Finance Act 1989

1989 CHAPTER 26

PART II

INCOME TAX, CORPORATION TAX AND CAPITAL GAINS TAX

CHAPTER III

CAPITAL GAINS

Exemptions

122 Annual exempt amount for 1989-90

For the year 1989-90 section 5 of the Capital Gains Tax Act 1979 (annual exempt amount) shall have effect as if the amount specified in subsection (1A) were £5,000; and accordingly subsection (1B) of that section (indexation) shall not apply for that year.

123 Increase of chattel exemption

(1) In the following enactments, namely—

(a) section 128 of the Capital Gains Tax Act 1979 (chattel exemption by reference to consideration of £3,000),

(b) section 12(2)(b) of the Taxes Management Act 1970 (information about assets acquired), and

(c) section 25(7) of that Act (information about assets disposed of),

for "£3,000", in each place where it occurs, there shall be substituted "£6,000".

(2) This section applies to disposals on or after 6th April 1989 and accordingly, in relation to subsection (1)(b) above, to assets acquired on or after that date.

Gifts

124 Relief for gifts

(1) Section 79 of the Finance Act 1980 (which gives general relief for gifts and other disposals not at arm's length) shall cease to have effect.

(2) Schedule 14 to this Act (which extends relief for gifts of business assets, provides relief for gifts on which inheritance tax is chargeable, gifts for political parties, gifts of property of historic interest etc. or works of art and gifts to certain maintenance funds etc., and makes provision for payment of tax by instalments in the case of gifts where relief is not available) shall have effect.

(3) This section shall have effect in relation to disposals on or after 14th March 1989 (except that it shall not affect the operation of any enactment in relation to such a disposal in a case where the enactment operates in consequence of relief having been given under section 79 of the Finance Act 1980 in respect of a disposal made before that date).

125 Gifts to housing associations

(1) The following section shall be inserted in the Capital Gains Tax Act 1979 after section 146—

"**146A Gifts to housing associations**

(1) Subsection (2) below shall apply where—

(a) a disposal of an estate or interest in land in the United Kingdom is made to a registered housing association otherwise than under a bargain at arm's length, and

(b) a claim for relief under this section is made by the transferor and the association.

(2) Section 29A(1) above (consideration deemed to be equal to market value) shall not apply; but if the disposal is by way of gift or for a consideration not exceeding the sums allowable as a deduction under section 32 above, then—

(a) the disposal and acquisition shall be treated for the purposes of this Act as being made for such consideration as to secure that neither a gain nor a loss accrues on the disposal, and

(b) where, after the disposal, the estate or interest is disposed of by the association, its acquisition by the person making the earlier disposal shall be treated for the purposes of this Act as the acquisition of the association.

(3) In this section "registered housing association" means a registered housing association within the meaning of the Housing Associations Act 1985 or Part VII of the Housing (Northern Ireland) Order 1981."

(2) This section shall apply to disposals made on or after 14th March 1989.

Non-residents etc.

126 Non-resident carrying on profession or vocation in the United Kingdom

(1) For the year 1988-89, section 12 of the Capital Gains Tax Act 1979 (non-resident with United Kingdom branch or agency) shall have effect with the insertion of the following subsection after subsection (2)—

"(2A) In the case of a disposal made on or after 14th March 1989, this section shall apply as if references to a trade included references to a profession or vocation, but not so as to make a person chargeable to capital gains tax by virtue of a profession or vocation which he ceased to carry on in the United Kingdom through a branch or agency before 14th March 1989."

(2) For the year 1989-90 and subsequent years of assessment section 12 of the Capital Gains Tax Act 1979 shall have effect with the insertion of the following subsection after subsection (2)—

"(2A) This section shall apply as if references to a trade included references to a profession or vocation."

(3) Where immediately before 14th March 1989 a person is not resident and not ordinarily resident in the United Kingdom but is carrying on a profession or vocation in the United Kingdom through a branch or agency, he shall be deemed for all purposes of capital gains tax—

(a) to have disposed immediately before 14th March 1989 of every asset to which subsection (4) below applies, and

(b) immediately to have reacquired every such asset,

at its market value at the time of the deemed disposal.

(4) This subsection applies to any asset which was held by the person immediately before 14th March 1989 and which at the beginning of 14th March 1989 is a chargeable asset in relation to him by virtue of his carrying on the profession or vocation.

(5) For the purposes of subsection (4) above an asset is at the beginning of 14th March 1989 a chargeable asset in relation to the person if, were it to be disposed of at that time, any chargeable gains accruing to him on the disposal would be gains in respect of which he would be chargeable to capital gains tax under section 12(1) of the Capital Gains Tax Act 1979.

(6) In the case of a person carrying on a profession or vocation in the United Kingdom through a branch or agency, the charge to capital gains tax under section 12(1) of the Capital Gains Tax Act 1979 shall not apply in respect of chargeable gains accruing on the disposal of assets only used in or for the purposes of the profession or vocation before 14th March 1989 or only used or held for the purposes of the branch or agency before that date.

127 Non-residents: deemed disposals

(1) Where an asset ceases by virtue of becoming situated outside the United Kingdom to be a chargeable asset in relation to a person, he shall be deemed for all purposes of the Capital Gains Tax Act 1979—

(a) to have disposed of the asset immediately before the time when it became situated outside the United Kingdom, and

(b) immediately to have reacquired it,

at its market value at that time.

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

(a) where the asset becomes situated outside the United Kingdom contemporaneously with the person there mentioned ceasing to carry on a trade in the United Kingdom through a branch or agency, or

(b) where the asset is an exploration or exploitation asset.

