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SCHEDULES

SCHEDULE 4

TAXATION PROVISIONS

PART I

CORPORATION TAX

Interpretation of Part I

- 1 (1) Subject to paragraph 24 below, in this Part of this Schedule “a relevant transfer” means any transfer in accordance with a restructuring scheme to a public-sector body of any property, rights or liabilities.
- (2) Subject to paragraph 24 below, in this Part of this Schedule—
- “the 1988 Act” means the ^{M1}Income and Corporation Taxes Act 1988;
 - “fixture” has the same meaning as in Chapter VI of Part II of the 1990 Act;
 - “predecessor”, in relation to any relevant transfer, means the person from whom the property, rights or liabilities in question are transferred;
 - “public-sector body” means the Treasury or any Minister of the Crown, the Authority, a local authority, any company which is wholly owned by the Crown or any body which is not a company but is established by or under any enactment for the purpose of carrying out functions conferred on it by any enactment or subordinate legislation; and
 - “transferee”, in relation to any relevant transfer, means the person to whom the property, rights or liabilities are transferred;
- and this Part of this Schedule shall be construed as one with the 1988 Act.
- (3) Subject to paragraph 7(8) below, in determining in relation to any transfer whether any such provision of this Schedule applies as is a provision applying if, by virtue of the coming into force of any relevant transfer, the predecessor is to be treated as having ceased to carry on any trade or the transferee is to be treated as having begun to carry one on, where—
- (a) the predecessor continues to carry on any trade or part of a trade after the coming into force of the transfer,
 - (b) the predecessor ceases, by virtue of any provisions of a restructuring scheme coming into force at the same time as the transfer, to carry on any trade or part of a trade which is not transferred to the transferee, or
 - (c) the transferee was carrying on any trade before the coming into force of the transfer,
- the trade or part of a trade which is continued or ceases to be carried on by the predecessor or, as the case may be, was being carried on shall for the purposes of that

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provision be treated in relation to any trade or part of a trade which is transferred by virtue of the transfer as a separate trade and, accordingly, shall be disregarded.

- (4) References in this Schedule to any provision of the 1992 Act shall have effect, in relation to times in any chargeable period beginning before 6th April 1992, as references to the corresponding enactment having effect in relation to that time.

Marginal Citations

M1 1988 c. 1.

Chargeable gains: general

- 2 (1) For the purposes of the 1992 Act, where there is a relevant transfer, the transfer of the property, rights and liabilities to which it relates shall (subject to the following provisions of this Part of this Schedule) be deemed, in relation to the transferee as well as the predecessor, to be for a consideration such that no gain or loss accrues to the predecessor.
- (2) Section 28 of the 1992 Act (time of disposal or acquisition in pursuance of contract) shall have effect in relation to any disposal or acquisition in pursuance of an obligation imposed by virtue of paragraph 2(1)(g) of Schedule 2 to this Act as it would apply if the obligation were contained in a contract made at the time when the scheme containing the obligation comes into force.
- (3) Paragraph (d) of section 35(3) of the 1992 Act (list of provisions for transfers treated as made without gain or loss) shall have effect with the insertion, at the end of the paragraph, of the following sub-paragraph—
- “(xi) paragraph 2(1) of Schedule 4 to the Coal Industry Act 1994;”.

Chargeable gains: compensation and insurance money

- 3 (1) Subsections (4) and (5) of section 23 of the 1992 Act (adjustments where compensation or insurance money used for purchase of replacement asset) shall have effect in accordance with sub-paragraph (2) below where—
- (a) there is a relevant transfer such that any capital sum which has been or (but for the transfer) would have been received by the predecessor by way of compensation for the loss or destruction of any asset, or under a policy of insurance of the risk of the loss or destruction of any asset, becomes available to the transferee; and
- (b) the transferee acquires any asset in circumstances where, if the predecessor had acquired it, the predecessor would be treated for the purposes of that section as having acquired it by the application of the whole or any part of that sum in replacement for the asset lost or destroyed.
- (2) In a case falling within sub-paragraph (1) above, subsection (4) or, as the case may require, subsection (5) of section 23 of the 1992 Act shall have effect as if the transferee and the predecessor were the same person except that—
- (a) it shall, subject to paragraph (b) below, be the transferee who shall be entitled as owner to make a claim for that subsection to be applied in relation to the transactions;

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- (b) any adjustment falling to be made under paragraph (a) of subsection (4) or, as the case may be, subsection (5) of that section shall have effect for the purposes only of the taxation of whichever of the predecessor and the transferee received the capital sum; and
 - (c) any adjustment falling, on a claim by the transferee, to be made under paragraph (b) of subsection (4) or, as the case may be, subsection (5) of that section shall have effect for the purposes only of the taxation of the transferee.
- (3) Sub-paragraph (2) above shall have effect for the purposes of any such adjustment as is mentioned in paragraph (c) of that sub-paragraph so as to require any residual or scrap value received by the predecessor to be treated as received by the transferee.

Chargeable gains: section 30 of the 1992 Act

- 4 Section 30 of the 1992 Act (tax-free benefits) shall not apply in any case where—
- (a) a reduction in the value of any asset, or
 - (b) the conferring of any tax-free benefit,
- results from any provision made by or under so much of any restructuring scheme as relates to a relevant transfer.

