



# Finance (No. 2) Act 1992

## 1992 CHAPTER 48

### PART II

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

### CHAPTER I

#### GENERAL

#### *Lower rate*

#### **19 Lower rate: further provisions.**

- (1) In section 7(4) of the <sup>M1</sup>Taxes Management Act 1970 for "basic rate" there shall be substituted " the basic rate or the lower rate ".
- (2) In each of the provisions to which this subsection applies, after "basic rate" there shall be inserted " or the lower rate "; and this subsection applies to section 91(3)(c) of the Taxes Management Act 1970 and to sections 550(3) and 599A(7) of the Taxes Act 1988.
- (3) In each of the provisions to which this subsection applies, after "all income tax" there shall be inserted " not chargeable at the lower rate "; and this subsection applies to sections 167(2A), <sup>F1</sup> . . . , <sup>F2</sup> . . . , 549(2), <sup>F3</sup> . . . , 699(2) and 819(2) of the Taxes Act 1988 and to the definition of "excess liability" in paragraph 19(1) of Schedule 7 to that Act.

<sup>F4</sup>(4) . . . . .

<sup>F2</sup>(5) . . . . .

- (6) In section 421(1)(c) of the Taxes Act 1988 for "shall, notwithstanding that paragraph, be treated" there shall be substituted " shall be treated as income which is not chargeable at the lower rate and, notwithstanding that paragraph, shall be treated ".
- (7) This section shall apply for the year 1992-93 and subsequent years of assessment.

*Status: Point in time view as at 02/12/2004.*

*Changes to legislation: There are currently no known outstanding effects for the Finance (No. 2) Act 1992, Chapter I. (See end of Document for details)*

**Textual Amendments**

- F1** Words in s. 19(3) repealed (27.7.1993 with effect for the years 1993-94 and subsequent years of assessment) by 1993 c. 34, s. 213, **Sch. 23 Pt. III**, Note
- F2** S. 19(5) and words in s. 19(3) repealed (3.5.1994 with effect in accordance with s. 81(6) of the repealing Act) by 1994 c. 9, s. 258, **Sch. 26 Pt. V(2)**, Note
- F3** Words in s. 19(3) repealed (1.5.1995 with effect for the year 1995-1996 and subsequent years of assessment) by 1995 c. 4, s. 162, **Sch. 29 Pt VIII(8)**, Note
- F4** S. 19(4) repealed (in force in accordance with s. 73 and Sch. 6 of the repealing Act) by 1996 c. 8, s. 205, **Sch. 41 Pt. V(1)**, Note(1)

**Marginal Citations**

- M1** 1970 c. 9.

*Married couple’s allowance etc.*

**20 Married couple’s allowance etc.**

Schedule 5 to this Act (which makes provision in relation to the married couple’s allowance) shall have effect.

*Corporation tax charge and rate*

**21 Charge and rate of corporation tax for 1992.**

Corporation tax shall be charged for the financial year 1992 at the rate of 33 per cent.

**22 Small companies.**

For the financial year 1992—

- (a) the small companies’ rate shall be 25 per cent., and
- (b) the fraction mentioned in section 13(2) of the Taxes Act 1988 (marginal relief for small companies) shall be one fiftieth.

*Capital gains tax*

**F5 23** .....

**Textual Amendments**

- F5** S. 23 repealed (27.7.1999 with effect for the year 1999-00 and subsequent years of assessment) by 1999 c. 16, s. 139, **Sch. 20 Pt. III(1)**, Note

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*Groups etc.*

**24 Amendments relating to group relief etc.**

Schedule 6 to this Act (which contains amendments relating to group relief etc.) shall have effect.

**25 Companies ceasing to be members of groups.**

<sup>F6</sup>(1) .....

(2) Subject to the repeals made by the <sup>M2</sup>Taxation of Chargeable Gains Act 1992, in relation to a company which ceases to be a member of a group of companies on or after 15th November 1991 section 278 of the <sup>M3</sup>Income and Corporation Taxes Act 1970 (deemed sale etc. where company ceases to be member of a group) shall have effect, and be deemed to have had effect, with the substitution in subsection (1) of the words “ in consequence of another member of the group ceasing to exist ” for the words from “by being wound up” to the end of the subsection.

**Textual Amendments**

**F6** S. 25(1) repealed (28.7.2000 with effect as mentioned in Sch. 40 Pt. II(12) Note 11 of the amending Act) by 2000 c. 17, s. 156, **Sch. 40 Pt. II(12)**

**Marginal Citations**

**M2** 1992 c. 12.  
**M3** 1970 c. 10.

*Charities etc.*

<sup>F7</sup>**26** .....

**Textual Amendments**

**F7** S. 26 repealed (27.7.1993 with effect in accordance with s. 67 as mentioned in Sch. 23 Pt. III Note) by 1993 c. 34, s. 213, **Sch. 23 Pt. III** Note

<sup>F8</sup>**27** .....

**Textual Amendments**

**F8** S. 27 repealed (1.5.1995 with effect for the year 1995-96 and subsequent years of assessment) by 1995 c. 4, s. 162, **Sch. 29 Pt. VIII(8)**, Note

**28 Powers of inspection.**

(1) Subsection (2) below applies if—

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- (a) an exempt body has made a claim for exemption from tax under section 505(1), 507 or 508 of the Taxes Act 1988, and
  - (b) the exemption results in, or (where it has yet to be granted or allowed) would if granted or allowed result in, the repayment of income tax or the payment of a tax credit.
- (2) The Board may require the body to produce for inspection by an officer of the Board all such books, documents and other records in the possession, or under the control, of the body as contain information relating to the claim.
- (3) For the purposes of subsection (1) above each of the following is an exempt body—
- (a) any body of persons or trust established for charitable purposes only;
  - (b) each of the bodies mentioned in section 507 of the Taxes Act 1988 (heritage bodies);
  - (c) any Association of a description specified in section 508 of that Act (scientific research organisations).
- (4) In the Table in section 98 of the <sup>M4</sup>Taxes Management Act 1970 (penalties for failure to produce documents etc.) at the end of the second column there shall be inserted—

“Section 28(2) of the Finance (No.2) Act 1992.”

- (5) Section 94 of the <sup>M5</sup>Finance Act 1990 (donations to charity: inspection powers) shall cease to have effect.
- (6) This section shall apply in relation to claims made after the day on which this Act is passed.

**Marginal Citations**

**M4** 1970 c. 9.

**M5** 1990 c. 29.

*Interest, dividends and distributions*

**29 Returns of interest.**

- (1) In section 17 of the <sup>M6</sup>Taxes Management Act 1970 (returns of interest) in subsection (4) (interest not required to be included in return if declaration that person beneficially entitled to interest not ordinarily resident in UK) the words from “and if a person” to the end of the subsection shall cease to have effect and after that subsection there shall be inserted the following subsections—

“(4A) If a person to whom any interest is paid or credited in respect of any money received or retained in the United Kingdom by notice in writing served on the person paying or crediting the interest—

- (a) has declared that the person beneficially entitled to the interest is a company not resident in the United Kingdom, and
- (b) has requested that the interest shall not be included in any return under this section,

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the person paying or crediting the interest shall not be required to include the interest in any such return.

(4B) Subsection (4C) below shall apply where—

- (a) as a result of a declaration made under section 481(5)(k) of the principal Act and the operation of section 482(5) of that Act in relation to that declaration, there is no obligation under section 480A(1) of that Act to deduct a sum representing income tax out of any interest paid or credited in respect of any money received or retained in the United Kingdom, and
- (b) the person who makes the declaration referred to in paragraph (a) above, by notice in writing served on the person paying or crediting the interest, requests that the interest shall not be included in any return under this section.

(4C) Where this subsection applies, the person paying or crediting the interest shall not be required to include the interest in any return under this section.”

(2) This section shall apply to interest paid or credited after the day on which this Act is passed.

**Marginal Citations**

**M6** 1970 c. 9.

**F9**30 .....

**Textual Amendments**

**F9** S. 30 repealed (29.4.1996 with effect in accordance with Sch. 7 of the repealing Act) by 1996 c. 8, s. 205, Sch. 41 Pt. V(2) Note

**31 Equity notes.**

(1) In section 209 of the Taxes Act 1988 (meaning of “distribution” for purposes of Corporation Tax Acts) in subsection (2)(e) after sub-paragraph (vi) there shall be inserted “or

- (vii) equity notes issued by the company (“the issuing company”) and held by a company which is associated with the issuing company or is a funded company;”.

(2) In that section the following subsections shall be inserted after subsection (8)—

“(9) For the purposes of subsection (2)(e)(vii) above a security is an equity note if as regards the whole of the principal or as regards any part of it—

- (a) the security’s terms contain no particular date by which it is to be redeemed,
- (b) under the security’s terms the date for redemption, or the latest date for redemption, falls after the expiry of the permitted period,

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- (c) under the security's terms redemption is to occur after the expiry of the permitted period if a particular event occurs and the event is one which (judged at the time of the security's issue) is certain or likely to occur, or
  - (d) the issuing company can secure that there is no particular date by which the security is to be redeemed or that the date for redemption falls after the expiry of the permitted period;
- and the permitted period is the period of 50 years beginning with the date of the security's issue.
- (10) For the purposes of subsection (2)(e)(vii) above and subsection (11) below a company is associated with the issuing company if—
- (a) the issuing company is a 75 per cent. subsidiary of the other company,
  - (b) the other company is a 75 per cent. subsidiary of the issuing company, or
  - (c) both are 75 per cent. subsidiaries of a third company.
- (11) For the purposes of subsection (2)(e)(vii) above a company is a funded company if there are arrangements involving the company being put in funds (directly or indirectly) by the issuing company or a company associated with the issuing company.”
- (3) In section 212 of the Taxes Act 1988 (exclusions from “distribution”) in subsection (1) (b) after “(vi)” there shall be inserted “ and (vii) ”.
- (4) This section shall apply where the interest or other distribution is paid after 14th May 1992.

### **32 Information relating to distributions.**

- (1) The following section shall be inserted after section 234 of the Taxes Act 1988—

#### **“234A Information relating to distributions: further provisions.**

- (1) This section applies where dividend or interest is distributed by a company which is—
- (a) a company within the meaning of the Companies Act 1985 or the Companies (Northern Ireland) Order 1986, or
  - (b) a company created by letters patent or by or in pursuance of an Act.
- (2) If the company makes a payment of dividend or interest to any person, and subsection (3) below does not apply, within a reasonable period the company shall send an appropriate statement to that person.
- (3) If the company makes a payment of dividend or interest into a bank or building society account held by any person, within a reasonable period the company shall send an appropriate statement to either—
- (a) the bank or building society concerned, or
  - (b) the person holding the account.
- (4) In a case where—
- (a) a statement is received by a person under subsection (2) or (3)(b) above,

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- (b) the whole or part of the sum concerned is paid to or on behalf of the person as nominee for another person, and
  - (c) the nominee makes a payment of the sum or part to the other person and subsection (5) below does not apply,within a reasonable period the nominee shall send an appropriate statement to that person.
- (5) In a case where—
  - (a) a statement is received by a person under subsection (2) or (3)(b) above,
  - (b) the whole or part of the sum concerned is paid to or on behalf of the person as nominee for another person, and
  - (c) the nominee makes a payment of the sum or part into a bank or building society account held by the other person,within a reasonable period the nominee shall send an appropriate statement to either the bank or building society concerned or the other person.
- (6) In the case of a payment of interest which is not a qualifying distribution or part of a qualifying distribution, references in this section to an appropriate statement are to a written statement showing—
  - (a) the gross amount which, after deduction of the income tax appropriate to the interest, corresponds to the net amount actually paid,
  - (b) the rate and the amount of income tax appropriate to such gross amount,
  - (c) the net amount actually paid, and
  - (d) the date of the payment.
- (7) In the case of a payment of dividend or interest which is a qualifying distribution or part of a qualifying distribution, references in this section to an appropriate statement are to a written statement showing—
  - (a) the amount of the dividend or interest paid,
  - (b) the date of the payment, and
  - (c) the amount of the tax credit to which a person is entitled in respect of the dividend or interest, or to which a person would be so entitled if he had a right to a tax credit in respect of the dividend or interest.
- (8) In this section “send” means send by post.
- (9) If a person fails to comply with subsection (2), (3), (4) or (5) above, the person shall incur a penalty of £60 in respect of each offence, except that the aggregate amount of any penalties imposed under this subsection on a person in respect of offences connected with any one distribution of dividends or interest shall not exceed £600.
- (10) The Board may by regulations provide that where a person is under a duty to comply with subsection (2), (3), (4) or (5) above, the person shall be taken to comply with the subsection if the person either—
  - (a) acts in accordance with the subsection concerned, or
  - (b) acts in accordance with rules contained in the regulations;and subsection (9) above shall be construed accordingly.