(3) Where an asset ceases to be a chargeable asset in relation to a person by virtue of his ceasing to carry on a trade in the United Kingdom through a branch or agency, he shall be deemed for all purposes of the Capital Gains Tax Act 1979—

(a) to have disposed of the asset immediately before the time when he ceased to carry on the trade in the United Kingdom through a branch or agency, and

(b) immediately to have reacquired it,

at its market value at that time.

(4) Subsection (3) above does not apply to an asset which is a chargeable asset in relation to the person there mentioned at any time after he ceases to carry on the trade in the United Kingdom through a branch or agency and before the end of the chargeable period in which he does so.

(5) In this section—

"exploration or exploitation asset" means an asset used in connection with exploration or exploitation activities carried on in the United Kingdom or a designated area, and

"designated area" and "exploration or exploitation activities" have the same meanings as in section 38 of the Finance Act 1973.

(6) For the purposes of this section an asset is at any time a chargeable asset in relation to a person if, were it to be disposed of at that time, any chargeable gains accruing to him on the disposal—

(a) would be gains in respect of which he would be chargeable to capital gains tax under section 12(1) of the Capital Gains Tax Act 1979 (non-resident with United Kingdom branch or agency), or

(b) would form part of his chargeable profits for corporation tax purposes by virtue of section 11(2)(b) of the Taxes Act 1988 (non-resident companies).

(7) Subsection (1) above shall apply where an asset ceases to be situated in the United Kingdom on or after 14th March 1989.

(8) Subsection (3) above shall apply where a person ceases to carry on a trade in the United Kingdom through a branch or agency on or after 14th March 1989.

(9) This section shall apply as if references to a trade included references to a profession or vocation.

128 Non-residents: post-cessation disposals

(1) For the year 1988-89, section 12 of the Capital Gains Tax Act 1979 (non-resident with United Kingdom branch or agency) shall have effect with the insertion of the following subsection after subsection (1)—

"(1A) In the case of a disposal made on or after 14th March 1989, subsection (1) above only applies—

(a) if it is made at a time when the person is carrying on the trade in the United Kingdom through a branch or agency, or

(b) if he ceased to carry on the trade in the United Kingdom through a branch or agency before 14th March 1989."

(2) For the year 1989-90 and subsequent years of assessment, section 12 of the Capital Gains Tax Act 1979 shall have effect with the insertion of the following subsection after subsection (1)—

"(1A) Subsection (1) above does not apply unless the disposal is made at a time when the person is carrying on the trade in the United Kingdom through a branch or agency."

129 Non residents: roll-over relief

(1) Section 115 of the Capital Gains Tax Act 1979 (roll-over relief) shall not apply in the case of a person if the old assets are chargeable assets in relation to him at the time they are disposed of, unless the new assets are chargeable assets in relation to him immediately after the time they are acquired.

(2) Subsection (1) above shall not apply where—

(a) the person acquires the new assets after he has disposed of the old assets, and

(b) immediately after the time they are acquired the person is resident or ordinarily resident in the United Kingdom.

(3) Subsection (2) above shall not apply where immediately after the time the new assets are acquired—

(a) the person is a dual resident, and

(b) the new assets are prescribed assets.

(4) This section shall apply where the disposal of the old assets or the acquisition of the new assets (or both) takes place on or after 14th March 1989.

(5) But where the acquisition of the new assets takes place before 14th March 1989 and the disposal of the old assets takes place on or after that date, this section shall not apply if the disposal of the old assets takes place within twelve months of the acquisition of the new assets or such longer period as the Board may by notice in writing allow.

(6) For the purposes of this section an asset is at any time a chargeable asset in relation to a person if, were it to be disposed of at that time, any chargeable gains accruing to him on the disposal—

(a) would be gains in respect of which he would be chargeable to capital gains tax under section 12(1) of the Capital Gains Tax Act 1979 (non-resident with United Kingdom branch or agency), or

(b) would form part of his chargeable profits for corporation tax purposes by virtue of section 11(2)(b) of the Taxes Act 1988 (non-resident companies).

(7) In this section—

"dual resident" means a person who is resident or ordinarily resident in the United Kingdom and falls to be regarded for the purposes of any double

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

"double taxation relief arrangements" means arrangements having effect by virtue of section 788 of the Taxes Act 1988 (as extended to capital gains tax by section 10 of the Capital Gains Tax Act 1979);

"prescribed asset", in relation to a dual resident, means an asset in respect of which, by virtue of the asset being of a description specified in any double taxation relief arrangements, he falls to be regarded for the purposes of the arrangements as not liable in the United Kingdom to tax on gains accruing to him on a disposal.

(8) In this section—

(a) "the old assets" and "the new assets" have the same meanings as in section 115 of the Capital Gains Tax Act 1979,

(b) references to disposal of the old assets include references to disposal of an interest in them, and

(c) references to acquisition of the new assets include references to acquisition of an interest in them or to entering into an unconditional contract for the acquisition of them.

130 Exploration or exploitation assets: definition

(1) In section 38 of the Finance Act 1973 (territorial extension) in subsection (3B) (definition of exploration or exploitation asset for purposes of that section)—

(a) in paragraph (a) the words "within the period of two years ending at the date of the disposal" shall be omitted, and

(b) in paragraph (b) for the words ", at some time within the period of two years ending at the date of the disposal, has" there shall be substituted the words "has at some time".

(2) This section shall apply where assets are disposed of on or after 14th March 1989.

