



# Finance Act 1994

## 1994 CHAPTER 9

### PART I

#### CUSTOMS AND EXCISE

#### CHAPTER I

#### GENERAL

#### *Rates of duty*

#### **1 Wine, made-wine and cider.**

- (1) For the Table of rates of duty in Schedule 1 to the <sup>M1</sup>Alcoholic Liquor Duties Act 1979 (wine and made-wine) there shall be substituted the Table in Schedule 1 to this Act.
- (2) In section 62(1) of that Act (cider) for “£22.39” there shall be substituted “ £22.82 ”.
- (3) This section shall be deemed to have come into force on 1st January 1994.

#### **Marginal Citations**

**M1** 1979 c. 4.

#### **2 Tobacco products.**

- (1) For the Table in Schedule 1 to the <sup>M2</sup>Tobacco Products Duty Act 1979 there shall be substituted—

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“ TABLE

1. Cigarettes	An amount equal to 20 per cent. of the retail price plus £52.33 per thousand cigarettes.
2. Cigars	£77.58 per kilogram.
3. Hand-rolling tobacco	£81.86 per kilogram.
4. Other smoking tobacco and chewing tobacco	£34.26 per kilogram.”

(2) This section shall be deemed to have come into force at 6 o’clock in the evening of 30th November 1993.

**Marginal Citations**

M2 1979 c. 7.

**3 Hydrocarbon oil.**

(1) In section 6(1) of the <sup>M3</sup>Hydrocarbon Oil Duties Act 1979 for “£0.3058” (duty on light oil) and “£0.2514” (duty on heavy oil) there shall be substituted “ £0.3314 ” and “ £0.2770 ” respectively.

(2) In section 11(1) of that Act (rebate on heavy oil) for “£0.0105” (fuel oil) and “£0.0149” (gas oil) there shall be substituted “ £0.0116 ” and “ £0.0164 ” respectively.

(3) In section 14(1) of that Act (rebate on light oil for use as furnace fuel) for “£0.0105” there shall be substituted “ £0.0116 ”.

(4) This section shall be deemed to have come into force at 6 o’clock in the evening of 30th November 1993.

**Marginal Citations**

M3 1979 c. 5.

**F14** .....

**Textual Amendments**

F1 S. 4 repealed (1.9.1994) by 1994 c. 22, s. 65, Sch. 5 Pt. I (with s. 57(4))

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*Other provisions*

**5 Vehicles excise duty: miscellaneous provisions.**

Schedule 2 to this Act (which contains miscellaneous provisions relating to vehicles excise duty) shall have effect.

**6 Gaming machine licence duty.**

Schedule 3 to this Act (which makes amendments to the <sup>M4</sup>Betting and Gaming Duties Act 1981 about gaming machine licence duty) shall have effect.

**Marginal Citations**

M4 1981 c. 63.

**CHAPTER II**

APPEALS AND PENALTIES

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

C1 Pt. 1 Chapter 2 (ss. 7-19) applied (17.3.2000) by S.I. 2000/426, art. 5

*VAT and duties tribunals*

**7 VAT and duties tribunals.**

<sup>F2</sup>(1) .....

<sup>F2</sup>(2) .....

(3) In the following provisions of this Chapter references to an appeal tribunal are references to a VAT and duties tribunal.

(4) Sections [<sup>F3</sup>85 and 87 of the Value Added Tax Act 1994] (settling of appeals by agreement and enforcement of decisions of tribunal) shall have effect as if—

(a) the references to section [<sup>F4</sup>83 of that Act] included references to this Chapter; and

(b) references to value added tax included references to any relevant duty.

(5) Without prejudice to the generality of the power conferred by paragraph 9 of Schedule [<sup>F5</sup>12 to the Value Added Tax Act 1994] (rules of procedure for tribunals), rules under that paragraph may provide for costs awarded against an appellant on an appeal by virtue of this Chapter to be recoverable, and for any directly applicable Community legislation relating to any relevant duty or any enactment so relating to apply, as if the amount awarded were an amount of duty which the appellant is required to pay.

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- (6) In Part I of Schedule 1 to the <sup>M5</sup>Tribunals and Inquiries Act 1992 (tribunals under direct supervision of Council on Tribunals), for the entry beginning “Value added tax” there shall be substituted the following entry—

“VAT and duties	44. VAT and duties tribunals for England and Wales and for Northern Ireland, constituted in accordance with Schedule 8 to the Value Added Tax Act 1983 (c. 55).”
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- (7) In Part II of Schedule 1 to that Act of 1992 (tribunals under supervision of Scottish Committee of the Council), for the entry beginning “Value added tax” there shall be substituted the following entry—

“VAT and duties	63. VAT and duties tribunals for Scotland constituted in accordance with Schedule 8 to the Value Added Tax Act 1983 (c. 55).”
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#### Textual Amendments

- F2** S. 7(1)(2) repealed (1.9.1994 with effect as mentioned in s. 101(1) of the amending Act) by 1994 c. 23, s. 100(2), **Sch. 15**
- F3** S. 7(4): Words substituted for “25 and 29 of the Finance Act 1985” (1.9.1994 with effect as mentioned in s. 101(1) of the amending Act) by virtue of 1994 c. 23, s. 100(1), **Sch. 14 para. 13(a)**
- F4** Words in s. 7(4)(a) substituted (1.9.1994 with effect as mentioned in s. 101(1) of the amending Act) by 1994 c. 23, s. 100(1), **Sch. 14 para. 13(a)** (as *retrospectively* amended by 1995 c. 4, s. 33(5))
- F5** Words in s. 7(5) substituted (1.9.1994 with effect as mentioned in s. 101(1) of the amending Act) by 1994 c. 23, s. 100(1), **Sch. 14 para. 13(b)**

#### Commencement Information

- I1** S. 7 wholly in force at 31.8.1994; s. 7 not in force at Royal Assent see s. 19(1); s. 7 (except s. 7(1)(b)) in force at 1.7.1994 by **S.I. 1994/1690, art. 2**; s. 7(1)(b) in force at 31.8.1994 by **S.I. 1994/2143, art. 2**

#### Marginal Citations

- M5** 1992 c. 53.

### *Civil penalties*

## 8 Penalty for evasion of excise duty.

- (1) Subject to the following provisions of this section, in any case where—
- (a) any person engages in any conduct for the purpose of evading any duty of excise, and
  - (b) his conduct involves dishonesty (whether or not such as to give rise to any criminal liability),
- that person shall be liable to a penalty of an amount equal to the amount of duty evaded or, as the case may be, sought to be evaded.
- (2) References in this section to a person’s evading a duty of excise shall include references to his obtaining or securing, without his being entitled to it—

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- (a) any repayment, rebate or drawback of duty;
  - (b) any relief or exemption from or any allowance against duty; or
  - (c) any deferral or other postponement of his liability to pay any duty or of the discharge by payment of any such liability,
- and shall also include references to his evading the cancellation of any entitlement to, or the withdrawal of, any such repayment, rebate, drawback, relief, exemption or allowance.
- (3) In relation to any such evasion of duty as is mentioned in subsection (2) above, the reference in subsection (1) above to the amount of duty evaded or sought to be evaded shall be construed as a reference to the amount of the repayment, rebate, drawback, relief, exemption or allowance or, as the case may be, the amount of the payment which, or the liability to make which, is deferred or otherwise postponed.
- (4) Where a person is liable to a penalty under this section—
- (a) the Commissioners or, on appeal, an appeal tribunal may reduce the penalty to such amount (including nil) as they think proper; and
  - (b) an appeal tribunal, on an appeal relating to a penalty reduced by the Commissioners under this subsection, may cancel the whole or any part of the reduction made by the Commissioners.
- (5) Neither of the following matters shall be a matter which the Commissioners or any appeal tribunal shall be entitled to take into account in exercising their powers under subsection (4) above, that is to say—
- (a) the insufficiency of the funds available to any person for paying any duty of excise or for paying the amount of the penalty;
  - (b) the fact that there has, in the case in question or in that case taken with any other cases, been no or no significant loss of duty.
- (6) Statements made or documents produced by or on behalf of a person shall not be inadmissible in—
- (a) any criminal proceedings against that person in respect of any offence in connection with or in relation to any duty of excise, or
  - (b) any proceedings against that person for the recovery of any sum due from him in connection with or in relation to any duty of excise,
- by reason only that any of the matters specified in subsection (7) below has been drawn to his attention and that he was, or may have been, induced by that matter having been brought to his attention to make the statements or produce the documents.
- (7) The matters mentioned in subsection (6) above are—
- (a) that the Commissioners have power, in relation to any duty of excise, to assess an amount due by way of a civil penalty, instead of instituting criminal proceedings;
  - (b) that it is the Commissioners' practice, without being able to give an undertaking as to whether they will make such an assessment in any case, to be influenced in determining whether to make such an assessment by the fact (where it is the case) that a person has made a full confession of any dishonest conduct to which he has been a party and has given full facilities for an investigation;
  - (c) that the Commissioners or, on appeal, an appeal tribunal have power to reduce a penalty under this section, as provided in subsection (4) above; and