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- (11) Regulations under subsection (10) above may make different provision for different circumstances.”
- (2) In section 234 of that Act—
  - (a) in subsection (1) for “subsections (3) and (4) below" there shall be substituted “ section 234A ”;
  - (b) subsections (3) and (4) shall be omitted.
- (3) In section 468(3) of that Act for “234(3) and (4)" there shall be substituted “ 234A ”.
- (4) This section shall apply in relation to distributions begun after the day on which this Act is passed.

*Securities and deposits*

**F10** 33 .....

**Textual Amendments**

**F10** S. 33 repealed (29.4.1996 with effect in accordance with ss. 80-105 of the repealing Act) by 1996 c. 8, s. 205, **Sch. 41 Pt V(3)**, Note

**34 Rights in pursuance of deposits.**

Schedule 8 to this Act (which contains provisions about arrangements relating to rights in pursuance of deposits) shall have effect.

**35 Exchange of securities.**

**F11**(1) .....

- (2) Subject to the repeals made by the Taxation of Chargeable Gains Act 1992, in relation to exchanges made on or after 1st January 1992 section 85 of the <sup>M7</sup>Capital Gains Tax Act 1979 (exchange of securities for those in another company) shall have effect, and be deemed to have had effect, with the insertion after subsection (1)(b) of “or
  - (c) company A holds, or in consequence of the exchange will hold, the greater part of the voting power in company B”.

**Textual Amendments**

**F11** S. 35(1) repealed (24.7.2002 with effect as mentioned in Sch. 9 paras. 7, 8 of the amending Act) by 2002 c. 23, s. 141, **Sch. 40 Pt. 3(2)**

**Marginal Citations**

**M7** 1979 c. 14.



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*Employee shares*

**36 Employee share ownership trusts.**

(1) In section 69 of the <sup>M8</sup>Finance Act 1989 (chargeable events as regards employee share ownership trusts) the following shall be inserted after subsection (3)—

“(3A) For the purposes of subsection (1)(a) above a transfer is also a qualifying transfer if it is made by way of exchange in circumstances mentioned in section 85(1) of the Capital Gains Tax Act 1979 or section 135(1) of the Taxation of Chargeable Gains Act 1992.”

(2) This section applies in relation to exchanges made on or after 1st January 1992.

**Marginal Citations**

**M8** 1989 c. 26.

<sup>F12</sup>**37 Employee share schemes: special benefits.**

**Textual Amendments**

**F12** S. 37 repealed (6.4.2003) (with effect in accordance with s. 723(1)(a)(b) of the amending Act) by [Income Tax \(Earnings and Pensions\) Act 2003 \(c. 1\)](#), s. 723, **Sch. 8 Pt. 1** (with [Sch. 7](#))

*Business expansion scheme*

<sup>F13</sup>**38** .....

**Textual Amendments**

**F13** S. 38 repealed (3.5.1994 with effect in relation to shares issued on or after 1.1.1994) by [1994 c. 9](#), s. 258, **Sch. 26 Pt. V(17)**, Note

<sup>F14</sup>**39** .....

**Textual Amendments**

**F14** S. 39 repealed (3.5.1994 with effect in relation to shares issued on or after 1.1.1994) by [1994 c. 9](#), s. 258, **Sch. 26 Pt. V(17)**, Note

<sup>F15</sup>**40** .....

*Status: Point in time view as at 02/12/2004.*

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#### **Textual Amendments**

- F15** S. 40 repealed (3.5.1994 with effect in relation to shares issued on or after 1.1.1994) by 1994 c. 9, s. 258, **Sch. 26 Pt. V(17)**, Note

#### **40A** <sup>F16</sup> **Revenue nature of expenditure on master versions of films**

- (1) Expenditure incurred on the production or acquisition of [<sup>F17</sup>the original master] version of a film is to be regarded for the purposes of the Tax Acts as expenditure of a revenue nature unless an election under section 40D below has effect with respect to it.
- (2) If expenditure on [<sup>F18</sup>the original master] version of a film is regarded as expenditure of a revenue nature under subsection (1) above, sums received from the disposal of [<sup>F18</sup>the original master] version are to be regarded for the purposes of the Tax Acts as receipts of a revenue nature (if they would not be so regarded apart from this subsection).
- (3) For the purposes of subsection (2) above sums received from the disposal of [<sup>F19</sup>the original master] version of a film include—
  - (a) sums received from the disposal of any interest or right in or over [<sup>F20</sup>the original master] version, including an interest or right created by the disposal, and
  - (b) insurance, compensation or similar money derived from [<sup>F20</sup>the original master] version.
- (4) In this section—
  - (a) “expenditure of a revenue nature” means expenditure which, if it were incurred in the course of a trade the profits of which are chargeable to tax under Case I of Schedule D, would be taken into account for the purpose of computing the profits or losses of the trade, and
  - (b) “receipts of a revenue nature” means receipts which, if they were receipts of such a trade, would be taken into account for that purpose.

<sup>F21</sup>(5) .....

#### **Textual Amendments**

- F16** S. 40A inserted (22.3.2001 with effect as mentioned in s. 579(1) of the amending Act) by 2001 c. 2, ss. 578, 579(1), **Sch. 2 para. 82**
- F17** Words in s. 40A(1) substituted (retrospective to 2.12.2004) by **Finance Act 2005 (c. 7)**, **Sch. 3 paras. 18(2), 31(3)**
- F18** Words in s. 40A(2) substituted (retrospective to 2.12.2004) by **Finance Act 2005 (c. 7)**, **Sch. 3 paras. 18(3), 31(3)**
- F19** Words in s. 40A(3) substituted (retrospective to 2.12.2004) by **Finance Act 2005 (c. 7)**, **Sch. 3 paras. 18(4)(a), 31(3)**
- F20** Words in s. 40A(3) substituted (retrospective to 2.12.2004) by **Finance Act 2005 (c. 7)**, **Sch. 3 paras. 18(4)(b), 31(3)**
- F21** S. 40A(5) repealed (retrospective to 2.12.2004) by **Finance Act 2005 (c. 7)**, **Sch. 3 paras. 18(5), 31(3)**, **Sch. 11 Pt. 2(3)**

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#### **40B** <sup>F22</sup> **Allocation of expenditure to periods**

- (1) In computing the profits or gains accruing to any person from a trade or business which consists of or includes the exploitation of [<sup>F23</sup>original] master versions of films, expenditure which is—
  - (a) incurred on the production or acquisition of [<sup>F24</sup>the original master] version of a film, and
  - (b) expenditure of a revenue nature (whether as a result of section 40A above or otherwise),must be allocated to relevant periods in accordance with this section.
- (2) Subsection (1) above does not apply if an election under section 40D below has effect with respect to the expenditure.
- (3) In this section “relevant period” means—
  - (a) a period for which the accounts of the trade or business concerned are made up, or
  - (b) if no accounts of the trade or business concerned are made up for a period—
    - (i) if the profits or gains accrue to a company within the charge to corporation tax, the accounting period of the company;
    - (ii) in any other case, the period the profits or gains of which are taken into account in assessing the income of the trade or business for a year of assessment.
- (4) The amount of expenditure falling within subsection (1) above which falls to be allocated to any relevant period is so much as is just and reasonable, having regard to—
  - (a) the amount of that expenditure which remains unallocated at the beginning of that period,
  - (b) the proportion which the estimated value of [<sup>F25</sup>the original master] version of the film which is realised in that period (whether by way of income or otherwise) bears to the aggregate of the value so realised and the estimated remaining value of [<sup>F25</sup>the original master] version at the end of that period, and
  - (c) the need to bring the whole of the expenditure falling within subsection (1) above into account over the time during which the value of [<sup>F25</sup>the original master] version is expected to be realised.
- (5) In addition to any expenditure which is allocated to a relevant period in accordance with subsection (4) above, if a claim is made, there must also be allocated to that period so much of the unallocated expenditure as is specified in the claim and does not exceed the difference between—
  - (a) the amount allocated to that period in accordance with subsection (4) above, and
  - (b) the value of [<sup>F26</sup>the original master] version of the film which is realised in that period (whether by way of income or otherwise).
- (6) A claim under subsection (5) above must be made—
  - (a) for the purposes of income tax, on or before the first anniversary of the 31st January next following the year of assessment in which ends the relevant period mentioned in that subsection;
  - (b) for the purposes of corporation tax, not later than two years after the end of the relevant period to which the claim relates.

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- (7) In subsection (5) above “the unallocated expenditure”, in relation to a relevant period, is any expenditure falling within subsection (1) above—
- (a) which does not fall to be allocated to that period in accordance with subsection (4) above, and
  - (b) which has not been allocated to any earlier relevant period in accordance with subsection (4) or (5) above.

#### **Textual Amendments**

- F22** S. 40B inserted (22.3.2001 with effect as mentioned in s. 579(1) of the amending Act) by 2001 c. 2, ss. 578, 579(1), **Sch. 2 para. 82**
- F23** Word in s. 40B(1) inserted (retrospective to 2.12.2004) by Finance Act 2005 (c. 7), **Sch. 3 paras. 19(2)(a), 31(3)**
- F24** Words in s. 40B(1)(a) substituted (retrospective to 2.12.2004) by Finance Act 2005 (c. 7), **Sch. 3 paras. 19(2)(b), 31(3)**
- F25** Words in s. 40B(4) substituted (retrospective to 2.12.2004) by Finance Act 2005 (c. 7), **Sch. 3 paras. 19(3), 31(3)**
- F26** Words in s. 40B(5) substituted (retrospective to 2.12.2004) by Finance Act 2005 (c. 7), **Sch. 3 paras. 19(3), 31(3)**

#### **Modifications etc. (not altering text)**

- C1** S. 40B applied (with modifications) (22.3.2001 with effect as mentioned in s. 579(1) of the amending Act) by 2001 c. 2, s. 579, **Sch. 3 Pt. XIII para. 116**
- C2** S. 40B modified (retrospective to 2.12.2004) by Finance Act 2005 (c. 7), s. **62(3)(12)**
- C3** S. 40B modified (retrospective to 2.12.2004) by Finance Act 2005 (c. 7), s. **60(3)(10)**

#### **40C** <sup>F27</sup> **Cases where section 40B does not apply**

- (1) To the extent that a deduction has been made in respect of any expenditure for a relevant period under section 42 below—
- (a) that expenditure must not be allocated under section 40B above, and
  - (b) no other expenditure incurred on the production or acquisition of [<sup>F28</sup>the original master] version of the film is to be allocated under section 40B above to the relevant period.
- (2) Section 40B above does not apply to the profits of a trade in which [<sup>F28</sup>the original master] version of the film constitutes trading stock, as defined by section 100(2) of the Taxes Act 1988.