131 Exploration or exploitation assets: deemed disposals

(1) Where an exploration or exploitation asset which is a mobile asset ceases to be chargeable in relation to a person by virtue of ceasing to be dedicated to an oil field in which he, or a person connected with him within the meaning of section 839 of the Taxes Act 1988, is or has been a participator, he shall be deemed for all purposes of the Capital Gains Tax Act 1979—

(a) to have disposed of the asset immediately before the time when it ceased to be so dedicated, and

(b) immediately to have reacquired it,

at its market value at that time.

(2) Where a person who is not resident and not ordinarily resident in the United Kingdom ceases to carry on a trade in the United Kingdom through a branch or agency, he shall be deemed for all purposes of the Capital Gains Tax Act 1979—

(a) to have disposed immediately before the time when he ceased to carry on the trade in the United Kingdom through a branch or agency of every asset to which subsection (3) below applies, and

(b) immediately to have reacquired every such asset,

at its market value at that time.

(3) This subsection applies to any exploration or exploitation asset, other than a mobile asset, used in or for the purposes of the trade at or before the time of the deemed disposal.

(4) A person shall not be deemed by subsection (2) above to have disposed of an asset if, immediately after the time when he ceases to carry on the trade in the United Kingdom through a branch or agency, the asset is used in or for the purposes of exploration or exploitation activities carried on by him in the United Kingdom or a designated area.

(5) Where in a case to which subsection (4) above applies the person ceases to use the asset in or for the purposes of exploration or exploitation activities carried on by him in the United Kingdom or a designated area, he shall be deemed for all purposes of the Capital Gains Tax Act 1979—

(a) to have disposed of the asset immediately before the time when he ceased to use it in or for the purposes of such activities, and

(b) immediately to have reacquired it,

at its market value at that time.

(6) For the purposes of this section an asset is at any time a chargeable asset in relation to a person if, were it to be disposed of at that time, any chargeable gains accruing to him on the disposal—

(a) would be gains in respect of which he would be chargeable to capital gains tax under section 12(1) of the Capital Gains Tax Act 1979 (non-resident with United Kingdom branch or agency), or

(b) would form part of his chargeable profits for corporation tax purposes by virtue of section 11(2)(b) of the Taxes Act 1988 (non-resident companies).

(7) In this section—

(a) "exploration or exploitation asset" means an asset used in connection with exploration or exploitation activities carried on in the United Kingdom or a designated area;

(b) "designated area" and "exploration or exploitation activities" have the same meanings as in section 38 of the Finance Act 1973; and

(c) the expressions "dedicated to an oil field" and "participator" shall be construed as if this section were included in Part I of the Oil Taxation Act 1975.

(8) Subsection (1) above shall apply where an asset ceases to be dedicated as mentioned in that subsection on or after 14th March 1989.

(9) Subsection (2) above shall apply where a person ceases to carry on a trade in the United Kingdom through a branch or agency on or after 14th March 1989.

(10) Subsection (5) above shall apply where a person ceases to use an asset in or for the purposes of exploration or exploitation activities on or after 14th March 1989.

132 Dual resident companies: deemed disposal

(1) For the purposes of this section, a company is a dual resident company if it is resident in the United Kingdom and falls to be regarded for the purposes of any double taxation relief arrangements as resident in a territory outside the United Kingdom.

(2) Where an asset of a dual resident company becomes a prescribed asset, the company shall be deemed for all purposes of the Capital Gains Tax Act 1979—

(a) to have disposed of the asset immediately before the time at which it became a prescribed asset, and

(b) immediately to have reacquired it,

at its market value at that time.

(3) Subsection (2) above does not apply where the asset becomes a prescribed asset on the company becoming a company which falls to be regarded as mentioned in subsection (1) above.

(4) This section applies where an asset becomes a prescribed asset on or after 14th March 1989.

(5) In this section—

"double taxation relief arrangements" means arrangements having effect by virtue of section 788 of the Taxes Act 1988 (as extended to capital gains tax by section 10 of the Capital Gains Tax Act 1979);

"prescribed asset", in relation to a dual resident company, means an asset in respect of which, by virtue of the asset being of a description specified in any double taxation relief arrangements, the company falls to be regarded for the purposes of the arrangements as not liable in the United Kingdom to tax on gains accruing to it on a disposal.

133 Dual resident companies: roll-over relief

(1) Where a company is a dual resident company at the time it disposes of the old assets and at the time it acquires the new assets, and the old assets are not prescribed assets at the time of disposal, section 115 of the Capital Gains Tax Act 1979 (roll-over relief) shall not apply unless the new assets are not prescribed assets immediately after the time of acquisition.

(2) This section shall apply where the disposal of the old assets or the acquisition of the new assets (or both) takes place on or after 14th March 1989.

(3) But where the acquisition of the new assets takes place before 14th March 1989 and the disposal of the old assets takes place on or after that date, this section shall not apply if the disposal takes place within twelve months of the acquisition or such longer period as the Board may by notice in writing allow.

(4) In this section—

"dual resident company" means a company which is resident in the United Kingdom and falls to be regarded for the purposes of any double taxation relief arrangements as resident in a territory outside the United Kingdom;

"double taxation relief arrangements" means arrangements having effect by virtue of section 788 of the Taxes Act 1988 (as extended to capital gains tax by section 10 of the Capital Gains Tax Act 1979);

"prescribed asset", in relation to a dual resident company, means an asset in respect of which, by virtue of the asset being of a description specified in any double taxation relief arrangements, the company falls to be regarded for the purposes of the arrangements as not liable in the United Kingdom to tax on gains accruing to it on a disposal.

(5) In this section—

(a) "the old assets" and "the new assets" have the same meanings as in section 115 of the Capital Gains Tax Act 1979,

(b) references to disposal of the old assets include references to disposal of an interest in them, and

(c) references to acquisition of the new assets include references to acquisition of an interest in them or to entering into an unconditional contract for the acquisition of them.