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- (d) that, in determining the extent of such a reduction in the case of any person, the Commissioners or tribunal will have regard to the extent of the co-operation which he has given to the Commissioners in their investigation.
- (8) Where, by reason of conduct falling within subsection (1) above, a person is convicted of an offence, that conduct shall not also give rise to liability to a penalty under this section.

#### Commencement Information

**I2** S. 8 wholly in force at 1.1.1995; s. 8 not in force at Royal Assent see s. 19(1); s. 8 in force for certain purposes at 1.11.1994 by [S.I. 1994/2679, art. 2, Sch.](#); s. 8 in force at 1.1.1995 insofar as not already in force by [S.I. 1994/2679, art. 3](#)

## 9 Penalties for contraventions of statutory requirements.

- (1) This section applies, subject to section 10 below, to any conduct in relation to which any enactment (including an enactment contained in this Act or in any Act passed after this Act) provides for the conduct to attract a penalty under this section.
- (2) Any person to whose conduct this section applies shall be liable—
  - (a) in the case of conduct in relation to which provision is made by subsection (4) below [<sup>F6</sup>, or by or under any other enactment,] for the penalty attracted to be calculated by reference to an amount of, or an amount payable on account of, any duty of excise, to a penalty of whichever is the greater of 5 per cent. of that amount and £250; and
  - (b) in any other case, to a penalty of £250.
- (3) Subject to section 13(3) and (4) below, in the case of any conduct to which this section applies which is conduct in relation to which provision is made by subsection (4) or (5) below or any other enactment for that conduct to attract daily penalties, the person whose conduct it is—
  - (a) shall be liable, in addition to an initial penalty under subsection (2) above, to a penalty of £20 for every day, after the first, on which the conduct continues, but
  - (b) shall not, in respect of the continuation of that conduct, be liable to further penalties under subsection (2) above.
- (4) Where any conduct to which this section applies consists in a failure, in contravention of any subordinate legislation, to pay any amount of any duty of excise or an amount payable on account of any such duty, then, in so far as that would not otherwise be the case—
  - (a) the penalty attracted to that contravention shall be calculated by reference to the amount unpaid; and
  - (b) the contravention shall also attract daily penalties.
- (5) Where—
  - (a) a contravention of any provision made by or under any enactment consists in or involves a failure, before such time as may be specified in or determined in accordance with that provision, to send a return to the Commissioners showing the amount which any person is or may become required to pay by way of, or on account of, any duty of excise, and

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- (b) that contravention attracts a penalty under this section,  
that contravention shall also attract daily penalties.
- (6) Where, by reason of any conduct to which this section applies, a person is convicted of an offence, that conduct shall not also give rise to liability to a penalty under this section.
- (7) If it appears to the Treasury that there has been a change in the value of money since the passing of this Act or, as the case may be, the last occasion when the power conferred by this subsection was exercised, they may by order substitute for any sum for the time being specified in subsection (2) or (3) above such other sum as appears to them to be justified by the change.
- (8) The power to make an order under subsection (7) above—
- (a) shall be exercisable by statutory instrument subject to annulment in pursuance of a resolution of the House of Commons; but
  - (b) shall not be exercisable so as to vary the penalty for any conduct occurring before the coming into force of the order.
- (9) Schedule 4 to this Act (which provides for the conduct to which this section applies, repeals the summary offences superseded by this section and makes related provision with respect to forfeiture) shall have effect.

#### Textual Amendments

**F6** Words in s. 9(2)(a) substituted (28.7.2000) by 2000 c. 17, s. 28

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

- C2** S. 9 applied (1.1.1995) by 1979 c. 2, ss. **92(6)(8)**, 93(6), 100J, 101(4), 107(2)(3), 108(4), 111(1), 114(2), 115(4), 116(3), 118G, 170A(1)(2) (all as amended (1.1.1995) by 1994 c. 9, s. 9, Sch. 4 paras. 2(1)(2), 3, 4, 5(b), 6(1)(2), 7, 8(1), 9, 10(1)(b), 11, 12, **13(1)(2)**); S.I. 1994/2679, **art. 3**
- S. 9 applied (1.1.1995) by 1979 c. 4, ss. **8(2)**, 10(2), 13(3)(5), 15(4)(5)(7), 16(2)(3), 18(6), 19(2), 20(1)(2), 21(3), 22(9), 24(4), 33(1)(5), 34(2), 35(3), 41A(8), 44(2), 46(2), 47(4)(5), 49(3), 54(5), 55(6), 55A(3), 56(2), 59(2), 61(2), 62(4)(6), 64(2), 67(2), 69(3)(4), 71(1)(3), 75(5), 77(3)(4), 78(4), 82(2) (all as amended (1.1.1995) by 1994 c. 9, s. 9, Sch. 4 paras. 15, 16, 17(1)(a)(3), 18(1)(2)(3), 19(1)(2), 20, 21(1), 22, 23(1), 24, 25, 26(1)(2), 27, 28, 29, 30, 31, 32(1)(2), 33, 34, 35, 36(b), 37, 38, 39, 40(1)(2), 41, 42, 43(1)(2), 44(1)(2), 45(b), 46(1)(2), 47, **48**); S.I. 1994/2679, **art. 3**
- S. 9 applied (1.1.1995) by 1979 c. 5, ss. **10(3)(4)**, 13(1)(2), 14(4)(5), 18(5), 20AA(4)(a), 21(3), 22(1), 23(1), 24(4) (all as amended (1.1.1995) by 1994 c. 9, s. 9, Sch. 4 paras. 50(1)(b)(2)(c), 51(1)(b)(2)(c), 52(1)(b)(2)(c), 53, 54, 55(b), 56(1)(b), 57(1)(b), **58(b)**); S.I. 1994/2679, **art. 3**
- S. 9 applied (1.1.1995) by 1979 c. 7, s. **7(2)** (as amended (1.1.1995) by 1994 c. 9, s. 9, **Sch. 4 para. 59**); S.I. 1994/2679, **art. 3**
- S. 9 applied (1.1.1995) by 1981 c. 63, s. 24(5), Sch. 1 paras. 13(1), 14(3), Sch. 2 para. 7(1), Sch. 3 para. 16(3)(b), **Sch. 4 para. 16(1)** (all as amended (1.1.1995) by 1994 c. 9, s. 9, Sch. 4 paras. 61(a), 62(1)(2)(b), 63(1), 64(1), **65(1)**); S.I. 1994/2679, **art. 3**
- S. 9 applied (1.1.1995) by 1993 c. 34, ss. **27(4)**, 28(3), 29(8) (all as amended (1.1.1995) by 1994 c. 9, s. 9, Sch. 4 paras. 67(b), **68(b)**); S.I. 1994/2679, **art. 3**
- S. 9 applied (19.3.1997) by 1997 c. 16, ss. 12(5)(a), 13(1), 15, 50(1), Sch. 1 paras. 5(3), 7, 10(3), **Sch. 5 para. 4(1)**
- S. 9 applied (28.7.2000) by 1979 c. 7, s. **8J(2)** (as inserted (28.7.2000) by 2000 c. 17, s. 14)
- C3** S. 9 applied (29.4.1996 with effect as mentioned in 1996 c. 8, s. **6(5)**) by 1979 c. 5, s. **20AAB(8)** (as inserted by 1996 c. 8, s. **6(3)(5)**); S.I. 1996/2751, **art. 2**