#### **Textual Amendments**

- F27** S. 40C inserted (22.3.2001 with effect as mentioned in s. 579(1) of the amending Act) by 2001 c. 2, ss. 578, 579(1), **Sch. 2 para. 82**
- F28** Words in s. 40C substituted (retrospective to 2.12.2004) by Finance Act 2005 (c. 7), **Sch. 3 paras. 20, 31(3)**

#### **Modifications etc. (not altering text)**

- C4** S. 40C applied (with modifications) (22.3.2001 with effect as mentioned in s. 579(1) of the amending Act) by 2001 c. 2, s. 579, **Sch. 3 Pt. XIII para. 116**

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#### **40D** <sup>F29</sup> **Election for sections 40A and 40B not to apply**

- (1) Sections 40A and 40B above do not apply to expenditure—
  - (a) in relation to which an election is made under this section, and
  - (b) which meets the conditions in subsection (2) below.
- (2) The conditions are that—
  - (a) the expenditure is incurred—
    - (i) by a person who carries on a trade or business which consists of or includes the exploitation of [<sup>F30</sup>original] master versions of films, and
    - (ii) on the production or acquisition of [<sup>F31</sup>the original master] version of a film,
  - (b) [<sup>F32</sup>the original master] version is certified by the Secretary of State under paragraph 3 of Schedule 1 to the Films Act 1985 as a qualifying film, tape or disc for the purposes of this section, and
  - (c) the value of [<sup>F33</sup>the original master] version is expected to be realisable over a period of not less than two years.
- (3) An election under this section—
  - (a) must relate to all expenditure incurred (or to be incurred) on the production or acquisition of [<sup>F34</sup>the original master] version in question,
  - (b) must be made by giving notice to the Inland Revenue, in such form as the Board of Inland Revenue may determine, and
  - (c) is irrevocable.
- (4) Notice under subsection (3)(b) above must be given—
  - (a) for the purposes of income tax, on or before the first anniversary of the 31st January next following the year of assessment in which ends the relevant period in which [<sup>F35</sup>the original master] version of the film is completed;
  - (b) for the purposes of corporation tax, not later than two years after the end of the relevant period in which [<sup>F35</sup>the original master] version of the film is completed.
- (5) In subsection (4) above “relevant period” has the same meaning as in section 40B above.
- (6) For the purposes of subsection (4) above, [<sup>F36</sup>the original master] version of a film is completed—
  - (a) at the time when it is first in a form in which it can reasonably be regarded as ready for copies of it to be made and distributed for presentation to the public, or
  - (b) if the expenditure in question was incurred on the acquisition of [<sup>F36</sup>the original master] version and it was acquired after the time mentioned in paragraph (a) above, at the time it was acquired.
- (7) An election may not be made under this section in relation to expenditure on [<sup>F37</sup>the original master] version of a film if a claim has been made in respect of any of that expenditure under section 41 or 42 below.

#### **Textual Amendments**

**F29** S. 40D inserted (22.3.2001 with effect as mentioned in s. 579(1) of the amending Act) by 2001 c. 2, ss. 578, 579(1), **Sch. 2 para. 82**

*Status: Point in time view as at 02/12/2004.*

*Changes to legislation: There are currently no known outstanding effects for the Finance (No. 2) Act 1992, Chapter 1. (See end of Document for details)*

- F30** Word in s. 40D(2)(a)(i) inserted (retrospective to 2.12.2004) by [Finance Act 2005 \(c. 7\), Sch. 3 paras. 21\(2\)\(a\)\(i\), 31\(3\)](#)
- F31** Words in s. 40D(2)(a)(ii) substituted (retrospective to 2.12.2004) by [Finance Act 2005 \(c. 7\), Sch. 3 paras. 21\(2\)\(a\)\(ii\), 31\(3\)](#)
- F32** Words in s. 40D(2)(b) substituted (retrospective to 2.12.2004) by [Finance Act 2005 \(c. 7\), Sch. 3 paras. 21\(2\)\(b\), 31\(3\)](#)
- F33** Words in s. 40D(2)(c) substituted (retrospective to 2.12.2004) by [Finance Act 2005 \(c. 7\), Sch. 3 paras. 21\(2\)\(b\), 31\(3\)](#)
- F34** Words in s. 40D(3)(a) substituted (retrospective to 2.12.2004) by [Finance Act 2005 \(c. 7\), Sch. 3 paras. 21\(3\), 31\(3\)](#)
- F35** Words in s. 40D(4) substituted (retrospective to 2.12.2004) by [Finance Act 2005 \(c. 7\), Sch. 3 paras. 21\(3\), 31\(3\)](#)
- F36** Words in s. 40D(6) substituted (retrospective to 2.12.2004) by [Finance Act 2005 \(c. 7\), Sch. 3 paras. 21\(3\), 31\(3\)](#)
- F37** Words in s. 40D(7) substituted (retrospective to 2.12.2004) by [Finance Act 2005 \(c. 7\), Sch. 3 paras. 21\(4\), 31\(3\)](#)

**Modifications etc. (not altering text)**

- C5** S. 40D applied (with modifications) (22.3.2001 with effect as mentioned in [s. 579\(1\)](#) of the amending Act) by [2001 c. 2, s. 579, Sch. 3 Pt. XIII paras. 116, 117](#)
- S. 40D restricted (24.7.2002 with application as mentioned in [s. 99\(3\)-\(6\)](#) of the amending Act) by [2002 c. 23, s. 99\(1\)\(a\)\(2\)\(6\)](#)

*Films*

**41 Relief for preliminary expenditure.**

- (1) Subject to the following provisions of this section and any other provisions of the Tax Acts, in computing for tax purposes the profits or gains accruing to a person in a relevant period from a trade or business which consists of or includes the exploitation of [<sup>F38</sup>original master versions of] films, that person shall (on making a claim) be entitled to deduct the amount of any expenditure of a revenue nature payable by him in that or an earlier relevant period—
  - (a) which is expenditure to which this section applies,
  - (b) in respect of which no deduction has previously been made (whether under this section or otherwise) in computing for tax purposes the profits or gains accruing from the trade or business, and
  - (c) in respect of which no election has been made under [<sup>F39</sup>section 40D above].
- (2) This section applies to any expenditure that—
  - (a) can reasonably be said to have been incurred with a view to enabling a decision to be taken as to whether or not to make a film,
  - (b) is payable before the first day of principal photography (where the decision that is taken is to make the film), and
  - (c) is not payable under any contract or other arrangement whereby it may fall to be repaid if the film is not made.
- (3) A deduction shall not be made in respect of a film that has been completed unless the [<sup>F40</sup>original master version] of the film is a qualifying film, tape or disc.

*Status: Point in time view as at 02/12/2004.*

*Changes to legislation: There are currently no known outstanding effects for the Finance (No. 2) Act 1992, Chapter I. (See end of Document for details)*

- (4) A deduction shall not be made in respect of a film that has not been completed unless it is reasonably likely that if the film were completed the [<sup>F41</sup>original master version] of the film would be a qualifying film, tape or disc.
- (5) The total amount deducted under this section in respect of a film shall not exceed 20 per cent. of the budgeted total expenditure on [<sup>F42</sup>the original master version of] the film, as calculated at the first day of principal photography.
- [<sup>F43</sup>(6) A claim under this section shall be made—
- (a) for the purposes of income tax, on or before the first anniversary of the 31st January next following the year of assessment in which ends the relevant period in which the expenditure to which it relates becomes payable;
  - (b) for the purposes of corporation tax, not later than two years after the end of the relevant period in which the expenditure to which it relates becomes payable.]
- (7) To the extent that a deduction has been made in respect of any expenditure under this section, no further deduction shall be made in respect of it in computing for tax purposes the profits or gains of the trade or business concerned.
- (8) This section shall have effect in relation to expenditure payable on or after 10th March 1992.

#### Textual Amendments

- F38** Words in s. 41(1) inserted (retrospective to 2.12.2004) by [Finance Act 2005 \(c. 7\)](#), [Sch. 3 paras. 22\(2\), 31\(3\)](#)
- F39** Words in s. 41(1)(c) substituted (22.3.2001 with effect as mentioned [s. 579\(1\)](#) of the amending Act) by [2001 c. 2, ss. 578, 579\(1\)](#), [Sch. 2 para. 83](#)
- F40** Words in s. 41(3) substituted (retrospective to 2.12.2004) by [Finance Act 2005 \(c. 7\)](#), [Sch. 3 paras. 22\(3\), 31\(3\)](#)
- F41** Words in s. 41(4) substituted (retrospective to 2.12.2004) by [Finance Act 2005 \(c. 7\)](#), [Sch. 3 paras. 22\(3\), 31\(3\)](#)
- F42** Words in s. 41(5) inserted (retrospective to 2.12.2004) by [Finance Act 2005 \(c. 7\)](#), [Sch. 3 paras. 22\(4\), 31\(3\)](#)
- F43** S. 41(6) substituted (29.4.1996 with effect as mentioned in [s. 135\(2\)](#) of the substituting Act) by [1996 c. 8, s. 135](#), [Sch. 21 para. 45](#)

#### Modifications etc. (not altering text)

- C6** S. 41 restricted (24.7.2002 with application as mentioned in [s. 99\(3\)-\(6\)](#) of the amending Act) by [2002 c. 23, s. 99\(1\)\(b\)\(2\)\(6\)](#)

## 42 Relief for production or acquisition expenditure.

- (1) Subject to the following provisions of this section and any other provisions of the Tax Acts, in computing for tax purposes the profits or gains accruing to a person in a relevant period from a trade or business which consists of or includes the exploitation [<sup>F44</sup>of original master versions] of films, that person shall (on making a claim) be entitled to deduct an amount in respect of any expenditure—
- (a) which is expenditure to which subsection (2) or (3) below applies, and
  - (b) in respect of which no deduction has been made by virtue of [<sup>F45</sup>section 40B above] and no election has been made under [<sup>F45</sup>section 40D above].