134 Non-payment of tax by non-resident companies

(1) This section applies where—

(a) a chargeable gain has accrued to a company not resident in the United Kingdom (the taxpayer company) on the disposal of an asset on or after 14th March 1989,

(b) the gain forms part of its chargeable profits for corporation tax purposes by virtue of section 11(2)(b) of the Taxes Act 1988, and

(c) any of the corporation tax assessed on the company for the accounting period in which the gain accrued is not paid within six months from the time when it becomes payable.

(2) The Board may, at any time before the end of the period of three years beginning with the time when the amount of corporation tax for the accounting period in which the chargeable gain accrued is finally determined, serve on any person to whom subsection (4) below applies a notice—

(a) stating the amount which remains unpaid of the corporation tax assessed on the taxpayer company for the accounting period in which the gain accrued and the date when the tax became payable, and

(b) requiring that person to pay the relevant amount within thirty days of the service of the notice.

(3) For the purposes of subsection (2) above the relevant amount is the lesser of—

(a) the amount which remains unpaid of the corporation tax assessed on the taxpayer company for the accounting period in which the gain accrued, and

(b) an amount equal to corporation tax on the amount of the chargeable gain at the rate in force when the gain accrued.

(4) This subsection applies to the following persons—

(a) any company which is, or within the relevant period was, a member of the same group as the taxpayer company, and

(b) any person who is, or within the relevant period was, a controlling director of the taxpayer company or of a company which has, or within that period had, control over the taxpayer company.

(5) Any amount which a person is required to pay by a notice under this section may be recovered from him as if it were tax due and duly demanded of him; and he may recover any such amount paid by him from the taxpayer company.

(6) A payment in pursuance of a notice under this section shall not be allowed as a deduction in computing any income, profits or losses for any tax purposes.

(7) In this section—

"director", in relation to a company, has the meaning given by subsection (6) of section 168 of the Taxes Act 1988 (read with subsection (9) of that section) and includes any person falling within subsection (5) of section 417 of that Act (read with subsection (6) of that section);

"controlling director", in relation to a company, means a director of the company who has control of it (construing control in accordance with section 416 of the Taxes Act 1988);

"group" has the meaning which would be given by section 272 of the Taxes Act 1970 if in that section references to residence in the United Kingdom were omitted and for references to 75 per cent. subsidiaries there were substituted references to 51 per cent. subsidiaries.

(8) In this section "the relevant period" means—

(a) where the time when the chargeable gain accrues is less than twelve months after 14th March 1989, the period beginning with that date and ending with that time;

(b) in any other case, the period of twelve months ending with that time.

Value shifting and groups of companies

135 Value shifting.

(1) In section 26 of the Capital Gains Tax Act 1979 (value shifting: further provisions) in subsection (1)(a) (schemes whereby value of the asset disposed of is materially reduced) after the words "the asset" there shall be inserted the words "or a relevant asset" and at the end of that subsection there shall be inserted—

"(1A) For the purposes of this section, where the asset disposed of by a company ("the disposing company") consists of shares in, or securities of, another company, another asset is a relevant asset if, at the time of the disposal, it is owned by a company associated with the disposing company; but no account shall be taken of any reduction in the value of a relevant asset except in a case where—

(a) during the period beginning with the reduction in value and ending immediately before the disposal by the disposing company, there is no disposal of the asset to any person, other than a disposal falling within section 273(1) of the Taxes Act 1970 (transfers within a group: no gain/no loss),

(b) no disposal of the asset is treated as having occurred during that period by virtue of section 278 of the Taxes Act 1970 (company ceasing to be member of group), and

(c) if the reduction had not taken place but any consideration given for the relevant asset and any other material circumstances (including any consideration given before the disposal for the asset disposed of) were unchanged, the value of the asset disposed of would, at the time of the disposal, have been materially greater;

and in this subsection "securities" has the same meaning as in section 82 below."

(2) For subsection (7) of that section there shall be substituted—

"(7) References in this section, in relation to any disposal, to a reduction in the value of an asset, where the asset consists of shares owned by a company in another company, shall be interpreted in accordance with sections 26A to 26C below and, in those sections, the disposal, the asset and those companies are referred to respectively as "the section 26 disposal", "the principal asset", "the first company" and "the second company"."

(3) In subsection (8) of that section for the words "reference in subsection (1)(a)" there shall be substituted the words "references in subsections (1)(a) and (1A)".

(4) This section shall have effect in respect of any disposal of an asset on or after 14th March 1989.

136 Value shifting: reductions attributable to distributions within a group

(1) After section 26 of the Capital Gains Tax Act 1979 there shall be inserted—

"**26A Value shifting: distributions within a group followed by a disposal of shares**

(1) The references in section 26 above to a reduction in the value of an asset, in the case mentioned in subsection (7) of that section, do not include a reduction attributable to the payment of a dividend by the second company at a time when it and the first company are associated, except to the extent (if any) that the dividend is attributable to chargeable profits of the second company and, in such a case, the tax-free benefit shall be ascertained without regard to any part of the dividend that is not attributable to such profits.

(2) Subsections (3) to (11) below apply for the interpretation of subsection (1) above.

(3) Chargeable profits shall be ascertained as follows—

(a) the distributable profits of any company are chargeable profits of that company to the extent that they are profits arising on a transaction caught by this section, and

(b) where any company makes a distribution attributable wholly or partly to chargeable profits (including any profits that are chargeable profits by virtue of this paragraph) to another company, the distributable profits of the other company, so far as they represent that distribution or so much of it as was attributable to chargeable profits, are chargeable profits of the other company,

and for this purpose any loss or other amount to be set against the profits of a company in determining the distributable profits shall be set first against profits other than the profits so arising or, as the case may be, representing so much of the distribution as was attributable to chargeable profits.