Chargeable gains: section 41 of the 1992 Act

- 5 Subject to paragraph 21 below, section 174(1) of the 1992 Act (which applies section 41 of that Act to cases where assets have been acquired without gain or loss) shall have effect, without prejudice to paragraph 2 above, where there has been a relevant transfer as if the property to which the transfer relates had been transferred to the transferee, and acquired by him, in relevant circumstances (within the meaning of that section).

Chargeable gains: options

- 6 (1) Where in the case of any relevant transfer the transferee becomes entitled, in consequence of the transfer, to any option granted to the predecessor, section 144 of the 1992 Act (options), so far as it requires an option to be treated as part of a larger transaction, shall have effect as if the option had originally been granted to the transferee for the consideration for which it was granted to the predecessor.
- (2) Where in the case of any relevant transfer the transferee is bound, in consequence of the transfer, by an option granted by the predecessor, that section, so far as it requires any option to be treated as part of a larger transaction, shall have effect as if the option had originally been granted by the transferee for the consideration for which it was granted by the predecessor and, if the case so requires, as if the transferee had entered into that transaction.
- (3) Sub-paragraph (2) above shall not apply in the case of any option in so far as any disposal made by the transferee by virtue of any exercise of that option before the time when the relevant transfer comes into force is one which falls, under section 28 of the 1992 Act (time of disposal etc.), to be treated as made before that time; and, accordingly, any disposal by the transferee which falls to be treated as so made and also, as mentioned in that sub-paragraph, to be treated as part of a larger transaction, shall be assumed for the purposes of the 1992 Act to be a disposal by the predecessor.

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- (4) The preceding provisions of this paragraph shall not affect the rights and liabilities of the predecessor, or confer any rights or liabilities on the transferee, in respect of any adjustment falling to be made in consequence of the option in question having been differently treated, for the purposes of the taxation of the predecessor, in relation to a time before the conditions for its being treated as part of a larger transaction were satisfied.

Chargeable gains: roll-over relief

- 7 (1) Where, apart from this sub-paragraph—
- (a) the predecessor would be treated for the purposes of section 152 of the 1992 Act as having ceased, by virtue of the coming into force of any relevant transfer, to carry on any trade, and
 - (b) the transferee would be treated as having begun, on the coming into force of that transfer, to carry it on,
- that section shall have effect as if any assets to which the transfer relates which, for the purposes of that section and in accordance with sub-paragraph (8) below, would fall immediately before the transfer comes into force to be treated in relation to the period of ownership as assets that have been used to any extent by the predecessor for the purposes of the trade were, as at the time immediately after the coming into force of the transfer, to be treated in relation to the period of ownership as assets that the transferee has used to the same extent for the purposes of that trade.
- (2) Where any assets vest by virtue of a relevant transfer in the transferee—
- (a) the predecessor shall not be entitled, at any time after the coming into force of the transfer, to make any claim under section 152 or 153 of the 1992 Act in respect of the acquisition by the predecessor of those assets; and
 - (b) subject to sub-paragraph (3) below, the transferee shall not be treated for the purposes of either of those sections or section 154 of that Act as having applied the whole or any part of the consideration for any disposal in acquiring those assets by means of that transfer.
- (3) Where, in the case of any relevant transfer—
- (a) the predecessor acquired any assets or any interest in any assets before the coming into force of the transfer,
 - (b) the assets or interest vest or vests in the transferee by virtue of the transfer,
 - (c) the acquisition is not one in respect of which the predecessor has made a claim under section 152 or 153 of the 1992 Act before the coming into force of the transfer,
 - (d) after the coming into force of the transfer the transferee disposes of, or of an interest in, any other assets, and
 - (e) the acquisition was such that, if the predecessor had been able to make and had made the disposal and obtained the consideration for it, the predecessor would have been regarded for the purposes of section 152 or 153 of that Act as having applied the consideration, or any part of it, in making the acquisition,
- then, on a claim by the transferee, section 152 and, so far as necessary, section 153 of that Act shall have effect for the purposes of paragraph 2 above in relation to the acquisition as they would have effect if the acquisition had been made by the transferee and the assumptions specified in sub-paragraph (4) below applied.

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- (4) Those assumptions are—
- (a) that the acquisition was made by the application by the transferee of the consideration or, as the case may be, the part of it mentioned in sub-paragraph (3)(e) above;
 - (b) that any period of ownership by the predecessor of any assets was a period of ownership of those assets by the transferee;
 - (c) that any use by the predecessor of any assets for the purposes of any trade which was, at the time, being carried on by the predecessor had been use by the transferee for the purposes of that trade; and
 - (d) that any trade for the purposes of which the transferee is assumed by virtue of paragraph (c) above to have used any asset was a trade which was being carried on by the transferee at the time.
- (5) Where—
- (a) a held-over gain would, but for the provisions of section 154 of the 1992 Act, have been carried forward to a depreciating asset, and
 - (b) that asset is transferred by a relevant transfer and immediately after the coming into force of that transfer is used by the transferee for the purposes of a trade carried on by him,
- that section shall have effect as if the gain had accrued to, and the claim for it to be held over had been made by, the transferee and, accordingly, as if the transferee had acquired the depreciating asset at the time when the predecessor acquired it and as if the assumptions specified in sub-paragraph (4)(c) and (d) above applied.
- (6) Expressions used in sub-paragraph (5) above which are also used in section 154 of the 1992 Act have the same meanings in that sub-paragraph as in that section.
- (7) Section 158 of the 1992 Act (extension of references to trade) shall have effect, subject to sub-paragraph (8) below, in relation to this paragraph as it has effect in relation to sections 152 to 157 of that Act.
- (8) For the purposes of this paragraph, any assets so far as used by the predecessor—
- (a) for the purposes of any part of a trade, or
 - (b) for the purposes of the whole or any part of any trade which is treated by virtue of subsection (8) of section 152 of the 1992 Act as forming a single trade with any one or more other trades,
- shall be treated as used for the purposes of every part of the trade carried on by the predecessor or, as the case may be, for the purposes of every part of every trade so carried on.