*Status: Point in time view as at 02/12/2004.*

*Changes to legislation: There are currently no known outstanding effects for the Finance (No. 2) Act 1992, Chapter I. (See end of Document for details)*

- (2) This subsection applies to any expenditure of a revenue nature incurred by the claimant on the production [<sup>F46</sup>of the original master version of a film where—]
- (a) [<sup>F47</sup>the film] was completed in the relevant period to which the claim relates or an earlier relevant period, <sup>F48</sup> ...
  - (b) the [<sup>F49</sup>original master version of the film] is a qualifying film, tape or disc [<sup>F50</sup>, and
  - (c) that version was owned by the claimant at the time the film was completed.]
- (3) This subsection applies to any expenditure of a revenue nature incurred by the claimant on the acquisition of the [<sup>F51</sup>original master version] of a film where—
- (a) the film was completed in the relevant period to which the claim relates or an earlier relevant period, <sup>F52</sup> ...
  - (b) the [<sup>F53</sup>original master version of the film] is a qualifying film, tape or disc [<sup>F54</sup>, and
  - (c) that version has not previously been acquired by the claimant.]
- [<sup>F55</sup>(3ZA) Subsection (3) does not apply to so much of that expenditure as exceeds the total production expenditure in respect of the film concerned.
- (3ZB) For the purposes of this section the “total production expenditure” in respect of a film means the total of all the expenditure incurred on the production of the original master version of the film.]
- [<sup>F56</sup>(3A) A claim under this section for a relevant period, in relation to the original master version of a film, may be made in respect of either expenditure to which subsection (2) applies or expenditure to which subsection (3) applies, but not both.
- (3B) Where, in relation to a trade or business, a company (“C”) makes a claim under this section (“the relevant claim”) for a deduction in respect of expenditure relating to the original master version of a film, C is not entitled to make that deduction if—
- (a) the relevant claim is in respect of expenditure to which subsection (2) applies and—
    - (i) a previous claim under this section has been made in relation to the same trade or business for any relevant period, or
    - (ii) in computing the profits of that trade or business of any relevant period, a deduction has been made under section 138, 138A or 140 of the Income Tax (Trading and Other Income) Act 2005,
 in respect of expenditure incurred on the acquisition of that version,
  - (b) the relevant claim is in respect of expenditure to which subsection (3) applies and—
    - (i) a previous claim under this section has been made in relation to the same trade or business for any relevant period, or
    - (ii) in computing the profits of that trade or business of any relevant period, a deduction has been made under section 138 or 139 of that Act,
 in respect of expenditure incurred on the production of that version,
  - (c) a previous claim under this section has been made in relation to another trade or business, for any relevant period, in respect of expenditure to which subsection (2) or (3) applies which relates to that version, or
  - (d) a deduction has been made in respect of expenditure relating to that version under any of sections 138 to 140 of the Income Tax (Trading and Other



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Income) Act 2005 in computing the profits of another trade or business of any relevant period.

(3C) For the purposes of subsection (3B)—

- (a) it does not matter whether the previous claim was made before, or on or after, 2nd December 2004, and
- (b) “relevant period”, in relation to a deduction under the Income Tax (Trading and Other Income) Act 2005, means a relevant period within the meaning of section 133 of that Act.

(3D) Where, in relation to any particular film, more than one claim under this section is made at the same time, the Inland Revenue may determine which of the claims is to be regarded as made first for the purposes of subsection (3B).

In this subsection references to a claim under this section are to be read as including references to a deduction of a kind mentioned in that subsection.

(3E) In this section “the Inland Revenue” means any officer of the Board.]

(4) Any amount deducted for a relevant period under subsection (1) above shall not exceed—

- (a) one third of the total expenditure incurred by the claimant on the production [F57 or acquisition of the original master version of the film concerned],
- (b) one third of the sum obtained by deducting from the amount of that total expenditure the amount of so much of that total expenditure as has already been deducted by virtue of section 41 above, or
- (c) so much of that total expenditure as has not already been deducted by virtue of [F58 section 40B or], section 41 above or this section,

whichever is less.

(5) In relation to a relevant period of less than twelve months, the references to one third in subsection (4) above shall be read as references to a proportionately smaller fraction.

[F59(5A) For the purposes of subsection (4) the total expenditure incurred by the claimant on the production or acquisition of the original master version of the film concerned is—

- (a) in the case of a deduction in respect of expenditure to which subsection (2) applies, the total expenditure incurred by the claimant on the production of the original master version of the film concerned, and
- (b) in the case of a deduction in respect of expenditure to which subsection (3) applies, the total expenditure incurred by the claimant on the acquisition of that original master version (“the claimant’s acquisition expenditure”).]

[F60(5B) Where the claimant’s acquisition expenditure exceeds the total production expenditure in respect of the film, paragraph (b) of subsection (5A) has effect as if the claimant’s acquisition expenditure were an amount equal to that total production expenditure.]

[F61(6) A claim under this section shall be made—

- (a) for the purposes of income tax, on or before the first anniversary of the 31st January next following the year of assessment in which ends the relevant period to which the claim relates,
- (b) for the purposes of corporation tax, not later than two years after the end of the relevant period to which the claim relates,

and shall be irrevocable.]

*Status: Point in time view as at 02/12/2004.*

*Changes to legislation: There are currently no known outstanding effects for the Finance (No. 2) Act 1992, Chapter 1. (See end of Document for details)*

- (7) Where any expenditure is deducted by virtue of [<sup>F62</sup>section 40B above] in computing the profits or gains of a trade or business for a relevant period, no deduction shall be made under this section for that relevant period in respect of expenditure incurred on the production or acquisition [<sup>F63</sup>of the original master version] of the film concerned.
- (8) This section does not apply to the [<sup>F64</sup>profits] of a trade in which [<sup>F65</sup>the original master version of the film] concerned constitutes trading stock, as defined in section 100(2) of the Taxes Act 1988.
- [<sup>F66</sup>(8A) For the purposes of this section the expenditure incurred on the production of the original master version of a film does not include any amount that at the time the film is completed—
- (a) has not been paid, and
  - (b) is not the subject of an unconditional obligation to pay within 4 months after the date of completion.
- (8B) Subsections (1) to (5) of section 5 of the Capital Allowances Act 2001 (when capital expenditure is incurred) apply for determining when for the purposes of this section any expenditure is incurred as they apply for determining when for the purposes of that Act any capital expenditure is incurred, but as if, in subsection (6) of that section, “at an earlier time” were substituted for “in an earlier chargeable period”.]
- [<sup>F67</sup>(9) This section has effect in relation to expenditure incurred -
- (a) on the production [<sup>F68</sup>of the original master version] of a film completed on or after 10th March 1992, or
  - (b) on the acquisition of the [<sup>F69</sup>original master version] of a film completed on or after that date.]

#### Textual Amendments

- F44** Words in s. 42(1) inserted (retrospective to 2.12.2004) by [Finance Act 2005 \(c. 7\)](#), [Sch. 3 paras. 23\(2\), 31\(3\)](#)
- F45** Words in s. 42(1)(b) substituted (22.3.2001 with effect as mentioned [s. 579\(1\)](#) of the amending Act) by [2001 c. 2, ss. 578, 579\(1\)](#), [Sch. 2 para. 84\(1\)\(a\)](#)  
 Words in s. 41(1)(b) substituted (22.3.2001 with effect as mentioned [s. 579\(1\)](#) of the amending Act) by [2001 c. 2, ss. 578, 579\(1\)](#), [Sch. 2 para. 84\(1\)\(b\)](#)
- F46** Words in s. 42(2) substituted (retrospective to 2.12.2004) by [Finance Act 2005 \(c. 7\)](#), [Sch. 3 paras. 23\(3\)\(a\), 31\(3\)](#)
- F47** Words in s. 42(2)(a) substituted (retrospective to 2.12.2004) by [Finance Act 2005 \(c. 7\)](#), [Sch. 3 paras. 23\(3\)\(b\), 31\(3\)](#)
- F48** Word in s. 42(2) repealed (retrospective to 2.12.2004) by [Finance Act 2005 \(c. 7\)](#), [Sch. 3 para. 1\(2\)\(6\)](#), [Sch. 11 Pt. 2\(3\)](#) (with [Sch. 3 para. 1\(7\)\(8\)\(10\)](#))
- F49** Words in s. 42(2)(b) substituted (retrospective to 2.12.2004) by [Finance Act 2005 \(c. 7\)](#), [Sch. 3 paras. 23\(3\)\(c\), 31\(3\)](#)
- F50** S. 42(2)(c) and word inserted (retrospective to 2.12.2004) by [Finance Act 2005 \(c. 7\)](#), [Sch. 3 para. 1\(2\)\(6\)](#) (with [Sch. 3 para. 1\(7\)\(8\)\(10\)](#))
- F51** Words in s. 42(3) substituted (retrospective to 2.12.2004) by [Finance Act 2005 \(c. 7\)](#), [Sch. 3 paras. 23\(4\)\(a\), 31\(3\)](#)
- F52** Word in s. 42(3) repealed (retrospective to 2.12.2004) by [Finance Act 2005 \(c. 7\)](#), [Sch. 3 para. 1\(3\)\(6\)](#), [Sch. 11 Pt. 2\(3\)](#) (with [Sch. 3 para. 1\(7\)\(8\)\(10\)](#))
- F53** Words in s. 42(3)(b) substituted (retrospective to 2.12.2004) by [Finance Act 2005 \(c. 7\)](#), [Sch. 3 paras. 23\(4\)\(b\), 31\(3\)](#)

*Status: Point in time view as at 02/12/2004.*

*Changes to legislation: There are currently no known outstanding effects for the Finance (No. 2) Act 1992, Chapter I. (See end of Document for details)*

- F54** S. 42(3)(c) and word inserted (retrospective to 2.12.2004) by Finance Act 2005 (c. 7), **Sch. 3 para. 1(3)(6)** (with **Sch. 3 para. 1(7)(8)(10)**)
- F55** S. 42(3ZA)(3ZB) inserted (retrospective to 2.12.2004) by Finance Act 2005 (c. 7), **Sch. 3 para. 9(2)(5)** (with **Sch. 3 para. 9(6)(7)(9)**)
- F56** S. 42(3A)-(3E) inserted (retrospective to 2.12.2004) by Finance Act 2005 (c. 7), **Sch. 3 para. 1(4)(6)** (with **Sch. 3 para. 1(7)(10)**)
- F57** Words in s. 42(4)(a) substituted (retrospective to 2.12.2004) by Finance Act 2005 (c. 7), **Sch. 3 paras. 23(5), 31(3)**
- F58** Words in s. 42(4)(c) substituted (22.3.2001 with effect as mentioned s. 579(1) of the amending Act) by 2001 c. 2, ss. 578, 579(1), **Sch. 2 para. 84(2)**
- F59** S. 42(5A) inserted (retrospective to 2.12.2004) by Finance Act 2005 (c. 7), **Sch. 3 para. 1(5)(6)** (with **Sch. 3 para. 1(7)(10)**)
- F60** S. 42(5B) inserted (retrospective to 2.12.2004) by Finance Act 2005 (c. 7), **Sch. 3 para. 9(3)(5)** (with **Sch. 3 para. 9(6)(7)**)
- F61** S. 42(6) substituted (29.4.1996 with effect as mentioned in s. 135(2) of the substituting Act) by 1996 c. 8, s. 135, **Sch. 21 para. 46**
- F62** Words in s. 42(7) substituted (22.3.2001 with effect as mentioned s. 579(1) of the amending Act) by 2001 c. 2, ss. 578, 579(1), **Sch. 2 para. 84(3)**
- F63** Words in s. 42(7) inserted (retrospective to 2.12.2004) by Finance Act 2005 (c. 7), **Sch. 3 paras. 23(6), 31(3)**
- F64** Word in s. 42(8) substituted (31.7.1998) by 1998 c. 36, s. 46(3), **Sch. 7 para. 8**
- F65** Words in s. 42(8) substituted (retrospective to 2.12.2004) by Finance Act 2005 (c. 7), **Sch. 3 paras. 23(7), 31(3)**
- F66** S. 42(8A)(8B) inserted (retrospective to 2.12.2004) by Finance Act 2005 (c. 7), **Sch. 3 para. 9(4)(5)** (with **Sch. 3 para. 9(6)(8)(9)**)
- F67** S. 42(9) substituted (28.7.2000 with application as mentioned in s. 113(5)(6) of the amending Act) by 2000 c. 17, s. 113(3)
- F68** Words in s. 42(9)(a) inserted (retrospective to 2.12.2004) by Finance Act 2005 (c. 7), **Sch. 3 paras. 23(8)(a), 31(3)**
- F69** Words in s. 42(9)(b) substituted (retrospective to 2.12.2004) by Finance Act 2005 (c. 7), **Sch. 3 paras. 23(8)(b), 31(3)**