(4) The distributable profits of a company are such profits computed on a commercial basis as, after allowing for any provision properly made for tax, the company is empowered, assuming sufficient funds, to distribute to persons entitled to participate in the profits of the company.

(5) Profits of a company ("company A") are profits arising on a transaction caught by this section where each of the following three conditions is satisfied.

(6) The first condition is that the transaction is—

(a) a disposal of an asset by company A to another company in circumstances such that company A and the other company are treated as mentioned in section 273(1) of the Taxes Act 1970 (transfers within a group: no gain/no loss), or

(b) an exchange, or a transaction treated for the purposes of section 85(2) and (3) below as an exchange, of shares in or debentures of a company held by company A for shares in or debentures of another company, being a company associated with company A immediately after the transaction, and is treated by virtue of section 85(3) below as a reorganisation of share capital, or

(c) a revaluation of an asset in the accounting records of company A.

In the following conditions the "asset with enhanced value" means (subject to section 26C below), in the paragraph (a) case, the asset acquired by the person to whom the disposal is made, in the paragraph (b) case, the shares in or debentures of the other company and, in the paragraph (c) case, the revalued asset.

(7) The second condition is that—

(a) during the period beginning with the transaction referred to in subsection (6) above and ending immediately before the section 26 disposal, there is no disposal of the asset with enhanced value to any person, other than a disposal falling within section 273(1) of the Taxes Act 1970, and

(b) no disposal of the asset with enhanced value is treated as having occurred during that period by virtue of section 278 of the Taxes Act 1970 (company ceasing to be member of group).

(8) The third condition is that, immediately after the section 26 disposal, the asset with enhanced value is owned by a person other than the company making that disposal or a company associated with it.

(9) The conditions in subsections (6) to (8) above are not satisfied if—

(a) at the time of the transaction referred to in subsection (6) above, company A carries on a trade and a profit on a disposal of the asset with enhanced value would form part of the trading profits, or

(b) by reason of the nature of the asset with enhanced value, a disposal of it could give rise neither to a chargeable gain nor to an allowable loss, or

(c) immediately before the section 26 disposal, the company owning the asset with enhanced value carries on a trade and a profit on a disposal of the asset would form part of the trading profits.

(10) The amount of chargeable profits of a company to be attributed to any distribution made by the company at any time in respect of any class of shares, securities or rights shall be ascertained by—

(a) determining the total of distributable profits, and the total of chargeable profits, that remains after allowing for earlier distributions made in respect of that or any other class of shares, securities or rights, and for distributions made at or to be made after that time in respect of other classes of shares, securities or rights, and

(b) attributing first to that distribution distributable profits other than chargeable profits.

(11) The amount of chargeable profits of a company to be attributed to any part of a distribution made at any time to which a person is entitled by virtue of any part of his holding of any class of shares, securities or rights, shall be such proportion of the chargeable profits as are attributable under subsection (10) above to the distributions made at that time in respect of that class as corresponds to that part of his holding.

26B Value shifting: disposals within a group followed by a disposal of shares

(1) The references in section 26 above to a reduction in the value of an asset, in the case mentioned in subsection (7) of that section, do not include a reduction attributable to the disposal of any asset ("the underlying asset") by the second company at a time when it and the first company are associated, being a disposal falling within section 273(1) of the Taxes Act 1970 (transfers within group: no gain/no loss), except in a case within subsection (2) below.

(2) A case is within this subsection if the amount or value of the actual consideration for the disposal of the underlying asset—

(a) is less than the market value of the underlying asset, and

(b) is less than the cost of the underlying asset,

unless the disposal is effected for bona fide commercial reasons and does not form part of a scheme or arrangements of which the main purpose, or one of the main purposes, is avoidance of liability to corporation tax.

(3) For the purposes of subsection (2) above, the cost of an asset owned by a company is the aggregate of—

(a) any capital expenditure incurred by the company in acquiring or providing the asset, and

(b) any other capital expenditure incurred by the company in respect of the asset while owned by that company.

(4) For the purposes of this section, where the disposal of the underlying asset is a part disposal, the reference in subsection (2)(a) above to the market value of the underlying asset is to the market value of the asset acquired by the person to whom the disposal is made and the amounts to be attributed to the underlying asset under paragraphs (a) and (b) of subsection (3) above shall be reduced to the appropriate proportion of those amounts, that is—

(a) the proportion of capital expenditure in respect of the underlying asset properly attributed in the accounting records of the company to the asset acquired by the person to whom the disposal is made, or

(b) where paragraph (a) above does not apply, such proportion as appears to the inspector, or on appeal the Commissioners concerned, to be just and reasonable.

(5) Where by virtue of a distribution in the course of dissolving or winding up the second company the first company is treated as disposing of an interest in the principal asset, the exception mentioned in subsection (1) above does not apply.

26C Value shifting: supplementary

(1) For the purposes of sections 26(1A) and 26A(7) to (9) above, subsections (2) to (6) below apply for the purpose of determining in the case of any asset ("the original asset") whether it is subsequently disposed of or treated as disposed of or owned or any other condition is satisfied in respect of it.

(2) References in sections 26(1A)(a) and (b) and 26A(7) to a disposal are to a disposal other than a part disposal.