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- S. 9 applied (24.9.1996 with effect as mentioned in 1996 c. 8, s. 5(6)) by 1979 c. 5, s. 13AB(1)(b)(2) (b)(5) (as inserted by 1996 c. 8, s. 5(4)(6)); S.I. 1996/2314, art. 2
- C4** S. 9 extended (with application as mentioned in 2002 c. 23, s. 5(8)(b)) by Hydrocarbon Oil Duties Act 1979 (c. 5), s. 22(1AA) (as inserted by Finance Act 2002 (c. 23), Sch. 2 para. 5(7))
- C5** S. 9 applied (1.8.2002) by S.I. 2002/1773, reg. 15(2)

#### Commencement Information

- I3** S. 9 wholly in force at 1.1.1995; s. 9 not in force at Royal Assent see s. 19(1); s. 9(1)–(8) in force for certain purposes at 1.11.1994 by S.I. 1994/2679, art. 2, Sch.; s. 9 in force at 1.1.1995 insofar as not already in force by S.I. 1994/2679, art. 3

## 10 Exceptions to liability under section 9.

- (1) Subject to subsection (2) below and to any express provision to the contrary made in relation to any conduct to which section 9 above applies, such conduct shall not give rise to any liability to a penalty under that section if the person whose conduct it is satisfies the Commissioners or, on appeal, an appeal tribunal that there is a reasonable excuse for the conduct.
- (2) Where it appears to the Commissioners or, on appeal, an appeal tribunal that there is no reasonable excuse for a continuation of conduct for which there was at first a reasonable excuse, liability for a penalty under section 9 above shall be determined as if the conduct began at the time when there ceased to be a reasonable excuse for its continuation.
- (3) For the purposes of this section—
- (a) an insufficiency of funds available for paying any duty or penalty due shall not be a reasonable excuse; and
  - (b) where reliance is placed by any person on another to perform any task, then neither the fact of that reliance nor the fact that any conduct to which section 9 above applies was attributable to the conduct of that other person shall be a reasonable excuse.

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

- C6** S. 10 excluded (1.1.1995) by 1979 c. 2, ss. 114(2), 170A(2) (both as amended (1.1.1995) by 1994 c. 9, s. 9, Sch. 4 paras. 9, 13(2) (with s. 19(3)); S.I. 1994/2679, art. 3
- S. 10 excluded (1.1.1995) by 1979 c. 5, ss. 22(1A), 23(1A) (both as amended (1.1.1995) by 1994 c. 9, s. 9, Sch. 4 paras. 56(2), 57(2) (with s. 19(3)); S.I. 1994/2679, art. 3

#### Commencement Information

- I4** S. 10 wholly in force at 1.1.1995; s. 10 not in force at Royal Assent see s. 19(1); s. 10 in force for certain purposes at 1.11.1994 by S.I. 1994/2679, art. 2, Sch.; s. 10 in force at 1.1.1995 insofar as not already in force by S.I. 1994/2679, art. 3

## 11 Breaches of walking possession agreements.

- (1) This section applies where—
- (a) <sup>[F7]</sup>in accordance with regulations under section 51 of the Finance Act 1997 (enforcement by distress), a person (“the person levying the distress”) is empowered or authorised to distrain any property of another person (“the



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- person in default”) [F<sup>8</sup>who has refused or neglected to pay any amount of relevant duty or any amount recoverable as if it were an amount of relevant duty due from him]; and
- (b) the person levying the distress and the person in default have entered into a walking possession agreement.
- (2) In this section a “walking possession agreement” means an agreement under which, in consideration of the property distrained upon being allowed to remain in the custody of the person in default and of the delaying of its sale, the person in default—
- (a) acknowledges that the property specified in the agreement is under distraint and held in walking possession; and
- (b) undertakes that, except with the consent of the Commissioners and subject to such conditions as they may impose, he will not remove or allow the removal of any of the specified property from the premises named in the agreement.
- (3) Subject to subsection (4) below, if the person in default is in breach of the undertaking contained in a walking possession agreement, he shall be liable to a penalty equal to one-half of the unpaid duty or penalty which gives rise to the distraint.
- (4) The person in default shall not be liable to a penalty under subsection (3) above if he satisfies the Commissioners or, on appeal, an appeal tribunal that there is a reasonable excuse for the breach in question.
- (5) This section does not extend to Scotland.

#### Textual Amendments

- F7** Words in s. 11(1)(a) substituted (1.7.1997) by 1997 c. 16, s. 53(2)(a)(9); S.I. 1997/1432, art. 2
- F8** Words in s. 11(1)(a) inserted (1.7.1997) by 1997 c. 16, s. 53(2)(b)(9); S.I. 1997/1432, art. 2

#### Commencement Information

- I5** S. 11 wholly in force at 1.1.1995; s. 11 not in force at Royal Assent see s. 19(1); s. 11 in force for certain purposes at 1.11.1994 by S.I. 1994/2679, art. 2, Sch.; s. 11 in force at 1.1.1995 insofar as not already in force by S.I. 1994/2679, art. 3

### *Assessments to excise duty or to penalties*

## 12 Assessments to excise duty.

- (1) Subject to subsection (4) below, where it appears to the Commissioners—
- (a) that any person is a person from whom any amount has become due in respect of any duty of excise; and
- (b) that there has been a default falling within subsection (2) below,
- the Commissioners may assess the amount of duty due from that person to the best of their judgement and notify that amount to that person or his representative.
- [F<sup>9</sup>(1A) Subject to subsection (4) below, where it appears to the Commissioners—
- (a) that any person is a person from whom any amount has become due in respect of any duty of excise; and
- (b) that the amount due can be ascertained by the Commissioners,

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the Commissioners may assess the amount of duty due from that person and notify that amount to that person or his representative.]

- (2) The defaults falling within this subsection are—
- (a) any failure by any person to make, keep, preserve or produce as required or directed by or under any enactment any returns, accounts, books, records or other documents;
  - (b) any omission from or inaccuracy in any returns, accounts, books, records or other documents which any person is required or directed by or under any enactment to make, keep, preserve or produce;
  - (c) any failure by any person to take or permit to be taken any step which he is required under Schedule 1 or 3 to the <sup>M6</sup>Betting and Gaming Duties Act 1981 [<sup>F10</sup>or Schedule 1 to the Finance Act 1997] to take or to permit to be taken;
  - (d) any unreasonable delay in performing any obligation the failure to perform which would be a default falling within this subsection.
- (3) Where an amount has been assessed as due from any person and notified in accordance with this section, it shall, subject to any appeal under section 16 below, be deemed to be an amount of the duty in question due from that person and may be recovered accordingly, unless, or except to the extent that, the assessment has subsequently been withdrawn or reduced.
- (4) An assessment of the amount of any duty of excise due from any person shall not be made under this section at any time after whichever is the earlier of the following times, that is to say—
- (a) subject to subsection (5) below, the end of the period of [<sup>F11</sup>three years] beginning with the time when his liability to the duty arose; and
  - (b) the end of the period of one year beginning with the day on which evidence of facts, sufficient in the opinion of the Commissioners to justify the making of the assessment, comes to their knowledge;
- but this subsection shall be without prejudice, where further evidence comes to the knowledge of the Commissioners at any time after the making of an assessment under this section, to the making of a further assessment within the period applicable by virtue of this subsection in relation to that further assessment.
- (5) Subsection (4) above shall have effect as if the reference in paragraph (a) to [<sup>F11</sup>three years] were a reference to twenty years in the case of any assessment to any amount of duty the assessment or payment of any of which has been postponed or otherwise affected by—
- (a) conduct in respect of which any person (whether or not the person assessed)—
    - (i) has become liable to a penalty under section 8 above, or
    - (ii) has been convicted of an offence of fraud or dishonesty; or
  - (b) any conduct in respect of which proceedings for an offence of fraud or dishonesty would have been commenced or continued against any person (whether or not the person assessed), but for their having been compounded under section 152(a) of the Management Act.
- (6) The reference in subsection (4) above to the time when a person's liability to a duty of excise arose are references—
- (a) in the case of a duty of excise on goods, to the excise duty point; and
  - (b) in any other case, to the time when the duty was charged.