Chargeable gains: group transactions

- 8 (1) For the purposes of section 179 of the 1992 Act (company ceasing to be a member of a group) where by virtue of any relevant transfer any company—
- (a) ceases to be a member of the same group of companies as the predecessor, but
 - (b) becomes a member of the same group of companies as the transferee,
- that company shall not under that section be treated, in consequence of having so ceased, as at any time having sold, and immediately reacquired, any asset acquired from a company which is or has been a member of the former group.

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- (2) Subject to sub-paragraph (3) below, where sub-paragraph (1) above applies, or but for subsection (2) of section 179 of the 1992 Act would apply, as respects any acquisition of any asset and the company that acquired the asset ceases to be a member of the same group of companies as the transferee, that section shall have effect as if—
- (a) that asset had been acquired from the transferee; and
 - (b) that company had been a member of the same group of companies as the transferee when it was so acquired;
- and where, for the purposes of that subsection, this sub-paragraph applies as respects more than one of a number of successive acquisitions of any asset, the fact that each is to be treated as an acquisition from the same person shall be disregarded.
- (3) Where—
- (a) any asset has been acquired by any company (“the leaving company”) from another company,
 - (b) both of those companies cease at the same time to be members of the same group of companies as the transferee, and
 - (c) those companies are associated companies both immediately before and immediately after that time,
- sub-paragraph (2) above shall not apply as respects the acquisition of the asset by the leaving company.
- (4) Expressions used in this paragraph and in section 179 of the 1992 Act shall have the same meanings in this paragraph as in that section.

Chargeable gains: disposal of debts

- 9 (1) Where in the case of any relevant transfer—
- (a) any debt owed to the predecessor is transferred by virtue of the transfer to the transferee, and
 - (b) the predecessor would, apart from this sub-paragraph, be the original creditor in relation to that debt for the purposes of section 251 of the 1992 Act (disposal of debts),
- that Act shall have effect as if the transferee and not the predecessor were the original creditor for those purposes.
- (2) Subject to the following provisions of this paragraph, where in the case of any relevant transfer—
- (a) there is transferred by virtue of the transfer to the transferee either a debt owed to the predecessor or the rights and liabilities of the predecessor under any guarantee, and
 - (b) the transferred debt is, or any debt arising by virtue of those rights and liabilities would be, either—
 - (i) a right to the repayment of any amount outstanding as principal on a loan which is a qualifying loan for the purposes of either of sections 253 and 254 of the 1992 Act, or
 - (ii) a right to recover any amount paid under a guarantee for the repayment of such a loan or of any loan which would be such a loan but for section 253(1)(c) of that Act,
- those sections shall have effect as if the loan or, as the case may be, the guarantee and any payment by the predecessor under the guarantee had been made or given

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by the transferee and, accordingly, as if there had been no assignment of the right to recover the principal of the loan or of any right to recover an amount paid under the guarantee.

(3) Where sub-paragraph (2) above applies, sections 253 and 254 of the 1992 Act and this paragraph shall have effect as if the companies which, in relation to times before the relevant transfer comes into force, are to be treated as having been members of the same group of companies as the transferee included the predecessor and any company which at any such time was a member of the same group of companies as the predecessor.

(4) Where—

- (a) any right to the recovery of any amount is transferred by virtue of any relevant transfer,
- (b) any amount outstanding in respect of that right is recovered at any time by the transferee or by a company in the same group of companies as the transferee, and
- (c) that amount is such that, if that transfer had not come into force and the amount in question had been recovered by the predecessor or a company in the same group as the predecessor, a chargeable gain would be treated as having accrued to the predecessor or that company under section 253(5) to (8) or 254(9) or (10) of the 1992 Act,

then a chargeable gain of the same amount shall be treated, instead, as having accrued at that time to the transferee, or as the case may be, the company in the same group as the transferee.

(5) Sub-paragraph (2) above shall not, in relation to any relevant transfer—

- (a) affect the allowable losses that have been or are to be treated, in pursuance of any claim made under section 253(3) or (4) or 254(2) of the 1992 Act before the coming into force of the transfer, as having accrued to the predecessor in respect of any amount; or
- (b) entitle the transferee to make any claim under section 253(3) or (4) or 254(2) of that Act for the purpose of requiring any allowable loss to be treated as having accrued to the transferee in respect of any amount in respect of which an allowable loss to which paragraph (a) above applies has been or is to be treated as having accrued;

and a relevant transfer shall be disregarded for the purposes of section 253(9) of the 1992 Act.

(6) For the purposes of subsection (10) of section 253 of the 1992 Act, where there is a relevant transfer, any amount taken into account as mentioned in that subsection in the case of the predecessor shall be deemed also to have been so taken into account in the case of the transferee.

(7) Section 253(13) and section 255(3) of the 1992 Act shall apply in relation to sub-paragraph (4) above for the purposes, respectively, of cases corresponding to those falling within subsections (7) and (8) of section 253 of that Act and cases corresponding to those falling within subsection (10) of section 254 of that Act, as they apply for the purposes of those subsections.