(3) References to an asset are to the original asset or, where at a later time one or more assets are treated by virtue of subsections (5) or (6) below as the same as the original asset—

(a) if no disposal falling within paragraph (a) or (b) of section 26(1A) or, as the case may be, of 26A(7) has occurred, those references are to the asset so treated or, as the case may be, all the assets so treated, and

(b) in any other case, those references are to an asset or, as the case may be, all the assets representing that part of the value of the original asset that remains after allowing for earlier disposals falling within the paragraphs concerned,

references in this subsection to a disposal including a disposal which would fall within the paragraphs concerned but for subsection (2) above.

(4) Where by virtue of subsection (3) above those references are to two or more assets—

(a) those assets shall be treated as if they were a single asset,

(b) any disposal of any one of them is to be treated as a part disposal, and

(c) the reference in section 26(1A) to the asset owned at the time of the disposal by a company associated with the disposing company and the reference in section 26A(8) to the asset with enhanced value is to all or any of those assets.

(5) Where there is a part disposal of an asset, that asset and the asset acquired by the person to whom the disposal is made are to be treated as the same.

(6) Where the value of an asset is derived from any other asset in the ownership of the same or an associated company, in a case where assets have been merged or divided or have changed their nature or rights or interests in or over assets have been created or extinguished, the first asset is to be treated as the same as the second.

(7) For the purposes of section 26(1A) above, where account is to be taken under that subsection of a reduction in the value of a relevant asset and at the time of the disposal by the disposing company referred to in that subsection—

(a) references to the relevant asset are by virtue of this section references to two or more assets treated as a single asset, and

(b) one or more but not all of those assets are owned by a company associated with the disposing company,

the amount of the reduction in the value of the relevant asset to be taken into account by virtue of that subsection shall be reduced to such amount as appears to the inspector, or on appeal to the Commissioners concerned, to be just and reasonable.

(8) For the purposes of section 26A above, where—

(a) a dividend paid by the second company is attributable to chargeable profits of that company, and

(b) the condition in subsection (7), (8) or (9)(c) of that section is satisfied by reference to an asset, or assets treated as a single asset, treated by virtue of subsection (3)(b) above as the same as the asset with enhanced value,

the amount of the reduction in value of the principal asset shall be reduced to such amount as appears to the inspector, or on appeal to the Commissioners concerned, to be just and reasonable.

(9) For the purposes of sections 26 to 26B above and this section, companies are associated if they are members of the same group.

(10) Section 272(1) to (4) of the Taxes Act 1970 (groups of companies: definitions) applies for the purposes of sections 26 to 26B above and this section as it applies for the purposes of that section."

(2) This section shall have effect in respect of any disposal of an asset on or after 14th March 1989, but—

(a) no account shall be taken by virtue of section 26A of the Capital Gains Tax Act 1979 of any reduction in the value of an asset attributable to the payment of a dividend unless it is paid on or after that date, and

(b) no account shall be taken by virtue of section 26B of that Act of a reduction in the value of an asset attributable to the disposal of another asset unless the disposal took place on or after that date.

137 Value shifting: transactions treated as a reorganisation of share capital.

(1) After section 26C of the Capital Gains Tax Act 1979 there shall be inserted—

"**26D Value shifting: transactions treated as a reorganisation of share capital.**

(1) Where—

(a) but for sections 78 and 85(3) below, section 26 above would have effect as respects the disposal by a company ("the disposing company") of an asset consisting of shares in or debentures of another company ("the original holding") in exchange for shares in or debentures of a further company which, immediately after the disposal, is not a member of the same group as the disposing company, and

(b) if section 26 above had effect as respects that disposal, any allowable loss or chargeable gain accruing on the disposal would be calculated as if the consideration for the disposal were increased by an amount,

the disposing company shall be treated for the purposes of section 79(2) below as receiving, on the reorganisation of share capital that is treated as occurring by virtue of section 85(3) below, that amount for the disposal of the original holding.

(2) For the purposes of subsection (1) above it shall be assumed that section 86 below has effect generally for the purposes of this Act, and in that subsection "group" has the same meaning as in sections 26 to 26C above."

(2) This section shall have effect where the reduction in value, by reason of which the amount referred to in section 26D(1)(b) of the Capital Gains Tax Act 1979 falls to be calculated, occurred on or after 14th March 1989.

138 Groups of companies.

(1) In section 272 of the Taxes Act 1970 (groups of companies: definitions) in subsection (1), for paragraphs (b) and (c) there shall be substituted—

"(b) subsections (1A) to (1D) below apply to determine whether companies form a group and, where they do, which is the principal company of the group;".

(2) After that subsection there shall be inserted—

"(1A) Subject to subsections (1B) to (1D) below—

(a) a company (referred to below in this Chapter as the "principal company of the group") and all its 75 per cent. subsidiaries form a group and, if any of those subsidiaries have 75 per cent. subsidiaries, the group includes them and their 75 per cent. subsidiaries, and so on, but

(b) a group does not include any company (other than the principal company of the group) that is not an effective 51 per cent. subsidiary of the principal company of the group.

(1B) A company cannot be the principal company of a group if it is itself a 75 per cent. subsidiary of another company.

(1C) Where a company ("the subsidiary") is a 75 per cent. subsidiary of another company but those companies are prevented from being members of the same group by subsection (1A)(b) above, the subsidiary may, where the requirements of subsection (1A) above are satisfied, itself be the principal company of another group notwithstanding subsection (1B) above unless this subsection enables a further company to be the principal company of a group of which the subsidiary would be a member.

