



# Income and Corporation Taxes Act 1970

## 1970 CHAPTER 10

### PART VI

#### SCHEDULE D

#### CHAPTER I

#### THE CHARGE

*The Schedule, and the seven Cases*

#### 108 Schedule D

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

“SCHEDULE D

- 1 Tax under this Schedule shall be charged in respect of—
  - (a) the annual profits or gains arising or accruing—
    - (i) to any person residing in the United Kingdom from any kind of property whatever, whether situated in the United Kingdom or elsewhere, and
    - (ii) to any person residing in the United Kingdom from any trade, profession or vocation, whether carried on in the United Kingdom or elsewhere, and
    - (iii) to any person, whether a British subject or not, although not resident in the United Kingdom, from any property whatever in the United Kingdom, or from any trade, profession or vocation exercised within the United Kingdom, and

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

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

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

### *Supplementary charging provisions*

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

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

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

#### **111 Woodlands managed on a commercial basis**

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

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

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

#### **112 Mines, quarries and other concerns**

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

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

### **113 Foreign pensions**

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

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

### **114 Persons chargeable**

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

## CHAPTER II

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

#### *Cases I and II*

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

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

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

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

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

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

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

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

- (1) In this section—

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

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

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

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

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

- (a) a change occurs in a partnership of persons engaged therein, by reason of retirement or death, or the dissolution of the partnership as to one or more of the partners, or the admission of a new partner, in such circumstances that one or more of the persons who until that time were engaged in the trade, profession or vocation continue to be engaged therein, or
- (b) a person who until that time was engaged in the trade, profession or vocation on his own account continues to be engaged in it, but as a partner in a partnership,

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

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

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

## **118 Special basis on discontinuance**

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

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

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

### *Case III*

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

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

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

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

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

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



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

*Cases IV and V*

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

- (1) Subject to the provisions of this section and sections 123 and 124 below, income tax chargeable under Case IV or Case V of Schedule D shall be computed on the full amount of the income arising in the year preceding the year of assessment, whether the income has been or will be received in the United Kingdom or not, subject in the case of income not received in the United Kingdom—
- (a) to the same deductions and allowances as if it had been so received, and
  - (b) to a deduction on account of any annuity or other annual payment (not being interest) payable out of the income to a person not resident in the United Kingdom, and
  - (c) to a deduction on account of any annual interest payable out of the income to a person not resident in the United Kingdom, being interest paid before 6th April 1975 on a debt incurred on or before 15th April 1969.
- (2) Subsection (1) above shall not apply—
- (a) to any person who satisfies the Board that he is not domiciled in the United Kingdom, or that, being a British subject or a citizen of the Republic of Ireland, he is not ordinarily resident in the United Kingdom, or
  - (b) to any income which is immediately derived by a person from the carrying on by him of any trade, profession or vocation, either solely or in partnership, or
  - (c) to any income which arises from any pension.
- Any claim under paragraph (a) above shall be made to the Board.
- (3) In the cases mentioned in subsection (2) above, the tax shall, subject to sections 123 and 124 below, be computed—
- (a) in the case of tax chargeable under Case IV, on the full amount, so far as the same can be computed, of the sums received in the United Kingdom in the year preceding the year of assessment, without any deduction or abatement, and
  - (b) in the case of tax chargeable under Case V, on the full amount of the actual sums received in the United Kingdom in the year preceding the year of assessment from remittances payable in the United Kingdom, or from property imported, or from money or value arising from property not imported, or from money or value so received on credit or on account in respect of any such remittances, property, money or value brought or to be brought into the United Kingdom, without any deduction or abatement other than is allowed under the provisions of the Income Tax Acts in respect of profits or gains charged under Case I of Schedule D.
- (4) For the purposes of subsection (3) above, any income arising from securities or possessions out of the United Kingdom which is applied outside the United Kingdom by a person ordinarily resident in the United Kingdom in or towards satisfaction of—
- (a) any debt for money lent to him in the United Kingdom, or for interest on money so lent, or
  - (b) any debt for money lent to him outside the United Kingdom and received in or brought to the United Kingdom, or
  - (c) any debt incurred for satisfying in whole or in part a debt falling within paragraph (a) or (b) above,

