C of the Taxes Management Act 1970 for the penalty for failure to comply with this section).

314 Legal professional privilege

(1) Nothing in this Part requires any person to disclose to the Board any privileged information.

(2) In this Part "privileged information" means information with respect to which a claim to legal professional privilege, or, in Scotland, to confidentiality of communications, could be maintained in legal proceedings.

315 Penalties

(1) After section 98B of the Taxes Management Act 1970 insert—

"**98C Notification under Part 7 of Finance Act 2004**

(1) A person who fails to comply with any of the provisions of Part 7 of the Finance Act 2004 (disclosure of tax avoidance schemes) mentioned in subsection (2) below shall be liable—

(a) to a penalty not exceeding £5,000, and

(b) if the failure continues after a penalty is imposed under paragraph (a) above, to a further penalty or penalties not exceeding £600 for each day on which the failure continues after the day on which the penalty under paragraph (a) was imposed (but excluding any day for which a penalty under this paragraph has already been imposed).

(2) Those provisions are—

(a) section 308(1) and (3) (duty of promoter in relation to notifiable proposals and notifiable arrangements),

(b) section 309(1) (duty of person dealing with promoter outside United Kingdom),

(c) section 310 (duty of parties to notifiable arrangements not involving promoter), or

(d) section 312(1) (duty of promoter to notify client of reference number).

(3) A person who fails to comply with section 313(1) of the Finance Act 2004 (duties of parties to notifiable arrangements to notify Board of reference number, etc.) shall be liable to a penalty of the relevant sum.

(4) In subsection (3) above "the relevant sum" means—

(a) in relation to a person not falling within paragraph (b) or (c) below, £100 in respect of each scheme to which the failure relates,

(b) in relation to a person who has previously failed to comply with section 313(1) on one (and only one) occasion during the period of 36 months ending with the date on which the current failure to comply with that provision began, £500 in respect of each scheme to which the current failure relates (whether or not the same as the scheme to which the previous failure relates), or

(c) in relation to a person who has previously failed to comply with section 313(1) on two or more occasions during the period of 36 months ending with the date on which the current failure to comply with that provision began, £1,000 in respect of each scheme to which the current failure relates (whether or not the same as the schemes to which any of the previous failures relates).

(5) In subsection (4) above "scheme" means any notifiable arrangements within the meaning of Part 7 of the Finance Act 2004."

(2) In section 100 of that Act (determination of penalties by officer of Board) at the end of subsection (2) (penalties to which subsection (1) of the section does not apply) insert ", or

(f) section 98C(1)(a) above."

(3) In section 100C of that Act (penalty proceedings before Commissioners) after subsection (1) insert—

"(1A) In its application to a penalty under section 98C(1)(a) above, subsection (1) above has effect with the omission of the words "General or"."

316 Information to be provided in form and manner specified by Board

The information required by section 308(1) or (3), 309(1), 310, 312(1) or 313(1) must be provided in a form and manner specified by the Board.

317 Regulations under Part 7

(1) Any power of the Treasury or the Board to make regulations under this Part is exercisable by statutory instrument.

(2) Regulations made by the Treasury or the Board under this Part may contain transitional provisions and savings.

(3) A statutory instrument containing regulations made by the Treasury or the Board under any provision of this Part is subject to annulment in pursuance of a resolution of the House of Commons.

318 Interpretation of Part 7

(1) In this Part—

"advantage", in relation to any tax, means—

(a) relief or increased relief from, or repayment or increased repayment of, that tax, or the avoidance or reduction of a charge to that tax or an

assessment to that tax or the avoidance of a possible assessment to that tax,

(b) the deferral of any payment of tax or the advancement of any repayment of tax, or

(c) the avoidance of any obligation to deduct or account for any tax;

"arrangements" includes any scheme, transaction or series of transactions;

"corporation tax" includes any amount which, by virtue of any of the provisions mentioned in paragraph 1 of Schedule 18 to the Finance Act 1998 (c. 36) (company tax returns, assessments and related matters) is assessable and chargeable as if it were corporation tax;

"notifiable arrangements" has the meaning given by section 306(1);

"notifiable proposal" has the meaning given by section 306(2);

"prescribed", except in section 306, means prescribed by regulations made by the Board;

"promoter", in relation to notifiable arrangements or a notifiable proposal, has the meaning given by section 307;

"reference number", in relation to notifiable arrangements, has the meaning given by section 311(3);

"tax" means—

(a) income tax,

(b) capital gains tax,

(c) corporation tax,

(d) petroleum revenue tax,

(e) inheritance tax,

(f) stamp duty land tax, or

(g) stamp duty reserve tax.