**Modifications etc. (not altering text)**

- C7** S. 42 modified (31.7.1997) by 1997 c. 58, s. 48(1)(2)(11) and restricted (31.7.1997) by 1997 c. 58, s. 48(4)(11) (as amended (retrospective to 2.12.2004) by Finance Act 2005 (c. 7), **Sch. 3 paras. 26, 31(3)**)
- S. 42 restricted (24.7.2002 with application as mentioned in s. 99(3)-(6) of the amending Act) by 2002 c. 23, s. 99(1)(c)(2)(6)

**43 Interpretation of sections 41 and 42.**

- (1) In sections [F70 40A to 42] above and this section—
- “expenditure of a revenue nature” has the meaning given in [F71 section 40A(4) above],
- [F72 “film” is to be construed in accordance with paragraph 1 of Schedule 1 to the Films Act 1985;]
- F73  
...  
F73  
...  
F73  
...
- [F72 “original master version”, in relation to a film, means the original master negative, tape or disc (but see subsections (2) and (2A));]

*Status: Point in time view as at 02/12/2004.*

*Changes to legislation: There are currently no known outstanding effects for the Finance (No. 2) Act 1992, Chapter I. (See end of Document for details)*

“qualifying disc” means [<sup>F74</sup>the original master] disc of a film certified by the Secretary of State under Schedule 1 to the <sup>M9</sup>Films Act 1985 as a qualifying disc for the purposes of [<sup>F75</sup>section 40D above],

“qualifying film” means [<sup>F74</sup>the original master] negative of a film certified by the Secretary of State under Schedule 1 to the <sup>M10</sup>Films Act 1985 as a qualifying film for the purposes of [<sup>F75</sup>section 40D above],

“qualifying tape” means [<sup>F74</sup>the original master] tape of a film certified by the Secretary of State under Schedule 1 to the <sup>M11</sup>Films Act 1985 as a qualifying tape for the purposes of section 68 of the 1990 Act,

“relevant period” has the meaning given in [<sup>F76</sup>section 40B(3) above], and  
<sup>F77</sup> . . .

[<sup>F78</sup>(2) In sections 40A to 42 and this section, references to the original master version of a film include the original master version of the film soundtrack (if any).

(2A) In those provisions, references to the original master version also include any rights in the original master version that are held or acquired with it.]

(3) For the purposes of sections 41 and 42 above a film is completed—

(a) at the time when it is first in a form in which it can reasonably be regarded as ready for copies of it to be made and distributed for presentation to the general public, <sup>F79</sup> . . .

<sup>F79</sup>(b) . . . . .

#### Textual Amendments

- F70** Words in s. 43(1) substituted (22.3.2001 with effect as mentioned s. 579(1) of the amending Act) by 2001 c. 2, ss. 578, 579(1), **Sch. 2 para. 85(a)**
- F71** Words in s. 43(1) substituted (22.3.2001 with effect as mentioned s. 579(1) of the amending Act) by 2001 c. 2, ss. 578, 579(1), **Sch. 2 para. 85(b)**
- F72** Words in s. 43(1) inserted (retrospective to 2.12.2004) by **Finance Act 2005 (c. 7), Sch. 3 paras. 24(2)(a), 31(3)**
- F73** Words in s. 43(1) repealed (retrospective to 2.12.2004) by **Finance Act 2005 (c. 7), Sch. 3 paras. 24(2)(b), 31(3), Sch. 11 Pt. 2(3)**
- F74** Words in s. 43(1) substituted (retrospective to 2.12.2004) by **Finance Act 2005 (c. 7), Sch. 3 paras. 24(2)(c), 31(3)**
- F75** Words in s. 43(1) substituted (22.3.2001 with effect as mentioned s. 579(1) of the amending Act) by 2001 c. 2, ss. 578, 579(1), **Sch. 2 para. 85(c)**
- F76** Words in s. 43(1) substituted (22.3.2001 with effect as mentioned s. 579(1) of the amending Act) by 2001 c. 2, ss. 578, 579(1), **Sch. 2 para. 85(d)**
- F77** S. 43(1): definition of “the 1990 Act”  
 repealed (22.3.2001 with effect as mentioned s. 579(1) of the amending Act) by 2001 c. 2, ss. 578, 579(1), 580, **Sch. 2 para. 85(e)**; Sch. 4
- F78** S. 43(2)(2A) substituted for s. 43(2) (retrospective to 2.12.2004) by **Finance Act 2005 (c. 7), Sch. 3 paras. 24(3), 31(3)**
- F79** S. 43(3)(b) and the preceding word “or” repealed (28.7.2000 with application as mentioned in s. 113(5) (6) of the amending Act) by 2000 c. 17, ss. 113(4)(b), 156, **Sch. 40 Pt. II(18)**

#### Modifications etc. (not altering text)

- C8** S. 43(3) applied with modifications (31.7.1997) by 1997 c. 58, **s. 48(8)(11)**

*Status: Point in time view as at 02/12/2004.*

*Changes to legislation: There are currently no known outstanding effects for the Finance (No. 2) Act 1992, Chapter I. (See end of Document for details)*

#### **Marginal Citations**

- M9** 1985 c. 21.  
**M10** 1985 c. 21.  
**M11** 1985 c. 21.

### *Transfers of trade*

#### **44 Transfer of a UK trade: amendment of 1992 Act.**

The <sup>M12</sup>Taxation of Chargeable Gains Act 1992 shall have effect, and be deemed always to have had effect, with the insertion of the following after section 140—

*“ Transfers concerning companies of different member States*

#### **140A Transfer of a UK trade.**

- (1) This section applies where—
- (a) a qualifying company resident in one member State (company A) transfers the whole or part of a trade carried on by it in the United Kingdom to a qualifying company resident in another member State (company B),
  - (b) the transfer is wholly in exchange for securities issued by company B to company A,
  - (c) a claim is made under this section by company A and company B,
  - (d) section 140B does not prevent this section applying, and
  - (e) the appropriate condition is met in relation to company B immediately after the time of the transfer.
- (2) Where immediately after the time of the transfer company B is not resident in the United Kingdom, the appropriate condition is that were it to dispose of the assets included in the transfer any chargeable gains accruing to it on the disposal would form part of its chargeable profits for corporation tax purposes by virtue of section 10(3).
- (3) Where immediately after the time of the transfer company B is resident in the United Kingdom, the appropriate condition is that none of the assets included in the transfer is one in respect of which, by virtue of the asset being of a description specified in 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.
- (4) Where this section applies—
- (a) the two companies shall be treated, so far as relates to corporation tax on chargeable gains, as if any assets included in the transfer were acquired by company B from company A for a consideration of such amount as would secure that on the disposal by way of transfer neither a gain nor a loss would accrue to company A;
  - (b) section 25(3) shall not apply to any such assets by reason of the transfer (if it would apply apart from this paragraph).

*Status: Point in time view as at 02/12/2004.*

*Changes to legislation: There are currently no known outstanding effects for the Finance (No. 2) Act 1992, Chapter I. (See end of Document for details)*

- (5) For the purposes of subsection (1)(a) above, a company shall be regarded as resident in a member State if it is within a charge to tax under the law of the State because it is regarded as resident for the purposes of the charge.
- (6) For the purposes of subsection (5) above, a company shall be treated as not within a charge to tax under the law of a member State if it falls to be regarded for the purposes of any double taxation relief arrangements to which the State is a party as resident in a territory which is not within any of the member States.
- (7) In this section—  
     “qualifying company” means a body incorporated under the law of a member State;  
     “securities” includes shares.

**140B Section 140A: anti-avoidance.**

- (1) Section 140A shall not apply unless the transfer of the trade or part 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 income tax, corporation tax or capital gains tax.
- (2) Subsection (1) above shall not apply where, before the transfer, the Board have on the application of company A and company B notified those companies that the Board are satisfied that the transfer will be effected for bona fide commercial reasons and will not form part of any such scheme or arrangements as are mentioned in that subsection.
- (3) Subsections (2) to (5) of section 138 shall have effect in relation to subsection (2) above as they have effect in relation to subsection (1) of that section.”

**Marginal Citations**

M12 1992 c. 12.

**45 Transfer of a non-UK trade: amendment of 1992 Act.**

The <sup>M13</sup>Taxation of Chargeable Gains Act 1992 shall have effect, and be deemed always to have had effect, with the insertion of the following sections after section 140B—

**“140C Transfer of a non-UK trade.**

- (1) This section applies where—  
     (a) a qualifying company resident in the United Kingdom (company A)  
         transfers to a qualifying company resident in another member State (company B) the whole or part of a trade which, immediately before the time of the transfer, company A carried on in a member State other than the United Kingdom through a branch or agency,

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*Status: Point in time view as at 02/12/2004.*

*Changes to legislation: There are currently no known outstanding effects for the Finance (No. 2) Act 1992, Chapter I. (See end of Document for details)*

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- (b) the transfer includes the whole of the assets of company A used for the purposes of the trade or part (or the whole of those assets other than cash),
  - (c) the transfer is wholly or partly in exchange for securities issued by company B to company A,
  - (d) the aggregate of the chargeable gains accruing to company A on the transfer exceeds the aggregate of the allowable losses so accruing,
  - (e) a claim is made under this section by company A, and
  - (f) section 140D does not prevent this section applying.
- (2) In a case where this section applies, this Act shall have effect in accordance with subsection (3) below.
- (3) The allowable losses accruing to company A on the transfer shall be set off against the chargeable gains so accruing and the transfer shall be treated as giving rise to a single chargeable gain equal to the aggregate of those gains after deducting the aggregate of those losses.
- (4) No claim may be made under this section as regards a transfer in relation to which a claim is made under section 140.
- (5) In a case where this section applies, section 815A of the Taxes Act shall also apply.
- (6) For the purposes of subsection (1)(a) above—
- (a) a company shall not be regarded as resident in the United Kingdom if it falls to be regarded for the purposes of any double taxation relief arrangements to which the United Kingdom is a party as resident in a territory which is not within any of the member States;
  - (b) a company shall be regarded as resident in another member State if it is within a charge to tax under the law of the State because it is regarded as resident for the purposes of the charge.
- (7) For the purposes of subsection (6)(b) above, a company shall be treated as not within a charge to tax under the law of a member State if it falls to be regarded for the purposes of any double taxation relief arrangements to which the State is a party as resident in a territory which is not within any of the member States.
- (8) Section 442(3) of the Taxes Act (overseas business of UK insurance companies) shall be ignored in arriving at the chargeable gains accruing to company A on the transfer, and the allowable losses so accruing, for the purposes of subsections (1)(d) and (3) above.
- (9) In this section—
- “qualifying company” means a body incorporated under the law of a member State;
  - “securities” includes shares.

#### **140D Section 140C: anti-avoidance.**

- (1) Section 140C shall not apply unless the transfer of the trade or part 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 income tax, corporation tax or capital gains tax.

*Status: Point in time view as at 02/12/2004.*

*Changes to legislation: There are currently no known outstanding effects for the Finance (No. 2) Act 1992, Chapter I. (See end of Document for details)*

- (2) Subsection (1) above shall not apply where, before the transfer, the Board have on the application of company A notified that company that the Board are satisfied that the transfer will be effected for bona fide commercial reasons and will not form part of any such scheme or arrangements as are mentioned in that subsection.
- (3) Subsections (2) to (5) of section 138 shall have effect in relation to subsection (2) above as they have effect in relation to subsection (1) of that section.”