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- (7) In this section references to an offence of fraud or dishonesty include references to an offence under any of the following provisions, that is to say-
- (a) sections 100(3), 136(1), 159(6), 167(1), 168(1), 170(1) and (2) and 170B(1) of the Management Act,
  - (b) section 24(6) of the <sup>M7</sup>Betting and Gaming Duties Act 1981 and paragraph 13(3) of Schedule 1, <sup>F12</sup>. . . and paragraph 16(1) of Schedule 3 to that Act,
  - (c) section 31(1) and (3) of the <sup>M8</sup>Finance Act 1993, and
  - (d) section 41(1) and (3) below,
- and also include references to attempting or conspiring to commit an offence of fraud or dishonesty and to inciting the commission of such an offence.
- (8) In this section “representative”, in relation to a person appearing to the Commissioners to be a person from whom any amount has become due in respect of any duty of excise, means his personal representative [<sup>F13</sup>, trustee in bankruptcy or interim or permanent trustee,] any receiver or liquidator appointed in relation to that person or any of his property or any other person acting in a representative capacity in relation to that person.

#### Textual Amendments

- F9** S. 12(1A) inserted (1.10.1998) by 1998 c. 36, s. 20, Sch. 2 paras. 7, **12**; S.I. 1998/2243, **art. 2**
- F10** Words in s. 12(2)(c) inserted (19.3.1997) by 1997 c. 16, ss. 13, 15, **Sch. 2 para. 7**
- F11** Words in s. 12(4)(a)(5) substituted (19.3.1997) by 1997 c. 16, s. 50(1), **Sch. 5 para. 6(2)(a)**
- F12** Words in s. 12(7)(b) repealed (19.3.1997 with effect as mentioned in Sch. 18 Pt. II Note 2 of the repealing Act) by 1997 c. 16, s. 113, **Sch. 18 Pt. II** Note 2
- F13** Words in s. 12(8) substituted (1.6.1997) by 1997 c. 16, s. 50(2), Sch. 6 paras. 1(3), 7; S.I. 1997/1305, **art. 2**

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

- C7** S. 12 modified (19.3.1997) by 1997 c. 16, ss. **12(6)(a)**, 15
- C8** S. 12(1) extended (29.4.1996 with effect as mentioned in 1996 c. 8, s. **6(5)**) by 1979 c. 5, s. **20AAB(5)** (as inserted by 1996 c. 8, s. **6(3)(5)**); S.I. 1996/2751, **art. 2**

#### Commencement Information

- I6** S. 12 wholly in force at 1.1.1995; s. 12 not in force at Royal Assent see s. 19(1); s. 12 (except s. 12(7)(b)(c) and specified references in s. 12(7)(a)) in force for certain purposes at 1.11.1994 by S.I. 1994/2679, **art. 2**, **Sch.**; s. 12 in force at 1.1.1995 insofar as not already in force by S.I. 1994/2679, **art. 3**

#### Marginal Citations

- M6** 1981 c. 63.
- M7** 1981 c. 63.
- M8** 1993 c. 34.

#### [<sup>F14</sup>12A Other assessments relating to excise duty matters.

- (1) This subsection applies where any relevant excise duty relief other than an excepted relief—
- (a) has been given but ought not to have been given, or

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- (b) would not have been given had the facts been known or been as they later turn out to be.
- (2) Where subsection (1) above applies, the Commissioners may assess the amount of the relief given as being excise duty due from the liable person and notify him or his representative accordingly.
- (3) Where an amount has been assessed as due from any person under—
- (a) subsection (2) above,
  - (b) section 94 or 96 of the Management Act, <sup>F15</sup> . . .  
 [ section 8, 10 or 11 of the Alcoholic Liquor Duties Act 1979,]
  - <sup>F16</sup>(bb) (c) section 10, 13, [<sup>F17</sup>13AB,] 14, 23 or 24 of the <sup>M9</sup>Hydrocarbon Oil Duties Act 1979,
  - <sup>F18</sup>(d) [ section 8 of the Tobacco Products Duty Act 1979, or
  - (e) section 2 of the Finance (No. 2) Act 1992,]
- and notice has been given accordingly, that amount shall, subject to any appeal under section 16 below, be deemed to be an amount of excise duty due from that person and may be recovered accordingly, unless, or except to the extent that, the assessment has subsequently been withdrawn or reduced.
- (4) No assessment under any of the provisions referred to in subsection (3) above, or under section 61 or 167 of the Management Act, shall be made at any time after whichever is the earlier of the following times, that is to say—
- (a) subject to subsection (6) below, the end of the period of three years beginning with the relevant time; and
  - (b) the end of the period of one year beginning with the day on which evidence of facts, sufficient in the opinion of the Commissioners to justify the making of the assessment, comes to their knowledge.
- (5) Subsection (4) above shall be without prejudice, where further evidence comes to the knowledge of the Commissioners at any time after the making the assessment concerned, to the making of a further assessment within the period applicable by virtue of that subsection in relation to that further assessment.
- (6) Subsection (4) above shall have effect as if the reference in paragraph (a) to three years were a reference to twenty years in any case where the assessment has been postponed or otherwise affected by, or the power to make the assessment arises out of, conduct falling within subsection (5)(a) or (b) of section 12 above (construed in accordance with subsection (7) of that section).]

#### Textual Amendments

- F14** Ss. 12A, 12B inserted (1.6.1997) by 1997 c. 16, s. 50(2), Sch. 6 paras. 1(1), 7; S.I. 1997/1305, **art. 2**
- F15** Word at the end of s. 12A(3)(b) repealed (1.10.1998) by 1998 c. 36, ss. 20, 165, Sch. 2 paras. 8(2), 12, **Sch. 27 Pt. I(5)**, Note; S.I. 1998/2243, **art. 2**
- F16** S. 12A(3)(bb) inserted (1.10.1998) by 1998 c. 36, s. 20, Sch. 2 paras. 8(2), 12; S.I. 1998/2243, **art. 2**
- F17** Word in s. 12A(3)(c) inserted (1.10.1998) by 1998 c. 36, s. 20, Sch. 2 paras. 8(3), 12; S.I. 1998/2243, **art. 2**
- F18** S. 12A(3)(d)(e) inserted (1.10.1998 for certain purposes otherwise *prosp.*) by 1998 c. 36, s. 20, Sch. 2 paras. 8(3), 12; S.I. 1998/2243, **art. 2**

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### Marginal Citations

M9 1979 c. 5.

## <sup>F19</sup>12B Section 12A: supplementary provisions.

(1) For the purposes of section 12A above and this section, relevant excise duty relief has been given if (and only if)—

- (a) an amount of excise duty which a person is liable to pay has been remitted or payment of an amount of excise duty which a person is liable to pay has been waived;
- (b) an amount of excise duty has been repaid to a person;
- (c) an amount by way of drawback of excise duty has been paid to a person;
- (d) an allowance of excise duty in any amount has been made to a person;
- (e) an amount by way of rebate has been allowed to a person;
- (f) the liability of a person to repay an amount paid by way of drawback of excise duty has been waived;
- (g) an amount has been paid to a person under section 20(3) of the Hydrocarbon Oil Duties Act 1979 (payments in respect of contaminated or accidentally mixed oil); or
- (h) an amount of relief has been allowed to a person by virtue of section 20AA [<sup>F20</sup>or 20AB] of that Act (power to allow reliefs), or in accordance with paragraph 10 of Schedule 3 to that Act (power to make regulations for the purpose of relieving from excise duty oil intended for exportation or shipment as stores);

and the amount of the relief is the amount mentioned in relation to the relief in this subsection.