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

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

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

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

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

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

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

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

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

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

#### *Case VI*

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

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

#### *Miscellaneous*

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

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

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

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

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

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

### CHAPTER III

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

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

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

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

## CHAPTER IV

### TRADES, PROFESSIONS AND VOCATIONS: COMPUTATIONAL PROVISIONS

#### *General provisions*

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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- (i) where the amount chargeable arose under the said section 80, the period treated in computing that amount as being the duration of the lease,
  - (ii) where that amount arose under the said section 81, the period treated in computing the amount as being the duration of the lease remaining at the date of the assignment, and
  - (iii) where that amount arose under the said section 82, the period beginning with the sale and ending on the date fixed under the terms of the sale as the date of the reconveyance or grant, or, if that date is not fixed, ending with the earliest date at which the reconveyance or grant could take place in accordance with the terms of the sale.
- (2) Subject to subsections (3) to (7) below, where during any part of the relevant period the land in relation to which the amount chargeable arose is occupied by the person for the time being entitled to the lease, estate or interest as respects which it arose for the purposes of a trade, profession or vocation carried on by him, he shall be treated, in computing the profits or gains of the trade, profession or vocation chargeable as aforesaid, as paying in respect of that land rent for the period (in addition to any actual rent), becoming due from day to day, of an amount which bears to the amount chargeable the same proportion as that part of the relevant period bears to the whole.
- (3) As respects any period during which a part only of the land in relation to which the amount chargeable arose is occupied as mentioned in subsection (2) above, that subsection shall apply as if the whole were so occupied, but the amount chargeable shall be treated as reduced by so much thereof as, on a just apportionment, is attributable to the remainder of the land.
- (4) Where a person, although not in occupation of the said land or a part thereof, deals with his interest in the land or that part as property employed for the purposes of a trade, profession or vocation carried on by him, subsections (2) and (3) above shall apply as if the land or part were occupied by him for those purposes:
- Provided that—
- (a) where section 83(1) of this Act has effect in relation to a lease granted out of that interest, subsection (3) of that section shall apply for modifying the operation of subsections (2) and (3) above as it applies for modifying the operation of subsection (2) of that section, and
  - (b) in computing profits or gains for any chargeable period, rent shall not by virtue of this subsection be treated as paid by a person for any period in respect of land in so far as rent treated under section 83(2) of this Act as paid by him for that period in respect of the land has in any previous chargeable period been deducted, or falls in that chargeable period to be deducted, under Part III of this Act.
- (5) Where, in respect of expenditure on the acquisition of his interest in the land in relation to which the amount chargeable arose, a person has become entitled to an allowance under section 60 of the Capital Allowances Act 1968 (mineral depletion) for any chargeable period, then—
- (a) if the allowance is in respect of the whole of the expenditure, no deduction shall be allowed him under this section for that or any subsequent chargeable period, or
  - (b) if the allowance is in respect of part only of the expenditure, a deduction allowed him under this section for that or any subsequent chargeable period shall be the fraction

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### *Special provisions*

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

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

### **140 Tied premises**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

A is the amount of the instalment, and



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

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

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

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

## CHAPTER V

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

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

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

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

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

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

(4) Where—

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

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

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

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

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

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

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

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

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

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

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

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

## **145 Allowable deductions**

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

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

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

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

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

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

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

### *Reliefs*

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

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

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

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

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

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

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

### *Supplemental*

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

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

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

## CHAPTER VI

### PARTNERSHIPS AND SUCCESSIONS

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

Provided that—

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

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

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

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

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

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

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

## CHAPTER VII

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

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

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

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

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

- (3) For the purposes of this section—

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

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

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

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

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

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

- (5) In this section—

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

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

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

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

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

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

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

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

## **159 Foreign dividends**

- (1) In this section—

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

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

- (3) Where—

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

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

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

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

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

## CHAPTER VIII

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

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

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

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

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

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

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

## **161 Chargeable assets**

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

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

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

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

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

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

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

## **162 General operation of charge**

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

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

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



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

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

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

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

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

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

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

## 164 Computation of gains

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## **166 Miscellaneous exemptions and reliefs**

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

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

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

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

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

- (1) For the purposes of this Chapter—

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

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

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

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

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

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

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

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

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

" wasting asset " means—

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

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

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

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