**Marginal Citations**

**M13** 1992 c. 12.

**46 Transfer of a trade: supplementary (1).**

- (1) The <sup>M14</sup>Taxation of Chargeable Gains Act 1992 shall have effect, and be deemed always to have had effect, with the following amendments.
- (2) In section 35(3)(d)(i) (re-basing) after “139,” there shall be inserted “ 140A, ”.
- (3) In section 116(11) (qualifying corporate bonds) after “139,” there shall be inserted “ 140A, ”.
- (4) In section 140 (transfer of assets to non-resident company) the following subsection shall be inserted after subsection (6)—
- “(6A) No claim may be made under this section as regards a transfer in relation to which a claim is made under section 140C.”
- (5) In section 174 (disposal or acquisition outside a group)—
- (a) in subsection (2) after the word “section” (in the first place where it occurs) there shall be inserted “ 140A, ”;
- (b) in subsection (3) after “section” there shall be inserted “ 140A, ”.
- (6) In section 177(2) (dividend stripping) after “which section” there shall be inserted “ 140A, ”.
- (7) In section 184(2) (indexation)—
- (a) after the word “section” (in the first place where it occurs) there shall be inserted “ 140A, ”;
- (b) for “either” there shall be substituted “ one ”.

**Marginal Citations**

**M14** 1992 c. 12.

**47 Transfer of a UK trade: amendment of 1970 Act.**

Subject to the repeals made by the <sup>M15</sup>Taxation of Chargeable Gains Act 1992, in relation to transfers taking effect on or after 1st January 1992 the <sup>M16</sup>Income and



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*Status: Point in time view as at 02/12/2004.*

*Changes to legislation: There are currently no known outstanding effects for the Finance (No. 2) Act 1992, Chapter I. (See end of Document for details)*

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Corporation Taxes Act 1970 shall have effect, and be deemed to have had effect, with the insertion of the following after section 269—

*“ Transfers concerning companies of different member States*

**269A Transfer of a UK trade.**

- (1) This section applies where—
  - (a) a qualifying company resident in one member State (company A)  
transfers the whole or part of a trade carried on by it in the United Kingdom to a qualifying company resident in another member State (company B),
  - (b) the transfer is wholly in exchange for securities issued by company B to company A,
  - (c) a claim is made under this section by company A and company B,
  - (d) section 269B below does not prevent this section applying, and
  - (e) the appropriate condition is met in relation to company B immediately after the time of the transfer.
- (2) Where immediately after the time of the transfer company B is not resident in the United Kingdom, the appropriate condition is that were it to dispose of the assets included in the transfer any chargeable gains accruing to it on the disposal would form part of its chargeable profits for corporation tax purposes by virtue of section 11(2)(b) of the Taxes Act 1988.
- (3) Where immediately after the time of the transfer company B is resident in the United Kingdom, the appropriate condition is that none of the assets included in the transfer is one in respect of which, by virtue of the asset being of a description specified in 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.
- (4) Where this section applies—
  - (a) the two companies shall be treated, so far as relates to corporation tax on chargeable gains, as if any assets included in the transfer were acquired by company B from company A for a consideration of such amount as would secure that on the disposal by way of transfer neither a gain nor a loss would accrue to company A;
  - (b) section 127(3) of the Finance Act 1989 (deemed disposal at market value) shall not apply to any such assets by reason of the transfer (if it would apply apart from this paragraph).
- (5) For the purposes of subsection (1)(a) above, a company shall be regarded as resident in a member State if it is within a charge to tax under the law of the State because it is regarded as resident for the purposes of the charge.
- (6) For the purposes of subsection (5) above, a company shall be treated as not within a charge to tax under the law of a member State if it falls to be regarded for the purposes of any double taxation relief arrangements to which the State is a party as resident in a territory which is not within any of the member States.
- (7) In this section—

*Status: Point in time view as at 02/12/2004.*

*Changes to legislation: There are currently no known outstanding effects for the Finance (No. 2) Act 1992, Chapter I. (See end of Document for details)*

“qualifying company” means a body incorporated under the law of a member State;

“securities” includes shares.

**269B Section 269A: anti-avoidance.**

- (1) Section 269A above shall not apply unless the transfer of the trade or part 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 income tax, corporation tax or capital gains tax.
- (2) Subsection (1) above shall not apply where, before the transfer, the Board have on the application of company A and company B notified those companies that the Board are satisfied that the transfer will be effected for bona fide commercial reasons and will not form part of any such scheme or arrangements as are mentioned in that subsection.
- (3) Subsections (2) to (5) of section 88 of the Capital Gains Tax Act 1979 shall have effect in relation to subsection (2) above as they have effect in relation to subsection (1) of that section.”

**Marginal Citations**

**M15** 1992 c. 12.

**M16** 1970 c. 10.

**48 Transfer of a non-UK trade: amendment of 1970 Act.**

Subject to the repeals made by the <sup>M17</sup>Taxation <sup>M18</sup>of Chargeable Gains Act 1992, in relation to transfers taking effect on or after 1st January 1992 the Income and Corporation Taxes Act 1970 shall have effect, and be deemed to have had effect, with the insertion of the following sections after section 269B—

**“269C Transfer of a non-UK trade.**

- (1) This section applies where—
  - (a) a qualifying company resident in the United Kingdom (company A) transfers to a qualifying company resident in another member State (company B) the whole or part of a trade which, immediately before the time of the transfer, company A carried on in a member State other than the United Kingdom through a branch or agency,
  - (b) the transfer includes the whole of the assets of company A used for the purposes of the trade or part (or the whole of those assets other than cash),
  - (c) the transfer is wholly or partly in exchange for securities issued by company B to company A,
  - (d) the aggregate of the chargeable gains accruing to company A on the transfer exceeds the aggregate of the allowable losses so accruing,
  - (e) a claim is made under this section by company A, and
  - (f) section 269D below does not prevent this section applying.

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*Status: Point in time view as at 02/12/2004.*

*Changes to legislation: There are currently no known outstanding effects for the Finance (No. 2) Act 1992, Chapter I. (See end of Document for details)*

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- (2) The Capital Gains Tax Act 1979 shall have effect in accordance with subsection (3) below.
- (3) The allowable losses accruing to company A on the transfer shall be set off against the chargeable gains so accruing and the transfer shall be treated as giving rise to a single chargeable gain equal to the aggregate of those gains after deducting the aggregate of those losses.
- (4) No claim may be made under this section as regards a transfer in relation to which a claim is made under section 268A above.
- (5) In a case where this section applies, section 815A of the Taxes Act 1988 shall also apply.
- (6) For the purposes of subsection (1)(a) above—
  - (a) a company shall not be regarded as resident in the United Kingdom if it falls to be regarded for the purposes of any double taxation relief arrangements to which the United Kingdom is a party as resident in a territory which is not within any of the member States;
  - (b) a company shall be regarded as resident in another member State if it is within a charge to tax under the law of the State because it is regarded as resident for the purposes of the charge.
- (7) For the purposes of subsection (6)(b) above, a company shall be treated as not within a charge to tax under the law of a member State if it falls to be regarded for the purposes of any double taxation relief arrangements to which the State is a party as resident in a territory which is not within any of the member States.
- (8) Section 442(3) of the Taxes Act 1988 (overseas business of UK insurance companies) shall be ignored in arriving at the chargeable gains accruing to company A on the transfer, and the allowable losses so accruing, for the purposes of subsections (1)(d) and (3) above.
- (9) In this section—

“qualifying company” means a body incorporated under the law of a member State;

“securities” includes shares.

#### **269D Section 269C: anti-avoidance.**

- (1) Section 269C above shall not apply unless the transfer of the trade or part 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 income tax, corporation tax or capital gains tax.
- (2) Subsection (1) above shall not apply where, before the transfer, the Board have on the application of company A notified that company that the Board are satisfied that the transfer will be effected for bona fide commercial reasons and will not form part of any such scheme or arrangements as are mentioned in that subsection.
- (3) Subsections (2) to (5) of section 88 of the Capital Gains Tax Act 1979 shall have effect in relation to subsection (2) above as they have effect in relation to subsection (1) of that section.”

*Status: Point in time view as at 02/12/2004.*

*Changes to legislation: There are currently no known outstanding effects for the Finance (No. 2) Act 1992, Chapter I. (See end of Document for details)*

#### **Marginal Citations**

**M17** 1992 c. 12.

**M18** 1970 c. 10.

#### **49 Transfer of a trade: supplementary (2).**

- (1) Subject to the repeals made by the <sup>M19</sup>Taxation of Chargeable Gains Act 1992, the enactments mentioned in this section shall be amended as there mentioned.
- (2) In section 268A of the <sup>M20</sup>Income and Corporation Taxes Act 1970 (transfer of assets to non-resident company) the following subsection shall be inserted after subsection (6) —
 

“(6A) No claim may be made under this section as regards a transfer in relation to which a claim is made under section 269C below.”
- (3) In section 275 of that Act (disposal or acquisition outside a group)—
  - (a) in subsection (1A) after the word “section” (in the first place where it occurs) there shall be inserted “ 269A, ”;
  - (b) in subsection (1B) after “section” there shall be inserted “ 269A, ”.
- (4) In section 281(2) of that Act (dividend stripping) after “which section” there shall be inserted “ 269A, ”.
- (5) In paragraph 10(2) of Schedule 13 to the <sup>M21</sup>Finance Act 1984 (qualifying corporate bonds) after paragraph (bb) there shall be inserted—
 

“(bc) section 269A of the Taxes Act (transfer of United Kingdom trade between companies of different member States); or”.
- (6) In section 68(7A)(b) of the <sup>M22</sup>Finance Act 1985 (indexation) after “267,” there shall be inserted “ 269A, ”.
- (7) In paragraph 1(3)(b) of Schedule 8 to the <sup>M23</sup>Finance Act 1988 (re-basing) after “267,” there shall be inserted “ 269A, ”.
- (8) In paragraph 5 of Schedule 11 to that Act (indexation)—
  - (a) after “section” there shall be inserted “ 269A, ”;
  - (b) the word “intra-group” shall be omitted;
  - (c) for “either” there shall be substituted “ one ”.
- (9) Subsections (3) and (4) above apply where the transfer referred to in section 269A takes effect on or after 1st January 1992.
- (10) Subsections (5) to (7) above apply to any disposal by way of transfer where the transfer takes effect on or after 1st January 1992.
- (11) Subsection (8) above applies where any disposal to which section 269A applies is by way of a transfer taking effect on or after 1st January 1992.