(2) For the purposes of section 12A above the relevant time is—

- (a) in the case of an assessment under section 61 of the Management Act, the time when the ship or aircraft in question returned to a place within the United Kingdom;
- (b) in the case of an assessment under section 94 of that Act, the time at which the goods in question were warehoused;
- (c) in the case of an assessment under that section as it has effect by virtue of section 95 of that Act, the time when the goods in question were lawfully taken from the warehouse;
- (d) in the case of an assessment under section 96 of that Act, the time when the goods in question were moved by pipe-line or notified as goods to be moved by pipe-line;
- (e) in the case of an assessment under section 167 of that Act—
  - (i) if the assessment relates to unpaid duty, the time when the duty became payable or, if later, the time when the document in question was delivered or the statement in question was made; and
  - (ii) if the assessment relates to an overpayment, the time when the overpayment was made;
- [<sup>F21</sup>(ea) in the case of an assessment under section 8 or 10 of the Alcoholic Liquor Duties Act 1979, the time of delivery from warehouse;
- (eb) in the case of an assessment under section 11 of that Act, the time when the direction was made;]

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- (f) in the case of an assessment under section 10, 13, [<sup>F22</sup>13AB,] 14 or 23 of the <sup>M10</sup>Hydrocarbon Oil Duties Act 1979, the time of the action which gave rise to the power to assess;
  - (g) in the case of an assessment under section 24(4A) or (4B) of that Act, the time when the rebate was allowed or the oil was delivered without payment of duty (as the case may be);
  - [<sup>F23</sup>(ga) in the case of an assessment under section 8 of the Tobacco Products Duty Act 1979, the time when the Commissioners are satisfied of a failure to prove as mentioned in subsection (2)(a) or (b) of that section;
  - (gb) in the case of an assessment under section 2 of the Finance (No. 2) Act 1992, the time when the sums were paid or credited in respect of the drawback;]
  - (h) in the case of an assessment under section 12A(2) above, the time when the relevant excise duty relief in question was given.
- (3) In section 12A above “the liable person” means—
- (a) in the case of excise duty which has been remitted or repaid under section 130 of the Management Act on the basis that goods were lost or destroyed while in a warehouse, the proprietor of the goods or the occupier of the warehouse;
  - (b) in the case of a rebate which has been allowed on any oil under section 11 of the Hydrocarbon Oil Duties Act 1979, the person to whom the rebate was allowed or the occupier of any warehouse from which the oil was delivered for home use;
  - (c) in the case of a rebate allowed on any petrol under section 13A of that Act, the person to whom the rebate was allowed or the occupier of any warehouse from which the petrol was delivered for home use;
  - (d) in any other case, the person mentioned in subsection (1) above to whom the relief in question was given.
- (4) In section 12A above—
- “excepted relief” means any relief which is given by the making of a repayment on a claim made under section 137A of the Management Act;
- “representative”, in relation to any person from whom the Commissioners assess an amount as being excise duty due, means his personal representative, trustee in bankruptcy or interim or permanent trustee, any receiver or liquidator appointed in relation to him or any of his property or any other person acting in a representative capacity in relation to him.

#### Textual Amendments

- F19** Ss. 12A, 12B inserted (1.6.1997) by 1997 c. 16, s. 50(2), Sch. 6 paras. 1(1), 7; S.I. 1997/1305, **art. 2**
- F20** Words in s. 12B(1)(h) inserted (11.5.2001) by 2001 c. 9, s. 3(4)
- F21** S. 12B(2)(ea)(eb) inserted (1.10.1998) by 1998 c. 36, s. 20, Sch. 2 paras. 9(2), 12; S.I. 1998/2243, **art. 2**
- F22** Word in s. 12B(2)(f) inserted (1.10.1998) by 1998 c. 36, s. 20, Sch. 2 paras. 9(3), 12; S.I. 1998/2243, **art. 2**
- F23** S. 12B(2)(ga)(gb) inserted (1.10.1998 for certain purposes otherwise *prosp.*) by 1998 c. 36, s. 20, Sch. 2 paras. 9(4), 12; S.I. 1998/2243, **art. 2**

#### Marginal Citations

- M10** 1979 c. 5.

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### 13 Assessments to penalties.

- (1) Where any person is liable to a penalty under this Chapter, the Commissioners may assess the amount due by way of penalty and notify that person, or his representative, accordingly.
- (2) An assessment under this section may be combined with an assessment under section 12 above, but any notification for the purposes of any such combined assessment shall separately identify any amount assessed by way of a penalty.
- (3) In the case of any amount due from any person by way of a penalty under section 9 above for conduct consisting in a contravention which attracts daily penalties—
  - (a) a notification of an assessment under this section shall specify a date, being a date no later than the date of the notification, to which the penalty as assessed is to be calculated; and
  - (b) if the contravention continues after that date, a further assessment, or (subject to this subsection) further assessments, may be made under this section in respect of any continuation of the contravention after that date.
- (4) If—
  - (a) a person is assessed to a penalty in accordance with paragraph (a) of subsection (3) above, and
  - (b) the contravention to which that penalty relates is remedied within such period after the date specified for the purposes of that subsection in the notification of assessment as may for the purposes of this subsection be notified to that person by the Commissioners,  
that contravention shall be treated for the purposes of this Chapter as having been remedied, and accordingly the conduct shall be deemed to have ceased, immediately before that date.
- (5) If an amount has been assessed as due from any person and notified in accordance with this section, then unless, or except to the extent that, the assessment has subsequently been withdrawn or reduced, that amount shall, subject to any appeal under section 16 below, be recoverable as if it were an amount due from that person as an amount of the appropriate duty.
- (6) In subsection (5) above “the appropriate duty” means—
  - (a) the [<sup>F24</sup>relevant duty] (if any) by reference to an amount of which the penalty in question is calculated; or
  - (b) where there is no such duty, the [<sup>F24</sup>relevant duty] the provisions relating to which are contravened by the conduct giving rise to the penalty or, if those provisions relate to more than one duty, such of the duties as appear to the Commissioners and are certified by them to be relevant in the case in question.
- (7) In this section “representative”, in relation to a person liable to a penalty under this Chapter, means his personal representative [<sup>F25</sup>, trustee in bankruptcy or interim or permanent trustee,] any receiver or liquidator appointed in relation to that person or any of his property or any other person acting in a representative capacity in relation to that person.

#### Textual Amendments

**F24** Words in s. 13(6)(a)(b) substituted (1.7.1997) by 1997 c. 16, s. 53(3)(9); S.I. 1997/1432, art. 2



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**F25** Words in s. 13(7) substituted (1.6.1997) by 1997 c. 16, s. 50(2), Sch. 6 paras. 1(3), 7; S.I. 1997/1305, art. 2

#### Commencement Information

**I7** S. 13 wholly in force at 1.1.1995; s. 13 not in force at Royal Assent see s. 19(1); s. 13 in force for certain purposes at 1.11.1994 by S.I. 1994/2679, art. 2, Sch.; s. 13 in force at 1.1.1995 insofar as not already in force by S.I. 1994/2679, art. 3

### *Customs and excise reviews and appeals*

#### 14 Requirement for review of a decision.

- (1) This section applies to the following decisions, not being decisions under this section or section 15 below, that is to say—
- (a) any decision by the Commissioners, in relation to any customs duty or to any agricultural levy of the European Community, as to—
    - (i) whether or not, and at what time, anything is charged in any case with any such duty or levy;
    - (ii) the rate at which any such duty or levy is charged in any case, or the amount charged;
    - (iii) the person liable in any case to pay any amount charged, or the amount of his liability; or
    - (iv) whether or not any person is entitled in any case to relief or to any repayment, remission or drawback of any such duty or levy, or the amount of the relief, repayment, remission or drawback to which any person is entitled;
  - (b) so much of any decision by the Commissioners that a person is liable to any duty of excise, or as to the amount of his liability, as is contained in any assessment under section 12 above;
  - <sup>F26</sup>(ba) any decision by the Commissioners to assess any person to excise duty under section 12A(2) above, section 61, 94, 96 or 167 of the Management Act <sup>F27</sup>, section 8, 10 or 11 of the Alcoholic Liquor Duties Act 1979,] section 10, 13, <sup>F28</sup>13AB,] 14, 23 or 24 of the <sup>M11</sup>Hydrocarbon Oil Duties Act 1979, <sup>F29</sup>section 8 of the Tobacco Products Duty Act 1979, section 2 of the Finance (No. 2) Act 1992,] or as to the amount of duty to which a person is to be assessed under any of those provisions;]
  - <sup>F30</sup>(bb) any decision of the Commissioners on a claim under section 137A of the Customs and Excise Management Act 1979 for repayment of excise duty;]
  - (c) so much of any decision by the Commissioners that a person is liable to any penalty under any of the provisions of this Chapter, or as to the amount of his liability, as is contained in any assessment under section 13 above;
  - <sup>F31</sup>(ca) any decision as to whether or not—
    - (i) an amount due in respect of customs duty or agricultural levy, or
    - (ii) any repayment by the Commissioners of an amount paid by way of customs duty or agricultural levy,
 is to carry interest, or as to the rate at which, or period for which, any such amount is to carry interest;]
  - (d) any decision by the Commissioners or any officer which is of a description specified in Schedule 5 to this Act.