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Chargeable gains: assets held before 6th April 1965

- 10 Schedule 2 to the 1992 Act (assets held on 6th April 1965) shall have effect in relation to any assets which vest in the transferee by virtue of a relevant transfer as if—
- (a) the predecessor and the transferee were the same person; and
 - (b) those assets, so far as they were in fact acquired or provided by the predecessor, were acquired or provided by the transferee.

Transfers of trading stock

- 11 (1) For the purposes of the Corporation Tax Acts if, in the case of any relevant transfer, any trading stock of the predecessor—
- (a) is vested in the transferee by virtue of the transfer, and
 - (b) falls, immediately after the time when the transfer comes into force, to be treated as trading stock of the transferee,

then, for the purpose of computing the profits and gains both of the trade in relation to which it is trading stock immediately before that time and of the trade in relation to which it is trading stock after that time, sub-paragraph (2) below shall apply to the stock.

- (2) Where this sub-paragraph applies to any stock, that stock—
- (a) shall be deemed—
 - (i) to have been disposed of by the predecessor in the course of the trade that is carried on by the predecessor;
 - (ii) to have been acquired by the transferee in the course of the trade that is carried on by the transferee; and
 - (iii) subject to that, to have been disposed of and acquired at the time when the transfer comes into force;
 - and
 - (b) shall be valued for the purposes of each of the trades mentioned in sub-paragraph (1) above as if the disposal and acquisition had been for a consideration which in relation to the predecessor would have resulted in neither a profit nor a loss being brought into account in respect of the disposal in the accounting period of the predecessor which ends with, or is current at, that time.
- (3) In this paragraph “trading stock” has the same meaning as in section 100 of the 1988 Act.

Transfer of rights to receipts

- 12 Where by virtue of any relevant transfer there is transferred any right of the predecessor to receive any amount which is for the purposes of corporation tax—
- (a) an amount brought into account as a trading receipt of the predecessor for any accounting period ending before the time when the transfer comes into force, or
 - (b) an amount falling to be so brought into account if it is assumed that the last such accounting period of the predecessor ended immediately before that time,

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the transfer shall not require any modification of the way that amount has been and is to be treated in relation to the predecessor for those purposes or entitle any amount due or paid in respect of that right to be treated as a trading receipt of the transferee for any accounting period.

Transfer of liabilities

- 13 (1) If, by virtue of any relevant transfer, there is transferred any liability the amount of which is for the purposes of corporation tax—
- (a) an amount brought into account as deductible in computing the predecessor's profits, or any description of the predecessor's profits, for any accounting period ending before the time when the transfer comes into force, or
 - (b) an amount falling to be so brought into account if it is assumed, where it is not the case, that the accounting period of the predecessor current on the day before the transfer comes into force ends immediately before that time,
- then that transfer shall not require any modification of the way that amount has been or is to be treated in relation to the predecessor for those purposes or entitle any amount due or paid in respect of that liability to be deductible in computing the transferee's profits, or any description of the transferee's profits, for any accounting period.
- (2) Where the amount of any liability which in consequence of any relevant transfer falls to be discharged by the transferee is an amount which would (but for that and any other transfer) have fallen to be deductible in computing the predecessor's profits, or any description of the predecessor's profits, for any accounting period beginning with the coming into force of the transfer or at any subsequent time, that amount—
- (a) shall not be so deductible; but
 - (b) subject to sub-paragraph (3) below, shall be deductible in computing the transferee's profits to the same extent as if the transferee had become subject to the obligation in pursuance of which the liability arises or has arisen at the same time and for the same consideration, and otherwise on the same terms and in the same circumstances, as the predecessor;
- and for the purposes of this sub-paragraph it shall be assumed, where it is not the case, that the accounting period of the predecessor current on the day before the transfer comes into force ends immediately before the coming into force of that transfer.
- (3) For the purposes of corporation tax, where any relevant transfer has the effect that any liability falls to any extent to be discharged by the transferee instead of by the predecessor, the amounts deductible in computing the transferee's profits, or any description of the transferee's profits, for any accounting period shall not include any amount in respect of so much of that liability as falls to be so discharged unless it is an amount which (but for that and any other transfer) would have fallen to be deductible in computing the predecessor's profits, or any description of the predecessor's profits, for any accounting period beginning or ending after the coming into force of that transfer.
- (4) The preceding provisions of this paragraph shall apply in relation to the deduction of charges on income against the total profits of the predecessor or transferee for any period as they apply in relation to the deduction of any amount in the computation for that period of the profits of the predecessor or, as the case may be, of the transferee.

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- (5) For the purposes of Chapter II of Part VI of the 1988 Act (definition of distributions), where in the case of any relevant transfer any consideration given or treated as given in respect of a security relating to—
- (a) any liability, or
 - (b) the use of the principal to which any liability, being a liability to interest or an equivalent liability, relates,
- would fall (apart from this sub-paragraph) to be regarded for those purposes as new consideration received by the predecessor, that consideration shall be treated instead, to the extent that it relates to so much of the liability as falls in consequence of the transfer to be discharged by the transferee and is not a liability to which sub-paragraph (1) above applies, as if it were new consideration received by the transferee.