(1D) A company cannot be a member of more than one group; but where, apart from this subsection, a company would be a member of two or more groups (the principal company of each group being referred to below as the "head of a group"), it is a member only of that group, if any, of which it would be a member under one of the following tests (applying earlier tests in preference to later tests)—

(a) it is a member of the group it would be a member of if, in applying subsection (1A)(b) above, there were left out of account any amount to which a head of a group is or would be beneficially entitled of any profits available for distribution to equity holders of a head of another group or of any assets of a head of another group available for distribution to its equity holders on a winding-up,

(b) it is a member of the group the head of which is beneficially entitled to a percentage of profits available for distribution to equity holders

of the company that is greater than the percentage of those profits to which any other head of a group is so entitled,

(c) it is a member of the group the head of which would be beneficially entitled to a percentage of any assets of the company available for distribution to its equity holders on a winding-up that is greater than the percentage of those assets to which any other head of a group would be so entitled,

(d) it is a member of the group the head of which owns directly or indirectly a percentage of the company's ordinary share capital that is greater than the percentage of that capital owned directly or indirectly by any other head of a group (interpreting this paragraph as if it were included in section 838(1)(a) of the Taxes Act 1988).

(1E) For the purposes referred to in subsection (1) above, a company ("the subsidiary") is an effective 51 per cent. subsidiary of another company ("the parent") at any time if and only if—

(a) the parent is beneficially entitled to more than 50 per cent. of any profits available for distribution to equity holders of the subsidiary; and

(b) the parent would be beneficially entitled to more than 50 per cent. of any assets of the subsidiary available for distribution to its equity holders on a winding-up.

(1F) Schedule 18 to the Taxes Act 1988 (group relief: equity holders and profits or assets available for distribution) shall apply for the purposes of subsections (1D) and (1E) above as if the references to subsection (7), or subsections (7) to (9), of section 413 of that Act were references to subsections (1D) and (1E) above and as if, in paragraph 1(4), the words from "but" to the end and paragraph 7(1)(b) were omitted."

(3) In subsection (3) of that section for the words from "75 per cent. subsidiary of another company" to "is the principal company" there shall be substituted the words "member of another group, the first group and the other group shall be regarded as the same".

(4) In subsection (4) of that section—

(a) for the words "a company" there shall be substituted the words "a member of a group of companies", and

(b) for the words from "that company, or" to the end there shall be substituted the words "that or any other company ceasing to be a member of the group".

(5) In section 278 of that Act (deemed disposal of certain assets held by company leaving group) after subsection (3A) there shall be inserted—

"(3B) Where, apart from subsection (3C) below, a company ceasing to be a member of a group by reason only of the fact that the principal company of the group becomes a member of another group would be treated by virtue of subsection (3) above as selling an asset at any time, subsections (3C) to (3E) below shall apply.

(3C) The company in question shall not be treated as selling the asset at that time; but if—

(a) within six years of that time the company in question ceases at any time ("the relevant time") to satisfy the following conditions, and

(b) at the relevant time, the company in question, or a company in the same group as that company, owns otherwise than as trading stock the asset or property to which a chargeable gain has been carried forward from the asset on a replacement of business assets,

the company in question shall be treated for all the purposes of the Capital Gains Tax Act 1979 as if, immediately after its acquisition of the asset, it had sold and immediately reacquired the asset at the value that, at the time of acquisition, was its market value.

(3D) Those conditions are—

(a) that the company is a 75 per cent. subsidiary of one or more members of the other group referred to in subsection (3B) above, and

(b) that the company is an effective 51 per cent. subsidiary of one or more of those members.

(3E) Any chargeable gain or allowable loss accruing to the company on that sale shall be treated as accruing at the relevant time.

(3F) Where—

(a) by virtue of this section a company is treated as having sold an asset at any time, and

(b) if at that time the company had in fact sold the asset at market value at that time, then, by virtue of section 26 of that Act, any allowable loss or chargeable gain accruing on the disposal would have been calculated as if the consideration for the disposal were increased by an amount,

subsections (3) and (3C) above shall have effect as if the market value at that time had been that amount greater."

(6) In section 97 of the Inheritance Tax Act 1984 (transfers within group etc.)—

(a) for the words "principal member" and "principal member's", wherever appearing, there shall be substituted "principal company" and "principal company's" respectively,

(b) for subsection (2)(a) there shall be substituted—

"(a) section 272 of the Taxes Act 1970 (groups of companies: definitions) applies as for the purposes of sections 273 to 281 of that Act", and

(c) the words from "and in this section" in subsection (2) to the end shall be omitted.

(7) Subject to the following provisions, this section shall be deemed to have come into force on 14th March 1989; but section 278(3E) of the Taxes Act 1970 shall have effect where the accounting period in which the company referred to in subsection (3B) of that section ceases to be a member of a group ends after the day appointed for the purposes of paragraph 4 of Schedule 6 to the Finance (No. 2) Act 1987.

(8) Where—

(a) at the beginning of the commencement day a company ceases for the purposes of the group provisions to be a member of a group by reason only of the substitution for the old definition of the new definition, and

(b) in consequence of ceasing to be such a member the company would, apart from this subsection, be treated by virtue of section 278(3) of the Taxes Act 1970 as selling an asset at any time,

the company in question shall not be treated as selling that asset at that time unless the conditions in subsection (9) below become satisfied, assuming for that purpose that the old definition applies.

(9) Those conditions are—

(a) that for the purposes of section 278 of that Act the company in question ceases at any time ("the relevant time") to be a member of the group referred to in subsection (8)(a) above,

(b) that, at the relevant time, the company in question, or an associated company also leaving that group at that time, owns otherwise than as trading stock the asset or property to which a chargeable gain has been carried forward from the asset on a replacement of business assets, and

(c) that the time of acquisition referred to in section 278(1) of that Act fell within the period of six years ending with the relevant time.