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- (2) Any person who is—
- (a) a person whose liability to pay any relevant duty or penalty is determined by, results from or is or will be affected by any decision to which this section applies,
  - (b) a person in relation to whom, or on whose application, such a decision has been made, or
  - (c) a person on or to whom the conditions, limitations, restrictions, prohibitions or other requirements to which such a decision relates are or are to be imposed or applied,
- may by notice in writing to the Commissioners require them to review that decision.
- (3) The Commissioners shall not be required under this section to review any decision unless the notice requiring the review is given before the end of the period of forty-five days beginning with the day on which written notification of the decision, or of the assessment containing the decision, was first given to the person requiring the review.
- (4) For the purposes of subsection (3) above it shall be the duty of the Commissioners to give written notification of any decision to which this section applies to any person who—
- (a) requests such a notification;
  - (b) has not previously been given written notification of that decision; and
  - (c) if given such a notification, will be entitled to require a review of the decision under this section.
- (5) A person shall be entitled to give a notice under this section requiring a decision to be reviewed for a second or subsequent time only if—
- (a) the grounds on which he requires the further review are that the Commissioners did not, on any previous review, have the opportunity to consider certain facts or other matters; and
  - (b) he does not, on the further review, require the Commissioners to consider any facts or matters which were considered on a previous review except in so far as they are relevant to any issue to which the facts or matters not previously considered relate.
- (6) If it appears to the Commissioners that there is any description of decisions falling to be made for the purposes of any provision of—
- (a) the Community Customs Code,
  - (b) any Community legislation made for the purpose of implementing that Code, or
  - (c) any enactment or subordinate legislation so made,
- which are not decisions to which this section otherwise applies, the Commissioners may by regulations provide for this section to apply to decisions of that description as it applies to the decisions mentioned in subsection (1) above.
- (7) The power to make regulations under subsection (6) above shall be exercisable by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament and shall include power—
- (a) to provide, in relation to any description of decisions to which this section is applied by any such regulations, that section 16(4) below shall have effect as if those decisions were of a description specified in Schedule 5 to this Act; and

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- (b) to make such other incidental, supplemental, consequential and transitional provision as the Commissioners think fit.

#### Textual Amendments

- F26** S. 14(1)(ba) inserted (1.6.1997) by 1997 c. 16, s. 50(2), Sch. 6 paras. 1(2), 7; S.I. 1997/1305, **art. 2**
- F27** Words in s. 14(1)(ba) substituted (1.10.1998) by 1998 c. 36, s. 20, Sch. 2 paras. 10(a), **12**; S.I. 1998/2243, **art. 2**
- F28** Word in s. 14(1)(ba) inserted (1.10.1998) by 1998 c. 36, s. 20, Sch. 2 paras. 10(b), **12**; S.I. 1998/2243, **art. 2**
- F29** Words in s. 14(1)(ba) inserted (1.10.1998 for certain purposes) by 1998 c. 36, s. 20, Sch. 2 paras. 10(c), **12**; S.I. 1998/2243, **art. 2**
- F30** S. 14(1)(bb) inserted (1.5.1995 with effect as mentioned in s. 20(5) of the amending Act) by 1995 c. 4, s. 20(4)(5); S.I. 1995/2892, **art. 2**
- F31** S. 14(1)(ca) substituted for word “and” at the end of s. 14(1)(c) (27.7.1999 with effect as mentioned in s. 130(4) of the amending Act) by 1999 c. 16, s. 130(1)(4)

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

- C9** S. 14 applied (1.6.1995) by S.I. 1995/1046, **reg. 7(3)**
- S. 14 applied (1.5.1995 with effect as mentioned in 1995 c. 4, s. 14(2)) by 1981 c. 63, **Sch. 4 para. 7A(5)** (as inserted by 1995 c. 4, s. 14, **Sch. 3 para. 11(5)**)
- S. 14 applied (1.10.1995) by S.I. 1995/2351, **reg. 2**
- S. 14 applied (*prosp.*) by 1995 c. 4, s. 5(4)(6)
- S. 14 applied (19.3.1997) by 1997 c. 16, ss. 11(7), 13(1), 15, 50(1), Sch. 1 paras. 8(11), 9(5), **Sch. 5 para. 19(1)**
- S. 14 applied (24.3.1997) by S.I. 1997/534, **regs. 3(1), 5(1)**
- S. 14 applied (28.7.2000 with effect as mentioned in 2000 c. 17, **Sch. 2 para. 10(2)**) by 1981 c. 63, **Sch. 4A para. 6(1)** (as inserted by 2000 c. 17, s. 17, **Sch. 2 para. 10**)

#### Commencement Information

- I8** S. 14 wholly in force at 1.1.1995; s. 14 not in force at Royal Assent see s. 19(1); s. 14(1)(2)-(5) (except s. 14(1)(a)) in force for certain purposes at 1.11.1994 by S.I. 1994/2679, **art. 2, Sch.**; s. 14 in force at 1.1.1995 insofar as not already in force by S.I. 1994/2679, **art. 3**

#### Marginal Citations

- M11** 1979 c. 5.

## 15 Review procedure.

- (1) Where the Commissioners are required in accordance with this Chapter to review any decision, it shall be their duty to do so and they may, on that review, either—
- (a) confirm the decision; or
  - (b) withdraw or vary the decision and take such further steps (if any) in consequence of the withdrawal or variation as they may consider appropriate.
- (2) Where—
- (a) it is the duty of the Commissioners in pursuance of a requirement by any person under section 14 above to review any decision; and
  - (b) they do not, within the period of forty-five days beginning with the day on which the review was required, give notice to that person of their determination on the review,

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they shall be assumed for the purposes of this Chapter to have confirmed the decision.

- (3) The Commissioners shall not by virtue of any requirement under this Chapter to review a decision have any power, apart from their power in pursuance of section 8(4) above, to mitigate the amount of any penalty imposed under this Chapter.

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

- C10** S. 15 applied (1.6.1995) by [S.I. 1995/1046, reg. 7\(3\)](#)  
S. 15 applied (1.5.1995 with effect as mentioned in [1995 c. 4, s. 14\(2\)](#)) by [1981 c. 63, Sch. 4 para. 7A\(5\)](#) (as inserted by [1995 c. 4, s. 14, Sch. 3 para. 11\(5\)](#))  
S. 15 applied (*prosp.*) by [1995 c. 4, s. 5\(4\)\(6\)](#)  
S. 15 applied (19.3.1997) by [1997 c. 16, ss. 11\(7\), 13\(1\), 15, 50\(1\), Sch. 1 paras. 8\(11\), 9\(5\), Sch. 5 para. 19\(1\)](#)

**Commencement Information**

- I9** S. 15 wholly in force at 1.1.1995; s. 15 not in force at Royal Assent see s. 19(1); s. 15 in force for certain purposes at 1.11.1994 by [S.I. 1994/2679, art. 2, Sch.](#); s. 15 in force at 1.1.1995 insofar as not already in force by [S.I. 1994/2679, art. 3](#)

## 16 Appeals to a tribunal.

- (1) Subject to the following provisions of this section, an appeal shall lie to an appeal tribunal with respect to any of the following decisions, that is to say—
- any decision by the Commissioners on a review under section 15 above (including a deemed confirmation under subsection (2) of that section); and
  - any decision by the Commissioners on such review of a decision to which section 14 above applies as the Commissioners have agreed to undertake in consequence of a request made after the end of the period mentioned in section 14(3) above.
- (2) An appeal under this section shall not be entertained unless the appellant is the person who required the review in question.
- (3) An appeal which relates to, or to any decision on a review of, any decision falling within any of paragraphs (a) to (c) of section 14(1) above shall not be entertained if any amount is outstanding from the appellant in respect of any liability of the appellant to pay any relevant duty to the Commissioners (including an amount of any such duty which would be so outstanding if the appeal had already been decided in favour of the Commissioners) unless—
- the Commissioners have, on the application of the appellant, issued a certificate stating either—
    - that such security as appears to them to be adequate has been given to them for the payment of that amount; or
    - that, on the grounds of the hardship that would otherwise be suffered by the appellant, they either do not require the giving of security for the payment of that amount or have accepted such lesser security as they consider appropriate;
  - or
  - the tribunal to which the appeal is made decide that the Commissioners should not have refused to issue a certificate under paragraph (a) above and

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are satisfied that such security (if any) as it would have been reasonable for the Commissioners to accept in the circumstances has been given to the Commissioners.