Losses to be retained by the predecessor

- 14 (1) Notwithstanding anything in the preceding provisions of this Part of this Schedule or in Schedule 2 or 3 to this Act, the relevant unallowed tax losses of the predecessor—
- (a) shall not be capable, at any time after a relevant transfer comes into force, of being brought into account for any of the purposes of the Corporation Tax Acts in relation to the taxation of the transferee; but
 - (b) shall continue, to the same extent as before, to be treated after any relevant transfer as unallowed tax losses of the predecessor.
- (2) In sub-paragraph (1) above “relevant unallowed tax losses” means—
- (a) if the accounting period of the predecessor ends immediately before the coming into force of the relevant transfer, the unallowed tax losses of the predecessor as at the end of that period; and
 - (b) in any other case, any losses, expenses, charges or amounts which would be unallowed tax losses of the predecessor immediately before the coming into force of the relevant transfer, if an accounting period of the predecessor had ended at that time.
- (3) In this paragraph “unallowed tax losses” means any losses, expenses, charges or amounts which are tax losses within the meaning of section 400(2)(a), (b), (d) or (e) of the 1988 Act.

Section 35 of the 1988 Act

- 15 (1) Section 35 of the 1988 Act (charge on lease granted at an undervalue) shall not apply in the case of any lease the grant of which is effected by means of a relevant transfer.
- (2) Section 87 of the 1988 Act (taxable premiums) shall not apply where there is an amount which would have become chargeable in relation to any land but for sub-paragraph (1) above; and, accordingly, references to any such amount shall not be included in references in that section to the amount chargeable.
- (3) In this paragraph “lease” has the same meaning as in Part II of the 1988 Act.

Group relief

- 16 The existence of the powers of the Secretary of State under section 12 of and Schedule 2 to this Act shall not be regarded as constituting arrangements within

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the meaning of section 410 of the 1988 Act (arrangements for the transfer of a company to another group or consortium) or as constituting option arrangements for the purposes of paragraph 5B of Schedule 18 to that Act.

Special provision for successor companies

- 17 (1) Where—
- (a) by virtue of any relevant transfer any liability for any loan made to the predecessor vests in a successor company, and
 - (b) at the coming into force of that transfer that company is wholly owned by the Crown,
- the vesting of liability for that loan in that company shall not affect any direction in respect of the loan given or having effect as if given by the Treasury under section 581 of the 1988 Act (income tax exemption for interest on foreign currency securities).
- (2) Any share issued by a successor company in pursuance of paragraph 2 of Schedule 3 to this Act shall be treated for the purposes of the Corporation Tax Acts as if it had been issued wholly in consideration of a subscription paid to that company of an amount equal to the nominal value of the share.
- (3) Any debenture issued by a successor company in pursuance of paragraph 2 of Schedule 3 to this Act shall be treated for the purposes of the Corporation Tax Acts as if it had been issued—
- (a) wholly in consideration of a loan made to that company of an amount equal to the principal sum payable under the debenture; and
 - (b) wholly and exclusively for the purposes of the trade carried on by that company.
- (4) If any debenture issued as mentioned in sub-paragraph (3) above includes provisions for the payment of a sum expressed as interest in respect of a period which falls wholly or partly before the issue of the debenture, any payment made in pursuance of that provision in respect of that period shall be treated for the purposes of the Corporation Tax Acts as if the debenture had been issued at the commencement of that period and, accordingly, as interest on the principal sum payable under the debenture.

Leased assets

- 18 (1) For the purposes of section 781 of the 1988 Act (assets leased to traders and others), where the interest of the lessor or the lessee under a lease, or any other interest in an asset, vests in any person by virtue of a relevant transfer—
- (a) the transfer shall be treated as made without any capital sum having been obtained in respect of that interest by the predecessor or the transferee; and
 - (b) in a case where the interest is an interest under a lease, payments made by the predecessor under the lease before the coming into force of the transfer shall be deemed to have been made under that lease by the transferee.
- (2) Section 782 of the 1988 Act (deduction of payment under leases: special cases) shall not apply to any payments made—
- (a) under any lease granted for the purposes of the creation in accordance with a restructuring scheme of any leasehold interest, including, where effect has been given without the grant of a lease to the creation of a leasehold interest

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in accordance with such a scheme, any lease which for those purposes is deemed to have been granted; or

- (b) under any lease granted by a person whose ability to grant that lease derives from the transfer to him in accordance with a restructuring scheme of the asset to which the lease relates.

- (3) In this paragraph “lease” and “asset” have the meanings given by section 785 of the 1988 Act and references to a leasehold interest are references to any such interest as may subsist under a lease.

Continuity in relation to capital allowances etc. where trade transferred

- 19 (1) Subject to the following provisions of this Part of this Schedule, where, apart from this paragraph—

- (a) the predecessor would be treated for the purposes of the Corporation Tax Acts as having ceased, by virtue of the coming into force of a relevant transfer, to carry on any trade, and
- (b) the transferee would be treated as having begun, on the coming into force of that transfer, to carry it on,

then the trade shall not be treated as permanently discontinued, nor a new trade as set up, for the purposes of the allowances and charges provided for by the Capital Allowances Acts, but sub-paragraphs (2) to (4) below shall apply.

- (2) Subject to sub-paragraphs (3) and (4) below, in a case falling within sub-paragraph (1) above—

- (a) there shall be made to or on the transferee in accordance with the Capital Allowances Acts all such allowances and charges as would, if the predecessor had continued to carry on the trade, have fallen to be made to or on the predecessor; and
- (b) the amount of any such allowance or charge shall be computed as if—
- (i) the transferee had been carrying on the trade since the predecessor began to do so; and
- (ii) everything done to or by the predecessor had been done to or by the transferee (but so that the relevant transfer itself, so far as it relates to any assets in use for the purpose of the trade, shall not be treated as giving rise to any allowance or charge).