#### **Marginal Citations**

**M19** 1992 c. 12.

**M20** 1970 c. 10.

*Status: Point in time view as at 02/12/2004.*

*Changes to legislation: There are currently no known outstanding effects for the Finance (No. 2) Act 1992, Chapter I. (See end of Document for details)*

**M21** 1984 c. 43.  
**M22** 1985 c. 54.  
**M23** 1988 c. 39.

### *Double taxation relief*

## **50 Transfer of a non-UK trade.**

The following section shall be inserted after section 815 of the Taxes Act 1988—

### **“815A Transfer of a non-UK trade.**

- (1) This section applies where section 269C of the 1970 Act or section 140C of the Taxation of Chargeable Gains Act 1992 applies; and references in this section to company A, the transfer and the trade shall be construed accordingly.
- (2) Where company A produces to the inspector an appropriate certificate given by the tax authorities of the relevant member State, this Part, including any arrangements having effect by virtue of section 788, shall apply as if the amount stated in the certificate in accordance with subsection (4)(b) below were tax payable under the law of the relevant member State.
- (3) In any case where—
  - (a) company A is unable to obtain an appropriate certificate from the tax authorities of the relevant member State,
  - (b) the Board is satisfied that this is the case, and
  - (c) company A makes a claim to the Board under this subsection and provides the Board with such information and documents in connection with the claim as the Board may require,the Board shall determine the amount which in their opinion is the amount of tax computed on the required basis which would have been payable under the law of the relevant member State in respect of the gains accruing to company A on the transfer but for the Mergers Directive; and this Part, including any arrangements having effect by virtue of section 788, shall apply as if the amount so determined were tax payable under the law of the relevant member State.
- (4) For the purposes of this section, an appropriate certificate is one containing—
  - (a) a statement to the effect that gains accruing to company A on the transfer would have been chargeable to tax under the law of the relevant member State but for the Mergers Directive;
  - (b) a statement of the amount of tax which would have been payable under that law in respect of the gains so accruing but for that Directive; and
  - (c) a statement to the effect that that amount has been computed on the required basis.
- (5) For the purposes of this section, the required basis is that—
  - (a) so far as permitted under the law of the relevant member State, any losses arising on the transfer are set against any gains so arising, and
  - (b) any relief available to company A under that law has been duly claimed.

*Status: Point in time view as at 02/12/2004.*

*Changes to legislation: There are currently no known outstanding effects for the Finance (No. 2) Act 1992, Chapter I. (See end of Document for details)*

(6) In this section—

“the Mergers Directive” means the Directive of the Council of the European Communities dated 23rd July 1990 on the common system of taxation applicable to mergers, divisions, transfers of assets and exchanges of shares concerning companies of different member States (no. 90/434/EEC);

“relevant member State” means the member State in which, immediately before the time of the transfer, company A carried on the trade through a branch or agency.”

## 51 The Arbitration Convention.

(1) The following section shall be inserted after section 815A of the Taxes Act 1988—

### “815B The Arbitration Convention.

(1) Subsection (2) below applies if the Arbitration Convention requires the Board to give effect to—

- (a) an agreement or decision, made under the Convention by the Board (or their authorised representative) and any other competent authority, on the elimination of double taxation, or
- (b) an opinion, delivered by an advisory commission set up under the Convention, on the elimination of double taxation.

(2) The Board shall give effect to the agreement, decision or opinion notwithstanding anything in any enactment; and any such adjustment as is appropriate in consequence may be made (whether by way of discharge or repayment of tax, the making of an assessment or otherwise).

(3) Any enactment which limits the time within which claims for relief under any provision of the Tax Acts may be made shall not apply to a claim made in pursuance of an agreement, decision or opinion falling within subsection (1) (a) or (b) above.

(4) In this section “the Arbitration Convention” means the Convention on the elimination of double taxation in connection with the adjustment of profits of associated enterprises, concluded on 23rd July 1990 by the parties to the treaty establishing the European Economic Community (90/436/EEC).”

(2) In section 816 of the Taxes Act 1988 (disclosure of information) the following subsection shall be inserted after subsection (2)—

“(2A) The obligation as to secrecy imposed by any enactment shall not prevent the Board, or any authorised officer of the Board, from disclosing information required to be disclosed under the Arbitration Convention in pursuance of a request made by an advisory commission set up under that Convention; and “the Arbitration Convention” here has the meaning given by section 815B(4).”

(3) The following section shall be inserted after section 182 of the <sup>M24</sup>Finance Act 1989 (disclosure of information)—

*Status: Point in time view as at 02/12/2004.*

*Changes to legislation: There are currently no known outstanding effects for the Finance (No. 2) Act 1992, Chapter I. (See end of Document for details)*

**“182A Double taxation: disclosure of information.**

- (1) A person who discloses any information acquired by him in the exercise of his functions as a member of an advisory commission set up under the Arbitration Convention is guilty of an offence.
- (2) Subsection (1) above does not apply to any disclosure of information—
  - (a) with the consent of the person who supplied the information to the commission, or
  - (b) which has been lawfully made available to the public before the disclosure is made.
- (3) It is a defence for a person charged with an offence under this section to prove that at the time of the alleged offence he believed that the information in question had been lawfully made available to the public before the disclosure was made and had no reasonable cause to believe otherwise.
- (4) A person guilty of an offence under this section is liable—
  - (a) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine or both;
  - (b) on summary conviction, to imprisonment for a term not exceeding six months or a fine not exceeding the statutory maximum or both.
- (5) No prosecution for an offence under this section shall be instituted in England and Wales or in Northern Ireland except—
  - (a) by the Board, or
  - (b) by or with the consent of the Director of Public Prosecutions or, in Northern Ireland, the Director of Public Prosecutions for Northern Ireland.
- (6) In this section—

“the Arbitration Convention” has the meaning given by section 815B(4) of the Taxes Act 1988;

“the Board” means the Commissioners of Inland Revenue.”

**Marginal Citations**

M24 1989 c. 26.

**52 Interest.**

- (1) In the Taxes Act 1988 the following section shall be inserted after section 808—

**“808A Interest: special relationship.**

- (1) Subsection (2) below applies where any arrangements having effect by virtue of section 788—
  - (a) make provision, whether for relief or otherwise, in relation to interest (as defined in the arrangements), and

*Status: Point in time view as at 02/12/2004.*

*Changes to legislation: There are currently no known outstanding effects for the Finance (No. 2) Act 1992, Chapter I. (See end of Document for details)*

- (b) make provision (the special relationship provision) that where owing to a special relationship the amount of the interest paid exceeds the amount which would have been paid in the absence of the relationship, the provision mentioned in paragraph (a) above shall apply only to the last-mentioned amount.
- (2) The special relationship provision shall be construed as requiring account to be taken of all factors, including—
  - (a) the question whether the loan would have been made at all in the absence of the relationship,
  - (b) the amount which the loan would have been in the absence of the relationship, and
  - (c) the rate of interest and other terms which would have been agreed in the absence of the relationship.
- (3) The special relationship provision shall be construed as requiring the taxpayer to show that there is no special relationship or (as the case may be) to show the amount of interest which would have been paid in the absence of the special relationship.
- (4) In a case where—
  - (a) a company makes a loan to another company with which it has a special relationship, and
  - (b) it is not part of the first company’s business to make loans generally, the fact that it is not part of the first company’s business to make loans generally shall be disregarded in construing subsection (2) above.
- (5) Subsection (2) above does not apply where the special relationship provision expressly requires regard to be had to the debt on which the interest is paid in determining the excess interest (and accordingly expressly limits the factors to be taken into account).”
- (2) This section shall apply in relation to interest (as defined in the arrangements) paid after 14th May 1992.

#### *Miscellaneous*

### **53 Car fuel: cash equivalents.**

- (1) Section 158 of the Taxes Act 1988 (car fuel) shall be amended as follows.
- (2) For subsection (2) (cash equivalents) there shall be substituted—
  - “(2) Subject to the provisions of this section, the cash equivalent of that benefit shall be ascertained from—
    - (a) Table A below where the car has an internal combustion engine with one or more reciprocating pistons and is not a diesel car;
    - (b) Table AB below where the car has an internal combustion engine with one or more reciprocating pistons and is a diesel car;
    - (c) Table B below where the car does not have an internal combustion engine with one or more reciprocating pistons.



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*Changes to legislation: There are currently no known outstanding effects for the Finance (No. 2) Act 1992, Chapter I. (See end of Document for details)*

TABLE A

<b>Cylinder capacity of car in cubic centimetres</b>	<b>Cash equivalent</b>
1,400 or less	£500
More than 1,400 but not more than 2,000	£630
More than 2,000	£940

TABLE AB

<b>Cylinder capacity of car in cubic centimetres</b>	<b>Cash equivalent</b>
2,000 or less	£460
More than 2,000	£590

TABLE B

<b>Original market value of car</b>	<b>Cash equivalent</b>
Less than £6,000	£500
£6,000 or more but less than £8,500	£630
£8,500 or more	£940

(2A) For the purposes of subsection (2) above a diesel car is a car which uses heavy oil as fuel; and “heavy oil” here means heavy oil as defined by section 1(4) of the Hydrocarbon Oil Duties Act 1979.

(2B) For the purposes of Tables A and AB in subsection (2) above a car’s cylinder capacity is the capacity of its engine calculated as for the purposes of the Vehicles (Excise) Act 1971.”

(3) In subsection (4) (Treasury orders) for “either” there shall be substituted “ any ”.

(4) This section shall have effect for the year 1992-93 and subsequent years of assessment.

**F80 54 Foreign earnings.**

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**Textual Amendments**

**F80** S. 54 repealed (6.4.2003) (with effect in accordance with s. 723(1)(a)(b) of the amending Act) by [Income Tax \(Earnings and Pensions\) Act 2003 \(c. 1\)](#), s. 723, [Sch. 8 Pt. 1](#) (with [Sch. 7](#))

*Status: Point in time view as at 02/12/2004.*

*Changes to legislation: There are currently no known outstanding effects for the Finance (No. 2) Act 1992, Chapter I. (See end of Document for details)*

**55 Oil extraction activities: extended transportation.**

(1) In section 502 of the Taxes Act 1988 (defined expressions for Chapter V of Part XII of that Act - petroleum extraction activities), in subsection (1), in the definition of "oil extraction activities", in paragraph (c)—

- (a) the words "as far as dry land in the United Kingdom" shall be omitted; and
- (b) after the words "so held" there shall be inserted

“where the transportation is—

- (i) to the place where the oil is first landed in the United Kingdom, or
- (ii) to the place in the United Kingdom or, in the case of oil first landed in another country, the place in that or any other country (other than the United Kingdom) at which the seller in a sale at arm’s length could reasonably be expected to deliver it or, if there is more than one such place, the one nearest to the place of extraction”.

(2) Subsection (1) above has effect with respect to chargeable periods ending after 27th November 1991.

(3) In so far as the amendments made by paragraph 3 of Schedule 15 to this Act amend the definitions of "initial storage" and "initial treatment" as they have effect, by virtue of section 502(2) of the Taxes Act 1988, for the purposes of Chapter V of Part XII of that Act, those amendments have effect with respect to chargeable periods ending after 27th November 1991.

**56 Friendly societies.**

Schedule 9 to this Act (which makes provision in relation to friendly societies) shall have effect.

<sup>F81</sup>57 .....

**Textual Amendments**  
**F81** S. 57 repealed (31.7.1998 with effect in accordance with s. 38(2)(3) of the repealing Act) by 1998 c. 36, s. 165, Sch. 27 Pt. III(4), Note

<sup>F82</sup>58 .....

**Textual Amendments**  
**F82** S. 58 repealed (31.7.1998 with effect in accordance with s. 38(2)(3) of the repealing Act) by 1998 c. 36, s. 165, Sch. 27 Pt. III(4), Note

*Status: Point in time view as at 02/12/2004.*

*Changes to legislation: There are currently no known outstanding effects for the Finance (No. 2) Act 1992, Chapter I. (See end of Document for details)*

**59 Furnished accommodation.**

Schedule 10 to this Act (which makes provision about furnished accommodation) shall have effect.

**60 Deduction on account of certain payments.**

(1) In section 347A(5) of the <sup>M25</sup>Taxes Act 1988 and in section 38(9) of the Finance Act 1988 (no deduction on account of certain payments) after “section 65(1)(b)” there shall be inserted “, 68(1)(b) or 192(3)”.

(2) This section shall have effect for the year 1992-93 and subsequent years of assessment.

**Marginal Citations**

M25 1988 c. 26.