(10) Where, under any compromise or arrangement agreed to on any date before 14th March 1989 in pursuance of section 425 of the Companies Act 1985 and sanctioned by the court, one company acquires at any time, directly or indirectly, an interest in ordinary share capital of another company and immediately after that time—

(a) under the old definition the two companies are, by virtue of that acquisition, members of a group for the purposes of the group provisions, but

(b) the second company is not an effective 51 per cent. subsidiary of the first company,

subsection (11) below applies; and in that subsection those companies and any other members of the group are referred to as "relevant companies".

(11) In respect of the period beginning with the time of acquisition and ending with—

(a) the expiry of the six months beginning with the date of the agreement, or

(b) if earlier, the date when, under the old definition, the other company ceases for the purposes of the group provisions to be a member of the group referred to in subsection (10)(a) above,

the old definition shall apply in relation to the relevant companies for the purposes of the group provisions and the commencement day in relation to those companies is the day following the end of that period.

(12) In subsections (8) to (11) above—

"arrangement" has the same meaning as in section 425 of the Companies Act 1985,

"commencement day", subject to subsection (11) above, is 14th March 1989,

"effective 51 per cent. subsidiary" has the meaning given by section 272(1E) of the Taxes Act 1970,

"group provisions" means sections 273 to 281 of that Act, and

"the new definition" means section 272 of that Act as amended by this section and "the old definition" means that section as it had effect on 13th March 1989,

and section 278(4) of that Act shall apply for the purposes of those subsections.

Miscellaneous

139 Corporate bonds

(1) In relation to disposals on or after 14th March 1989 Chapter III of Part II of the Finance Act 1984 shall have effect subject to the following provisions of this section (and, in relation to such disposals, those provisions shall be regarded as always having had effect).

(2) In subsection (2) of section 64 (which defines "corporate bond" for the purposes of that section and accordingly for the purposes of certain other enactments including, by virtue of section 64(1) of the Capital Gains Tax Act 1979, that Act) paragraph (a) shall be omitted.

(3) After subsection (3) of section 64 there shall be inserted—

"(3A) For the purposes of this section "corporate bond" also includes a security—

(a) which is not included in the definition in subsection (2) above, and

(b) which is a deep gain security for the purposes of Schedule 11 to the Finance Act 1989.

(3B) For the purposes of this section "corporate bond" also includes a security—

(a) which is not included in the definition in subsection (2) above, and

(b) which, by virtue of paragraph 21(2) of Schedule 11 to the Finance Act 1989, falls to be treated as a deep gain security as there mentioned.

(3C) For the purposes of this section "corporate bond" also includes a security—

(a) which is not included in the definition in subsection (2) above, and

(b) which, by virtue of paragraph 22(2) of Schedule 11 to the Finance Act 1989, falls to be treated as a deep gain security as there mentioned."

(4) After subsection (5) of section 64 there shall be inserted—

"(5A) Subject to subsection (6) below, for the purposes of this section and Schedule 13 to this Act a corporate bond which falls within subsection (3A) above is a qualifying corporate bond, whatever the date of its issue; and subsections (4) and (5) above shall not apply in the case of such a bond.

(5B) Subject to subsection (6) below, for the purposes of this section and Schedule 13 to this Act a corporate bond which falls within subsection (3B) above is a qualifying corporate bond as regards a disposal made after the time mentioned in paragraph 21(1)(c) of Schedule 11 to the Finance Act 1989, whatever the date of its issue; and subsections (4) and (5) above shall not apply in the case of such a bond.

(5C) Subject to subsection (6) below, for the purposes of this section and Schedule 13 to this Act a corporate bond which falls within subsection (3C) above is a qualifying corporate bond as regards a disposal made after the time the agreement mentioned in paragraph 22(1)(b) of Schedule 11 to the Finance Act 1989 is made, whatever the date of its issue; and subsections (4) and (5) above shall not apply in the case of such a bond."

(5) In subsection (6) of section 64, after the words "this Act" there shall be inserted the words "except in relation to a disposal by a person who (at the time of the disposal) is not a member of the same group as the company which issued the security".

(6) In paragraph 10(2) of Schedule 13—

(a) after paragraph (b) there shall be inserted—

"(bb) section 267 of the Taxes Act (company reconstructions and amalgamations); or", and

(b) the word "not" shall be inserted after the words "previous disposal".

140 Collective investment schemes

(1) In this section—

"collective investment scheme" has the same meaning as in the Financial Services Act 1986, and

"participant" shall be construed in accordance with that Act.

(2) Subsection (3) below applies in the case of arrangements which constitute a collective investment scheme and under which—

(a) the contributions of the participants, and the profits or income out of which payments are to be made to them, are pooled in relation to separate parts of the property in question, and

(b) the participants are entitled to exchange rights in one part for rights in another.

(3) If a participant exchanges rights in one such part for rights in another section 78 of the Capital Gains Tax Act 1979 (reorganisations etc.) shall not prevent the exchange constituting a disposal and acquisition for the purposes of that Act.

(4) The reference in subsection (3) above to section 78 of that Act—

(a) includes a reference to that section as applied by section 82 of that Act (conversion of securities), but

(b) does not include a reference to section 78 as applied by section 85 of that Act (exchange of securities for those in another company).

(5) Subsection (3) above shall apply where rights are exchanged on or after 14th March 1989.

(6) Section 78 of the Finance (No.2) Act 1987 shall cease to have effect as regards any case where the question it mentions is determined in relation to a disposal made on or after 14th March 1989.

141 Re-basing to 1982 etc

Schedule 15 to this Act (which makes further provision about charges etc. postponed from 31st March 1982 or before, assets held on that date and related matters) shall have effect.