- (3) For the purposes of the Corporation Tax Acts, only such amounts (if any) as may be specified in or determined in accordance with the restructuring scheme providing for a relevant transfer shall be allocated to the transferee in respect of—

- (a) expenditure by reference to which capital allowances may be made by virtue of sub-paragraph (2) above in relation to anything to which the transfer relates; and
- (b) allowances which (apart from the allocation and irrespective of what are in fact the accounting periods of the predecessor) would, under section 145(2) of the 1990 Act, be carried forward, in relation to anything to which the transfer relates, to an accounting period of the predecessor beginning immediately before the coming into force of that transfer.

- (4) Sub-paragraph (2) above shall affect the amounts falling to be taken into account in relation to the predecessor—

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- (a) as expenditure by reference to which capital allowances may be made, or
 - (b) as an allowance carried forward under section 145(2) of the 1990 Act,
- only so far as necessary to give effect to a reduction of any such amount by a sum equal to so much of that amount as is allocated to the transferee as mentioned in sub-paragraph (3) above.
- (5) Subject to sub-paragraph (6) below, the provisions of a restructuring scheme providing for the determination of any amount which for the purposes of sub-paragraph (3) above is to be allocated, in the case of any relevant transfer, to the transferee may include provision—
- (a) for such a determination to be made by the Secretary of State in such manner as may be described in the scheme;
 - (b) for any amount determined to be calculated by reference to such factors or to the opinion of such person as may be so described; and
 - (c) for a determination under those provisions to be capable of being modified, on one or more occasions, in such manner and in such circumstances as may be so described.
- (6) The consent of the Treasury shall be required for the making or modification of a determination of any such amount as is mentioned in sub-paragraph (5) above; and the consent of the transferee shall also be required for any such modification after the relevant transfer.

Capital allowances in cases where paragraph 19 does not apply

- 20 (1) Subject to paragraph 21 below, the Capital Allowances Acts shall have effect in accordance with this paragraph in relation to any property if—
- (a) it is property to which a relevant transfer relates; and
 - (b) paragraph 19 above does not apply in relation to its transfer to the transferee;
- and in this paragraph “the relevant scheme”, in relation to property to which a relevant transfer relates, means the restructuring scheme that provides for that transfer.
- (2) Where—
- (a) subsection (6) of section 21 of the 1990 Act (transfer of industrial buildings or structures to be deemed to be sale at market price) applies on the relevant transfer in relation to the property, and
 - (b) the relevant scheme contains provision for the sale of that property which is deemed to occur by virtue of that subsection (6) to be deemed for the purposes of the Capital Allowances Acts to be at a price specified in or determined in accordance with the scheme,
- that deemed sale shall be treated as a sale at the price so specified or determined (instead of at the price determined in accordance with that subsection or any other provision of those Acts), sections 157 and 158 of the 1990 Act shall not apply and that provision of the scheme shall have an equivalent effect in relation to the expenditure which the transferee is to be treated as having incurred in making the corresponding purchase.
- (3) Where the property is plant or machinery which would, for the purposes of the Capital Allowances Acts, be treated on the coming into force of the relevant transfer as

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disposed of by the predecessor to the transferee and the relevant scheme contains provision for the disposal value of that property to be deemed for the purposes of those Acts to be of such amount as may be specified in or determined in accordance with the scheme—

- (a) that provision shall have effect, instead of section 26(1) or 59 of the 1990 Act, for determining an amount as the disposal value of the property or, as the case may be, as the price at which any fixture is to be treated as sold;
- (b) the transferee shall be deemed to have incurred expenditure of that amount on the provision of that property; and
- (c) in the case of a fixture, the expenditure which falls to be treated as incurred by the transferee shall be deemed for the purposes of section 54 of that Act to be incurred by the giving of a consideration consisting in a capital sum of that amount.

(4) Where—

- (a) the predecessor has been carrying on a trade of mineral extraction, and
- (b) the relevant scheme contains provision for the amount specified in or determined in accordance with the scheme to be brought into account under section 99 of the 1990 Act (disposal receipts in relation to mineral extraction allowances) as a disposal receipt,

that amount, instead of any other amount, shall be so brought into account as such a receipt in respect of the transfer of the property in accordance with the relevant scheme or of the predecessor's otherwise ceasing to use the property in consequence of that transfer.

(5) Where—

- (a) the acquisition of the property by the transferee in accordance with the relevant scheme would be a balancing event for the purposes of Part V of the 1990 Act (agricultural buildings etc.) if an election were made under section 129(2) of that Act, and
- (b) the relevant scheme contains provision for the price paid by the transferee to the predecessor for the property to be deemed, for the purposes of the Capital Allowances Acts, to be such amount as may be specified in or determined in accordance with the scheme,

such an election shall be deemed to have been made and the sale moneys related to that event shall be deemed for the purposes of section 128(2) of that Act (calculation of balancing allowance or charge) to be equal to that amount.

(6) Where—

- (a) the transfer of the property in accordance with the relevant scheme would be a relevant event for the purposes of section 138 of the 1990 Act (assets representing allowable scientific research expenditure ceasing to belong to traders), and
- (b) the relevant scheme contains provision for an amount specified in or determined in accordance with the scheme to be treated for the purposes of subsection (2) of that section as the disposal value of that property,

that section shall have effect accordingly.