(2) Subject to subsection (1), expressions which are defined in the Taxes Act 1988 for the purposes of the Tax Acts, as defined in section 831(2) of that Act, have the same meaning in this Part.

319 Part 7: commencement and savings

(1) The following provisions of this Part come into force on the passing of this Act—

sections 306 to 315, so far as is necessary for enabling the making of any regulations for which they provide, and

sections 317 and 318 and this section.

(2) Except as provided by subsection (1), the provisions of this Part come into force on 1st August 2004.

(3) Section 308 does not apply to a promoter in the case of—

(a) any notifiable proposal as respects which the relevant date, as defined by subsection (2) of that section, fell before 18th March 2004,

(b) any notifiable arrangements which implement such a proposal, or

(c) any notifiable arrangements which include any transaction entered into before 18th March 2004.

(4) Sections 309 and 310 do not apply in relation to notifiable arrangements which include any transaction entered into before 23rd April 2004.

(5) Section 313 does not apply in relation to any notifiable arrangements in respect of which, by virtue of subsection (3) or (4), none of the duties imposed by sections 308 to 310 arises.

PART 8

MISCELLANEOUS MATTERS

320 Exclusion of extended limitation period in England, Wales and Northern Ireland

(1) Section 32(1)(c) of the Limitation Act 1980 (c. 58) or, in Northern Ireland, Article 71(1)(c) of the Limitation (Northern Ireland) Order 1989 (S.I. 1989/1339 (N.I. 11)) (extended period for bringing an action in case of mistake) does not apply in relation to a mistake of law relating to a taxation matter under the care and management of the Commissioners of Inland Revenue.

This subsection has effect in relation to actions brought on or after 8th September 2003.

(2) For the purposes of—

(a) section 35(5)(a) of the Limitation Act 1980 or, in Northern Ireland, Article 73(4)(a) of the Limitation (Northern Ireland) Order 1989 (circumstances in which time-barred claim may be brought in course of existing action), and

(b) rules of court or county court rules having effect for the purposes of those provisions,

as they apply to claims in respect of mistakes of the kind mentioned in subsection (1), a new claim shall not be regarded as arising out of the same facts, or substantially the same facts, if it is brought in respect of a different payment, transaction, period or other matter.

This subsection has effect in relation to claims made on or after 20th November 2003.

(3) If before the passing of this Act—

(a) an action is brought in relation to which a defence of limitation would have been available if subsection (1) had been in force, or

(b) a claim is made on or after 20th November 2003 that by virtue of section 35(1)(b) of the Limitation Act 1980 (c. 58) or, in Northern Ireland, Article 73(1)(b) of the Limitation (Northern Ireland) Order 1989 (S.I. 1989/1339 (N.I. 11)) is treated as an action brought before 8th September 2003 and that claim would not have been allowed if subsections (1) and (2) above had been in force,

the action (or so much of it as relates to a cause of action in respect of which a defence of limitation would have been available or, as the case may be, a claim would not have been allowed) shall be deemed to be discontinued on the passing of this Act and any payment made by the Commissioners in or towards meeting their liability in the action (or so much of the action as so relates) may be recovered by them (with interest from the date of the payment).

(4) Nothing in this section affects a claim made before 20th November 2003 that by virtue of section 35(1)(b) of the Limitation Act 1980 or, in Northern Ireland, Article 73(1)(b) of the Limitation (Northern Ireland) Order 1989 is treated as an action brought before 8th September 2003.

(5) For the purposes of this section a claim is treated as made before 20th November 2003 if—

(a) the Commissioners have before that date consented in writing to the making of the claim; or

(b) immediately before that date—

(i) the consent of the Commissioners has been sought and has not been refused, or

(ii) an application to the court for permission to make the claim has been made and has not been refused.

(6) The provisions of this section apply to any action or claim for relief from the consequences of a mistake of law, whether expressed to be brought on the ground of mistake or on some other ground (such as unlawful demand or *ultra vires* act).

(7) This section shall be construed as one with the Limitation Act 1980 or, in Northern Ireland, the Limitation (Northern Ireland) Order 1989.

321 Exclusion of extended prescriptive period in Scotland

(1) Section 6(4)(a)(ii) of the Prescription and Limitation (Scotland) Act 1973 (c. 52) (extinction of obligations by prescriptive period: exclusion of period during which creditor induced by error to refrain from making claim) does not apply in relation to an obligation based on redress of unjustified enrichment arising from an error of law relating to a taxation matter under the care and management of the Commissioners of Inland Revenue.

(2) Subsection (1) has effect in relation to an obligation in respect of which no relevant claim has been made before 8th September 2003.