**61 Qualifying maintenance payments: extension to member States.**

(1) In section 347B(1)(a) of the Taxes Act 1988 (payments under certain court orders or written agreements)—

- (a) for “in the United Kingdom” there shall be substituted “ in a member State ”;
- (b) for “a part of the United Kingdom” there shall be substituted “ a member State or of a part of a member State ”.

(2) This section shall have effect for the year 1992-93 and subsequent years of assessment.

**62 Qualifying maintenance payments: maintenance assessments etc.**

(1) In section 347B of the Taxes Act 1988 (qualifying maintenance payments), the following subsections shall be added at the end—

“(8) In subsections (1)(a) and (5)(a) above, the reference to an order made by a court in the United Kingdom includes a reference to a maintenance assessment.

(9) Where—

- (a) any periodical payment is made under a maintenance assessment by one of the parties to a marriage (including a marriage which has been dissolved or annulled),
- (b) the other party to the marriage is, for the purposes of the Child Support Act 1991 or (as the case may be) the Child Support (Northern Ireland) Order 1991, a parent of the child or children with respect to whom the assessment has effect,
- (c) the assessment was not made under section 7 of the Child Support Act 1991 (right of child in Scotland to apply for maintenance assessment), and

(d) any of the conditions mentioned in subsection (10) below is satisfied, this section shall have effect as if the payment had been made to the other party for the maintenance by that other party of that child or (as the case may be) those children.

*Status: Point in time view as at 02/12/2004.*

*Changes to legislation: There are currently no known outstanding effects for the Finance (No. 2) Act 1992, Chapter I. (See end of Document for details)*

- (10) The conditions are that—
- (a) the payment is made to the Secretary of State in accordance with regulations made under section 29 of the Child Support Act 1991, by virtue of subsection (3)(a)(ii) of that section;
  - (b) the payment is made to the Department of Health and Social Services for Northern Ireland in accordance with regulations made under Article 29 of the Child Support (Northern Ireland) Order 1991, by virtue of paragraph (3)(a)(ii) of that Article;
  - (c) the payment is retained by the Secretary of State in accordance with regulations made under section 41 of that Act;
  - (d) the payment is retained by the Department of Health and Social Services for Northern Ireland in accordance with regulations made under Article 38 of that Order.
- (11) In this section “maintenance assessment” means a maintenance assessment made under the Child Support Act 1991 or the Child Support (Northern Ireland) Order 1991.
- (12) Where any periodical payment is made to the Secretary of State or to the Department of Health and Social Services for Northern Ireland—
- (a) by one of the parties to a marriage (including a marriage which has been dissolved or annulled), and
  - (b) under an order made under section 106 of the Social Security Administration Act 1992 or section 101 of the Social Security Administration (Northern Ireland) Act 1992 (recovery of expenditure on benefit from person liable for maintenance) in respect of income support claimed by the other party to the marriage,
- this section shall have effect as if the payment had been made to the other party to the marriage to or for the benefit, and for the maintenance, of that other party or (as the case may be) to that other party for the maintenance of the child or children concerned.”
- (2) In section 36 of the <sup>M26</sup>Finance Act 1988 (annual payments), the following subsection shall be inserted after subsection (5)—
- “(5A) The reference in subsection (4)(d) above to an order made by a court, and the reference in subsection (5)(b) above to an order, in each case includes a reference to a maintenance assessment made under the Child Support Act 1991 or the Child Support (Northern Ireland) Order 1991.”
- (3) In section 38 of the <sup>M27</sup>Finance Act 1988 (maintenance payments under existing obligations), the following subsection shall be inserted after subsection (8)—
- “(8A) The reference in subsection (1)(a) above to an order made by a court includes a reference to a maintenance assessment made under the Child Support Act 1991 or under the Child Support (Northern Ireland) Order 1991.”
- (4) This section shall come into force on such date as the Secretary of State may by order provide.
- (5) The power conferred by subsection (4) above shall be exercisable by statutory instrument.

*Status: Point in time view as at 02/12/2004.*

*Changes to legislation: There are currently no known outstanding effects for the Finance (No. 2) Act 1992, Chapter I. (See end of Document for details)*

- (6) The provision made by this section shall have effect, so far as it concerns orders under section 106 of the <sup>M28</sup>Social Security Administration Act 1992 or section 101 of the <sup>M29</sup>Social Security Administration (Northern Ireland) Act 1992, only in relation to payments which fall due after the coming into force of this section.

#### Subordinate Legislation Made

**P1** [S. 62\(4\)](#) power fully exercised (26.10.1992): 6.4.1993 appointed day by [S.I. 1992/2642](#), **art. 2**.

#### Commencement Information

**II** [S. 62](#) wholly in force at 6.4.1993 see [s. 62\(4\)](#) and [S.I. 1992/2642](#), **art. 2**.

#### Marginal Citations

**M26** [1988 c. 39](#).

**M27** [1988 c. 39](#).

**M28** [1992 c. 5](#).

**M29** [1992 c. 8](#).

### 63 Paying and collecting agents etc.

Schedule 11 to this Act (which makes provision in relation to the payment of income tax on foreign dividends etc.) shall have effect.

### 64 Reduced and composite rate.

- (1) For the purposes of this section each of the following is a relevant order—
- the <sup>M30</sup>Income Tax (Reduced and Composite Rate) Order 1985 (which sets out 25.25 per cent. as the reduced rate for building societies and the composite rate for deposit-takers for the year 1986-87);
  - the <sup>M31</sup>Income Tax (Reduced and Composite Rate) Order 1986 (which sets out 24.75 per cent. as the rate for the year 1987-88);
  - the <sup>M32</sup>Income Tax (Reduced and Composite Rate) Order 1987 (which sets out 23.25 per cent. as the rate for the year 1988-89);
  - the <sup>M33</sup>Income Tax (Reduced and Composite Rate) Order 1988 (which sets out 21.75 per cent. as the rate for the year 1989-90).
- (2) If apart from this section a relevant order would not be so taken, it shall be taken to be and always to have been effective to determine the rate set out in the order as the reduced rate and the composite rate for the year of assessment for which the order was made.

#### Marginal Citations

**M30** [S.I. 1985/1836](#).

**M31** [S.I. 1986/2147](#).

**M32** [S.I. 1987/2075](#).

**M33** [S.I. 1988/2145](#).

*Status: Point in time view as at 02/12/2004.*

*Changes to legislation: There are currently no known outstanding effects for the Finance (No. 2) Act 1992, Chapter I. (See end of Document for details)*

## 65 Life assurance business: I minus E basis.

- (1) For the purposes of this section a claim is a relevant claim if it is made under or by virtue of any of the following provisions—
- (a) section 393(1) of the Taxes Act 1988 (claim for carry forward of trading losses);
  - (b) section 393A(1) of the Taxes Act 1988 (claim for carry sideways and backwards of trading losses);
  - (c) section 402(2) of the Taxes Act 1988 (surrender of relief between members of groups and consortia: group claim);
  - (d) section 402(3) of the Taxes Act 1988 (surrender of relief between members of groups and consortia: consortium claim);
  - (e) any provision reproduced in any of the provisions mentioned in paragraphs (a) to (d) above (whether directly or indirectly and whether with or without modification).
- (2) For the purposes of this section the following are relevant provisions—
- (aa) section 434(1) and (1A) of the Taxes Act 1988 (section 208 not to apply in relation to life assurance profits computed in accordance with Case I of Schedule D etc);
  - <sup>F83</sup>(ab) .....
  - [<sup>F84</sup>(a) section 434A(1) of the Taxes Act 1988 (profits derived from investments held for purposes of life assurance business treated as profits of that business in ascertaining loss);]
  - (b) .....
  - (c) .....
  - [<sup>F85</sup>(d) section 83(2) of the <sup>M34</sup>Finance Act 1989 ( amounts to be taken into account as receipts or expenses);]
  - (e) section 37(1) of the <sup>M35</sup>Taxation of Chargeable Gains Act 1992 (exclusion from consideration for disposal of asset of any money or moneys worth taken into account in computing profits or losses etc.);
  - (f) any provision reproduced in any of the provisions mentioned in paragraphs (a) <sup>F86</sup>. . . and (e) above (whether directly or indirectly and whether with or without modification).
- (3) For the purposes of this section—
- (a) the I minus E basis is the basis commonly so called (under which a company carrying on life assurance business is charged to tax in respect of that business otherwise than under Case I of Schedule D);
  - (b) life assurance business includes annuity business [<sup>F87</sup>and capital redemption business].
- (4) Neither the making of a relevant claim in respect of a trading loss incurred by a company in an accounting period nor the application of any commercial or accounting principle or practice in computing that loss—
- (a) shall prevent the I minus E basis being applied for that or any other accounting period in respect of the company's life assurance business;
  - (b) shall affect the calculation of the income or gains of that business for that or any other accounting period in applying that basis.
- (5) The application of a relevant provision as regards a company for an accounting period shall not—

*Status: Point in time view as at 02/12/2004.*

*Changes to legislation: There are currently no known outstanding effects for the Finance (No. 2) Act 1992, Chapter I. (See end of Document for details)*

- (a) prevent the I minus E basis being applied for that or any other accounting period in respect of its life assurance business;
  - (b) affect the calculation of the income or gains of that business for that or any other accounting period in applying that basis.
- (6) This section—
- (a) shall apply in relation to accounting periods beginning on or after the day on which this Act is passed;
  - (b) shall apply and be deemed always to have applied in relation to accounting periods beginning before that day<sup>F88</sup> but, in relation to any case in which by virtue of section 99 of the Finance Act 1990 losses may be set off under subsection (1) of section 393 of the Taxes Act 1988 without the making of a claim, this section shall have effect as if references to the making of a claim under that subsection were references to the setting off of any loss under that subsection.]

#### Textual Amendments

- F83** S. 65(2)(ab) omitted (17.9.2004) (with effect in accordance with reg. 1 of the amending S.I.) by virtue of [The Overseas Life Insurance Companies Regulations 2004 \(S.I. 2004/2200\)](#), regs. 1(1), **8(2)**
- F84** S. 65(2)(a) substituted (1.5.1995 with effect as mentioned in Sch. 8 paras. 55(2), 57(1) of the amending Act) by [1995 c. 4, s. 51](#), [Sch. 8 paras. 20\(2\), 55\(2\), 57\(1\)](#)
- F85** S. 65(2)(d) substituted (1.5.1995 with effect as mentioned in Sch. 8 paras. 55(2), 57(1) of the amending Act) by [1995 c. 4, s. 51](#), [Sch. 8 paras. 16\(6\), 55\(2\), 57\(1\)](#)
- F86** S. 65(2)(b)(c) and words in s. 65(2)(f) repealed (29.4.1996 with effect in accordance with ss. 80-105 of the repealing Act) by [1996 c. 8, s. 205](#), [Sch. 41 Pt. V\(3\)](#), Note
- F87** Words in s. 65(3)(b) added (23.3.1999) by [S.I. 1999/498](#), [reg. 13](#)
- F88** Words in s. 65(6) inserted (27.7.1993) by [1993 c. 34, s. 120](#), [Sch. 14 para. 9](#)

#### Marginal Citations

- M34** [1989 c. 26](#).
- M35** [1992 c. 12](#).

## 66 Banks etc. in compulsory liquidation.

Schedule 12 to this Act (which makes provision in relation to companies that are or have been carrying on a deposit-taking business and are in compulsory liquidation) shall have effect.

**Status:**

Point in time view as at 02/12/2004.

**Changes to legislation:**

There are currently no known outstanding effects for the Finance (No. 2) Act 1992, Chapter I.