(7) A disposal or acquisition in relation to which provision is made by the relevant scheme under any of sub-paragraphs (4) to (6) above shall not for any of the purposes of the 1990 Act be treated as, or as part of, a transaction falling within section 157(1) (a) of that Act (sales between connected persons etc.).

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- (8) Sub-paragraphs (5) and (6) of paragraph 19 above shall apply in relation to any determination of any amount in accordance with any provision made by a restructuring scheme for the purposes of this paragraph as they apply for the purposes of a determination such as is mentioned in those sub-paragraphs.

Capital allowances in cases where interests created by restructuring scheme

- 21 (1) This paragraph shall apply where—
- (a) an interest or right in or in relation to any property (“the relevant property”) is retained, or under paragraph 24 below is deemed to be retained, by the predecessor following any relevant transfer; and
 - (b) any other interest or right in or in relation to that property vests by virtue of that transfer in the transferee;
- and in this paragraph references to the retained property are references to the interest or right mentioned in paragraph (a) above and references to the transferred property are references to the interest or right mentioned in paragraph (b) above.
- (2) Where—
- (a) the relevant transfer is one which is deemed to be made by virtue of paragraph 24(4) below, and
 - (b) the restructuring scheme in accordance with which it is made provides for this sub-paragraph to apply in relation to the relevant property,
- the Capital Allowances Acts, sections 41 and 174 of the 1992 Act and paragraphs 19 and 20 above shall have effect for all purposes as if the interests or rights of the predecessor in or in relation to the relevant property had always been confined to the retained property and, accordingly, as if all allowances and charges made to or on the predecessor in relation to the relevant property, and anything done by or with respect to the predecessor in relation to the relevant property, had been made or done in relation to the retained property.
- (3) Where—
- (a) any interest or right of any person is under sub-paragraph (2) above to be treated as having always been confined to a particular interest or right in or in relation to any property,
 - (b) that property is a fixture, and
 - (c) any of the requirements of Chapter VI of Part II of the 1990 Act which did not in fact apply in relation to the property before the coming into force of the scheme in question would have had to be satisfied (if the interest had been so confined) for the Capital Allowances Acts to apply in relation to that property as they did in fact apply before that time,
- those Acts and the preceding provisions of this Part of this Schedule shall have effect as if those requirements had been satisfied.
- (4) Where—
- (a) any interest or right of any person in or in relation to any property is under sub-paragraph (2) above to be treated as having always been confined to an interest under a lease (within the meaning of section 61 of the 1990 Act) of that property,

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- (b) that property is machinery or plant which is not so installed or otherwise fixed in or to a building or any other description of land as to become, in law, a part of that building or land, and
- (c) the restructuring scheme in accordance with which the relevant transfer relating to the machinery or plant is made provides for this sub-paragraph to apply in relation to that property,

the Capital Allowances Acts and the preceding provisions of this Part of this Schedule shall have effect (with the provisions of sub-paragraph (2) above so far as they apply to the lease) as if the capital expenditure on the provision of that machinery or plant was expenditure on machinery or plant which that person was required to provide under the terms of the lease.

- (5) Where sub-paragraph (2) above is not applied in relation to the relevant property, paragraph 5 above shall not apply but the capital allowances which shall be taken into account in pursuance of section 41 of the 1992 Act (restriction of losses by reference to capital allowances) on—
 - (a) the disposal by the transferee of the transferred property or any part of it, or
 - (b) the disposal by the predecessor of the retained property or any part of it,
 shall include, so far as not already taken into account under that section or this sub-paragraph, any capital allowances (within the meaning of that section) which have been made or fall to be made to the predecessor in relation to the relevant property.
- (6) In determining for the purposes of sub-paragraph (5) above whether or the extent to which any amount has been taken into account in pursuance of section 41 of the 1992 Act or that sub-paragraph, an amount so taken into account for the purpose of restricting any loss shall be assumed to be taken into account at the time when the loss accrues.

Capital allowances for machinery and plant: connected persons

- 22 For the purposes of Part II of the 1990 Act references in that Part to a transaction (however described) between connected persons within the meaning of section 839 of the 1988 Act shall not include references to any relevant transfer.

Exchange gains and losses

- 23 (1) This paragraph shall apply where—
 - (a) in consequence of so much of any relevant transfer as relates to any qualifying asset, qualifying liability or currency contract, any accrual period ends, as regards that asset, liability or contract, with the time immediately before the coming into force of the transfer; and
 - (b) that time would not be a translation time apart from the transfer.
- (2) For the purposes of Chapter II of Part II of the ^{M2}Finance Act 1993 (exchange gains and losses) the exchange rate to be used in finding the local currency equivalent at the translation time mentioned in sub-paragraph (1) above of—
 - (a) the basic valuation of an asset or liability,
 - (b) the nominal amount of a debt outstanding, or
 - (c) an amount of currency,

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shall (subject to sub-paragraph (3) below) be the same as that used at the translation time with which the accrual period so mentioned began.

- (3) Where the accrual period mentioned in sub-paragraph (1) above is one in relation to which section 127 of the Finance Act 1993 (accrual on debts whose amounts vary) applies, that section shall have effect as if the local currency equivalent, at the translation time with which that period ends, of the nominal amount of the debt then outstanding were an amount equal to the first amount (within the meaning of that section).
- (4) For the purposes mentioned in sub-paragraph (2) above, where the preceding provisions of this paragraph apply for finding the local currency equivalent of any valuation or amount at the time immediately before the coming into force of a relevant transfer, the equivalent found in accordance with those provisions shall also be deemed to be the local currency equivalent of that valuation or amount at the translation time which, in consequence of the transfer, falls immediately after the transfer comes into force.
- (5) This paragraph shall be construed as one with Chapter II of Part II of the ^{M3}Finance Act 1993.