[<sup>F32</sup>(3A) Subsection (3) above shall not apply if the appeal arises out of an assessment under section 8, 10 or 11 of the Alcoholic Liquor Duties Act 1979.]

(4) In relation to any decision as to an ancillary matter, or any decision on the review of such a decision, the powers of an appeal tribunal on an appeal under this section shall be confined to a power, where the tribunal are satisfied that the Commissioners or other person making that decision could not reasonably have arrived at it, to do one or more of the following, that is to say—

- (a) to direct that the decision, so far as it remains in force, is to cease to have effect from such time as the tribunal may direct;
- (b) to require the Commissioners to conduct, in accordance with the directions of the tribunal, a further review of the original decision; and
- (c) in the case of a decision which has already been acted on or taken effect and cannot be remedied by a further review, to declare the decision to have been unreasonable and to give directions to the Commissioners as to the steps to be taken for securing that repetitions of the unreasonableness do not occur when comparable circumstances arise in future.

(5) In relation to other decisions, the powers of an appeal tribunal on an appeal under this section shall also include power to quash or vary any decision and power to substitute their own decision for any decision quashed on appeal.

(6) On an appeal under this section the burden of proof as to—

- (a) the matters mentioned in subsection (1)(a) and (b) of section 8 above,
- (b) the question whether any person has acted knowingly in using any substance or liquor in contravention of section 114(2) of the Management Act, and
- (c) the question whether any person had such knowledge or reasonable cause for belief as is required for liability to a penalty to arise under section 22(1) or 23(1) of the <sup>M12</sup>Hydrocarbon Oil Duties Act 1979 (use of fuel substitute or road fuel gas on which duty not paid),

shall lie upon the Commissioners; but it shall otherwise be for the appellant to show that the grounds on which any such appeal is brought have been established.

(7) An appeal tribunal shall not, by virtue of anything contained in this section, have any power, apart from their power in pursuance of section 8(4) above, to mitigate the amount of any penalty imposed under this Chapter.

(8) [<sup>F33</sup>Subject to subsection (9) below] references in this section to a decision as to an ancillary matter are references to any decision of a description specified in Schedule 5 to this Act which is not comprised in a decision falling within section 14(1)(a) to (c) above.

[<sup>F34</sup>(9) References in this section to a decision as to an ancillary matter do not include a reference to a decision of a description specified in paragraph 9(e) of Schedule 5 to this Act.

(10) Nothing in this section shall be taken to confer on an appeal tribunal any power to vary an amount of interest specified in an assessment under paragraph 11A of Schedule 6 to this Act except in so far as it is necessary to reduce it to the amount which is appropriate under paragraph 7 of that Schedule.]

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#### Textual Amendments

- F32** S. 16(3A) inserted (1.10.1998) by 1998 c. 36, s. 20, Sch. 2 paras. 11, 12; S.I. 1998/2243, art. 2  
**F33** Words in s. 16(8) inserted (1.5.1995) by 1995 c. 4, s. 16(3)(4)  
**F34** S. 16(9)(10) inserted (1.5.1995) by 1995 c. 4, s. 16(3)(4)

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

- C11** S. 16 applied (1.6.1995) by S.I. 1995/1046, reg. 7(3)  
S. 16 applied (1.5.1995 with effect as mentioned in 1995 c. 4, s. 14(2)) by 1981 c. 63, Sch. 4 para. 7A(5) (as inserted by 1995 c. 4, s. 14, Sch. 3 para. 11(5))  
S. 16 applied (*prosp.*) by 1995 c. 4, s. 5(4)(6)  
S. 16 applied (19.3.1997) by 1997 c. 16, ss. 11(7), 13(1), 15, 50(1), Sch. 1 paras. 8(11), 9(5), Sch. 5 para. 19(1)  
**C12** S. 16(4) modified (1.10.1995) by S.I. 1995/2351, reg. 3  
S. 16(4) modified (24.3.1997) by S.I. 1997/534, regs. 4, 6

#### Commencement Information

- I10** S. 16 wholly in force at 1.1.1995; s. 16 not in force at Royal Assent see s. 19(1); s. 16 (except s. 16(6)(a)(b)) in force for certain purposes at 1.11.1994 by S.I. 1994/2679, art. 2, Sch.; s. 16 in force at 1.1.1995 insofar as not already in force by S.I. 1994/2679, art. 3

#### Marginal Citations

- M12** 1979 c. 5.

### Supplemental provisions

## 17 Interpretation.

- (1) Subject to the following provisions of this section, expressions used in this Chapter and in the Management Act have the same meanings in this Chapter as in that Act.
- (2) In this Chapter—
  - “appeal tribunal” shall be construed in accordance with section 7(3) above;
  - “conduct” includes any act, omission or statement;
  - “contravention” includes a failure to comply, and cognate expressions shall be construed accordingly;
  - “the Community Customs Code” means the Regulation of the Council of the European Communities dated 12 October 1992 (EEC) No. 2913/92 for establishing the Community Customs Code;
  - “the Management Act” means the <sup>M13</sup>Customs and Excise Management Act 1979;
  - “relevant duty” means any Community customs duty or agricultural levy of the European Community or any duty of excise; and
  - “subordinate legislation” has the same meaning as in the <sup>M14</sup>Interpretation Act 1978.
- (3) For the purposes of this Chapter a contravention consisting in a failure to do something at or before a particular time shall be taken to continue after that time until the thing is done, and references in this Chapter to the remedying of such a contravention shall be construed accordingly.

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- (4) References in this Chapter to a duty of excise do not include references to [<sup>F35</sup>vehicle] excise duty.

#### Textual Amendments

**F35** Word in s. 17(4) substituted (1.9.1994 subject to transitional provisions in Sch. 4 of the amending Act) by 1994 c. 22, ss. 63, 66(1), Sch. 3 para. 32 (with s. 57(4))

#### Commencement Information

**I11** S. 17 wholly in force at 1.1.1995; s. 17 not in force at Royal Assent see s. 19(1); s. 17 in force for certain purposes at 1.11.1994 by S.I. 1994/2679, art. 2, Sch.; s. 17 in force at 1.1.1995 insofar as not already in force by S.I. 1994/2679, art. 3

#### Marginal Citations

**M13** 1979 c. 2.

**M14** 1978 c. 30.

## 18 Consequential modifications of enactments.

- (1) Subject to subsection (2) below, references in the Management Act to a penalty shall not include references to a penalty under this Chapter.
- (2) Section 117 of the Management Act (execution and distress against revenue traders) shall have effect—
- (a) as if any amount assessed as due from any person by way of a penalty under this Chapter<sup>F36</sup> . . . were an amount of excise duty payable by that person;<sup>F37</sup> . . .
  - <sup>F37</sup>(b) . . . . .
- (3) Section 127 of the Management Act (determination of disputes as to duties on imported goods) shall cease to have effect;<sup>F38</sup> . . .
- <sup>F39</sup>(4) . . . . .
- (5) In section 29A(1)(d) of that Act of 1981 (certificate to be evidence of certain matters), for the words “or estimate made in pursuance of this Act” there shall be substituted “made in pursuance of this Act or in any assessment made under section 12 of the Finance Act 1994”.
- (6) In section 35(1)(c) of the<sup>M15</sup> Finance Act 1993 (certificate to be evidence of certain matters), for the words “in an estimate made under section 116A of the Customs and Excise Management Act 1979” there shall be substituted “in any assessment made under section 12 of the Finance Act 1994”.
- (7) In section 827 of the Taxes Act 1988 (VAT penalties etc.), after subsection (1) there shall be inserted the following subsection—
- “(1A) Where a person is liable to make a payment by way of a penalty under any of sections 8 to 11 of the Finance Act 1994 (penalties relating to excise), that payment shall not be allowed as a deduction in computing any income, profits or losses for any tax purposes.”
- (8) Subsections (1) [<sup>F40</sup>and (2)] above shall be without prejudice to section 13(5) above; and subsection (7) above shall have effect in relation to any chargeable period ending

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after the coming into force of the provision which provides for the imposition of the penalty in question.