(3) In the case of a relevant claim made on or after that date and before the passing of this Act relating to an obligation that would have been extinguished if subsections (1) and (2) had been in force—

(a) proceedings on the claim (or so much of the proceedings as relates to such an obligation) shall be deemed to be discontinued on the passing of this Act, and

(b) any payment made by the Commissioners in or towards meeting their liability on the claim (or so much of it as so relates) may be recovered by them (with interest from the date of the payment).

(4) The provisions of this section apply in relation to any relevant claim for redress of unjustified enrichment arising from an error of law, whether expressed to be made on the ground of error or on some other ground.

(5) In this section "relevant claim" has the same meaning as in section 6 of the Prescription and Limitation (Scotland) Act 1973.

322 Mutual assistance: customs union with the Principality of Andorra

(1) The UK mutual assistance provisions have effect for the purposes of giving effect to the EC-Andorra Mutual Assistance Recovery Decision as they have effect for the purposes of giving effect to the Mutual Assistance Recovery Directive.

(2) In this section—

"the EC-Andorra Mutual Assistance Recovery Decision" means Chapter 2 of Title 1 of, and Annex 1 to, Decision No 1/2003 of the EC-Andorra Joint Committee of 3 September 2003 (on the laws, regulations and administrative provisions necessary for the proper functioning of the Customs Union between the European Community and the Principality of Andorra);

"the Mutual Assistance Recovery Directive" has the same meaning as in the UK mutual assistance provisions;

"the UK mutual assistance provisions" means the provisions of section 134 of the Finance Act 2002 (c. 23) (recovery of taxes etc due in other member States) and Schedule 39 to that Act.

(3) In the UK mutual assistance provisions as they have effect in accordance with subsection (1)—

(a) references (except those in section 134(2) and paragraph 1(2)(a) of Schedule 39) to the Mutual Assistance Recovery Directive shall be read as references to the EC-Andorra Mutual Assistance Recovery Decision,

(b) references to another member State shall be read as references to the Principality of Andorra,

(c) references to the competent authority of another member State shall be read as references to the competent authority of the Principality of Andorra,

(d) references to a tax authority in the United Kingdom, or to the relevant UK authority, shall be read as references to the Commissioners of Customs and Excise,

(e) the following provisions shall be treated as omitted—

(i) in section 134, subsections (3)(a), (4) and (5), and

(ii) in Schedule 39, paragraphs 2(2) and 3(3).

(4) The powers in section 134(6) of the Finance Act 2002 and paragraph 3 of Schedule 39 to that Act may be exercised so as to make provision for the purposes of giving effect to the EC-Andorra Mutual Assistance Recovery Decision (or amendments of the Decision) which is different to that made for the purposes of giving effect to the Mutual Assistance Recovery Directive (or amendments of the Directive).

323 Ending of shipbuilders' relief

(1) Relief under section 2 of the Finance Act 1966 (c. 18) (relief for shipbuilders in respect of certain taxes and duties) is not available, and shall be regarded as never having been available, in any case where the contract mentioned in subsection (2) of that section is—

(a) a contract made on or after 1st January 2001 relating to a self-propelled sea-going commercial vessel, within the meaning of the 1998 Regulation, or

(b) in a case not falling within paragraph (a), a contract made on or after 13th January 2004.

(2) In this section "the 1998 Regulation" means Council Regulation (EC) No 1540/ 98 of 29 June 1998 establishing new rules on aid to shipbuilding (under which operating aid for shipbuilding ended on 31st December 2000).

324 Government borrowing: preparations for possible adoption of Euro

(1) The Treasury may incur expenditure with a view to securing that they would be able to exercise their functions under sections 12 to 20A of (and Schedule 5A to) the National Loans Act 1968 (c. 13) (national debt and government accounting) if the United Kingdom were to adopt the single currency in accordance with the Treaty establishing the European Communities.

(2) The Director of Savings may incur expenditure with a view to securing that he would be able to exercise his functions if the United Kingdom were to adopt the single currency in accordance with the Treaty establishing the European Communities.

325 Premium bonds

Regulations under section 11 of the National Debt Act 1972 (c. 65) (power of Treasury to make regulations as to raising of money under auspices of Director of Savings) may repeal any provision contained in section 54 of, or Schedule 18 to, the Finance Act 1968 (c. 44) (terms of issue of premium savings bonds).

PART 9

SUPPLEMENTARY PROVISIONS

326 Repeals

(1) The enactments mentioned in Schedule 42 to this Act (which include provisions that are spent or of no practical utility) are repealed to the extent specified.

(2) The repeals specified in that Schedule have effect subject to the commencement provisions and savings contained or referred to in the notes set out in that Schedule.

327 Interpretation

In this Act "the Taxes Act 1988" means the Income and Corporation Taxes Act 1988 (c. 1).

328 Short title

This Act may be cited as the Finance Act 2004.