Marginal Citations

M2 1993 c. 34.

M3 1993 c. 34.

Transfers of property in coal and lease back etc.

- 24 (1) Subject to the following provisions of this paragraph—
- (a) this Part of this Schedule shall have effect as if the transfer made by section 7(3) of this Act were made in accordance with a restructuring scheme coming into force on the restructuring date; and
 - (b) any provisions of this Part of this Schedule by virtue of which provision may be contained in the restructuring scheme in accordance with which a relevant transfer is made shall have effect, in relation to the transfer made by section 7(3) of this Act, as if they authorised the inclusion of that provision in any restructuring scheme which is to take effect on the restructuring date.
- (2) Subject to sub-paragraph (3) below, where any interests or rights are created, in accordance with any restructuring scheme, in or in relation to any property which—
- (a) is property to which section 7(3) of this Act applies,
 - (b) is retained, subject to those interests and rights, by the Corporation or any of its wholly-owned subsidiaries, or
 - (c) in accordance with a restructuring scheme is transferred, with effect from the time at or immediately before which the creation of the interests or rights takes effect, from the Corporation or one of its wholly-owned subsidiaries to any other person,
- those interests or rights, so far as they are created in favour of a public sector body shall be treated for the purposes of the Corporation Tax Acts and this Part of this Schedule as transferred from the Corporation or, as the case may be, its subsidiary to that body but not, except for the purposes of paragraphs 2, 4, 10, 15 and 18(1) above, as transferred by virtue of a relevant transfer.

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- (3) Sub-paragraph (2) above shall not apply in relation to the creation in favour of the Corporation or any of its wholly-owned subsidiaries, in accordance with any restructuring scheme, of any interest or right in or in relation to—
- (a) property to which section 7(3) of this Act applies; or
 - (b) any other property in or in relation to which the Corporation or, as the case may be, that subsidiary owned some other interest or right immediately before the created interest or right comes into existence.
- (4) Where any restructuring scheme contains provision for the creation in favour of the Corporation or any of its wholly-owned subsidiaries of any interest or right in or in relation to any such property as is mentioned in sub-paragraph (3)(a) or (b) above, the only transfer which shall be deemed for the purposes of the Corporation Tax Acts and this Part of this Schedule to have taken place in accordance with that provision shall be a transfer (subject to the retention of the created interest or right) from the Corporation or that subsidiary of—
- (a) any interest or right in or in relation to that property which, by virtue of that scheme, is to be retained by the Authority; and
 - (b) the interest or right in or in relation to that property which in accordance with the scheme is transferred to any other person, together with any interest or right which in accordance with that scheme is created in favour of another person.
- (5) Where—
- (a) any interest or right is created in accordance with a restructuring scheme in or in relation to any property which has vested in any person (“the intermediary”) by virtue of a relevant transfer,
 - (b) the intermediary and the person in favour of whom the right or interest is created are both public-sector bodies at the time when the interest or right is created, and
 - (c) neither sub-paragraph (2) nor sub-paragraph (4) above applies to the creation of that interest or right,
- the creation of that interest or right shall be treated for the purposes of the Corporation Tax Acts and this Schedule as a transfer in accordance with a restructuring scheme of the interest or right from the intermediary to the person in favour of whom it is created but not, except for the purposes of paragraphs 2, 4, 10, 15 and 18(1) above and this sub-paragraph, as a relevant transfer.
- (6) Where paragraph 10 above applies in the case of any transaction which by virtue of sub-paragraph (5) above is treated for the purposes of that paragraph as a relevant transfer, that paragraph shall have effect in relation to that transaction as if references to the predecessor were references to the person who is the predecessor in relation to the relevant transfer by virtue of which the property in question vested in the intermediary or, where there has been more than one such transaction, the person who by virtue of this sub-paragraph is deemed for the purposes of that paragraph to be the predecessor in the case of the earliest such transaction.
- (7) The creation in accordance with a restructuring scheme of any interest or right in any property in which different interests or rights subsist shall not be treated for the purposes of this Schedule as a transfer in accordance with that scheme of the created interest or right except so far as it falls to be so treated by virtue of the preceding provisions of this paragraph.

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- (8) Subsections (1) and (2) of section 779 of the 1988 Act (sale and lease back) shall not apply where the liability of the transferor (within the meaning of that section) or of the person associated with that transferor is as a result of either—
- (a) the creation in accordance with any restructuring scheme of any interest or right; or
 - (b) any other transaction or series of transactions for which such a scheme provides.
- (9) Section 28 of the 1992 Act and paragraph 2(2) above shall apply for determining for the purposes of this paragraph the time as from which the creation of any interest or right takes effect as they apply for the purpose of determining the time of the disposal and acquisition of any asset.

Modifications of restructuring scheme

- 25 Where the effect of any restructuring scheme is modified in pursuance of any agreement which takes effect under paragraph 6(2) of Schedule 2 to this Act, the Corporation Tax Acts and this Part of this Schedule shall have effect as if—
- (a) the scheme originally made had been the scheme as modified; and
 - (b) anything done by or in relation to the person who without the modification became entitled or subject in accordance with the scheme to any property, rights or liabilities had, so far as relating to the property, rights or liabilities to which another person becomes entitled or subject in consequence of the modification, been done by or in relation to that other person.

Status:

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