#### Textual Amendments

- F36** Words in s. 18(2)(a) repealed (1.7.1997) by 1997 c. 16, s. 113, **Sch. 18 Pt. V(2)**, Note; S.I. 1997/1433, **art. 2**
- F37** S. 18(2)(b) and the preceding word “and” repealed (1.7.1997) by 1997 c. 16, s. 113, **Sch. 18 Pt. V(2)**, Note; S.I. 1997/1433, **art. 2**
- F38** Words in s. 18(3) repealed (1.9.1994 with effect as mentioned in s. 101(1) of the amending Act) by 1994 c. 23, s. 100(2), **Sch. 15**
- F39** S. 18(4) repealed (1.7.1997) by 1997 c. 16, s. 113, **Sch. 18 Pt. V(2)**, Note; S.I. 1997/1433, **art. 2**
- F40** Words in s. 18(8) substituted (1.7.1997) by 1997 c. 16, s. 53(4)(9); S.I. 1997/1432, **art. 2**

#### Commencement Information

- I12** S. 18 wholly in force at 1.1.1995; s. 18 not in force at Royal Assent see s. 19(1); s. 18(1)(2)(7)(8) in force for certain purposes at 1.11.1994 by S.I. 1994/2679, **art. 2**, **Sch.**; s. 18 in force at 1.1.1995 insofar as not already in force by S.I. 1994/2679, **art. 3**

#### Marginal Citations

- M15** 1993 c. 34.

## 19 Commencement of Chapter.

- (1) Subject to section 18(8) above, this Chapter shall come into force on such day as the Commissioners may by order made by statutory instrument appoint, and different days may be appointed under this subsection for different provisions and for different purposes.
- (2) An order under this section may make such transitional provision and savings as appear to the Commissioners to be appropriate in connection with the bringing into force by such an order of any provision of this Chapter.
- (3) Nothing in any provision of this Chapter shall, in respect of conduct occurring before the coming into force of that provision, impose or affect any liability to any civil or criminal penalty or any liability of goods to forfeiture.

#### Subordinate Legislation Made

- P1** S. 19 power partly exercised: 1.7.1994 appointed for specified provisions by S.I. 1994/1690, **art. 2**  
S. 19 power partly exercised: 31.8.1994 appointed for specified provision by S.I. 1994/2143, **art. 2**  
S. 19 power partly exercised: different dates appointed for specified provisions by S.I. 1994/2679, **arts. 2, 3**

#### Commencement Information

- I13** S. 19 wholly in force at 1.1.1995; s. 19 not in force at Royal Assent see s. 19(1); s. 19 in force at 1.1.1995 by S.I. 1994/2679, **art. 3**

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## CHAPTER III

### CUSTOMS: ENFORCEMENT POWERS

#### 20 Interpretation, etc.

- (1) This Chapter applies to any person carrying on a trade or business which consists of or includes any of the following activities—
  - (a) importing or exporting any goods of a class or description subject to a duty of customs (whether or not in fact chargeable with that duty);
  - (b) producing, manufacturing or applying a process to them;
  - (c) buying, selling or dealing in them;
  - (d) handling or storing them;
  - (e) financing or facilitating any activity mentioned in paragraphs (a) to (d) above.
- (2) In subsection (1) above “duty of customs” includes any agricultural levy of the European Community.
- (3) In this Chapter—
  - (a) “customs goods” means any goods mentioned in paragraph (a) of subsection (1) above; and
  - (b) any reference to the business of a person to whom this Chapter applies is a reference to the trade or business carried on by him as mentioned in that subsection.
- (4) This Chapter shall have effect and be construed as if it were contained in the <sup>M16</sup>Customs and Excise Management Act 1979.
- (5) In consequence of the provision made by sections 21 to 27 below, any power under—
  - (a) section 75A, 75B or 75C of the Customs and Excise Management Act 1979 to require a person importing or exporting goods to keep or preserve records, or
  - (b) section 77A, 77B or 77C of that Act to require a person to furnish information or produce documents relating to imported or exported goods,
 shall cease to be exercisable in relation to a person to the extent that the goods in question are customs goods.

#### Marginal Citations

M16 1979 c. 2.

#### 21 Requirements about keeping records.

- (1) The Commissioners may by regulations require any person to whom this Chapter applies—
  - (a) to keep such records as may be prescribed in the regulations; and
  - (b) to preserve those records—
    - (i) for such period not exceeding four years as may be prescribed in the regulations, or
    - (ii) for such lesser period as the Commissioners may require.
- (2) The Commissioners may also require any person mentioned in subsection (3) below—



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- (a) to keep such records as they may specify; and
  - (b) to preserve those records for such period not exceeding four years as they may require.
- (3) The person referred to is any person who—
- (a) is not carrying on a trade or business which consists of or includes the importation or exportation of customs goods, but
  - (b) is concerned in some other capacity in such importation or exportation.
- (4) A duty imposed under subsection (1)(b) or (2)(b) above to preserve records may be discharged by the preservation of the information contained in them by such means as the Commissioners may approve.
- (5) On giving approval under subsection (4) above, the Commissioners may impose such reasonable requirements as appear to them necessary for securing that the information will be as readily available to them as if the records themselves had been preserved.
- (6) Regulations under this section may—
- (a) make different provision for different cases; and
  - (b) be framed by reference to such records as may be specified in any notice published by the Commissioners in pursuance of the regulations and not withdrawn by a further notice.
- (7) Any person who fails to comply with a requirement imposed by virtue of this section shall be liable on summary conviction to a penalty not exceeding level 3 on the standard scale.

## 22 Records and rules of evidence.

- (1) Where any information is preserved by approved means as mentioned in section 21(4) above, a copy of any document in which it is contained shall, subject to subsection (2) below, be admissible in evidence in any proceedings, whether civil or criminal, to the same extent as the records themselves.
- (2) A statement contained in a document produced by a computer shall not by virtue of subsection (1) above be admissible in evidence—
- <sup>F41</sup>(a) .....
  - (b) in criminal proceedings in England and Wales, except in accordance with [<sup>F42</sup>sections 69 and 70 of the <sup>M17</sup>Police and Criminal Evidence Act 1984 and] Part II of the <sup>M18</sup>Criminal Justice Act 1988;
  - (c) in civil proceedings in Scotland, except in accordance with sections 5 and 6 of the <sup>M19</sup>Civil Evidence (Scotland) Act 1988;
  - (d) in criminal proceedings in Scotland, except in accordance with [<sup>F43</sup>Schedule 8 to the Criminal Procedure (Scotland) Act 1995];
  - <sup>F44</sup>(e) .....
  - (f) in criminal proceedings in Northern Ireland, except in accordance with Article 68 of the <sup>M20</sup>Police and Criminal Evidence (Northern Ireland) Order 1989 and Part II of the <sup>M21</sup>Criminal Justice (Evidence, Etc.) (Northern Ireland) Order 1988.

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#### Textual Amendments

- F41** S. 22(2)(a) repealed (31.1.1997) by 1995 c. 38, s. 15(2), **Sch. 2**; S.I. 1996/3217, **art. 2**
- F42** Words in s. 22(2)(b) repealed (E.W.) (14.4.2000) by 1999 c. 23, ss. 67(3), 68(3)(4), **Sch. 6** (with **Sch. 7** paras. 3(3), 5(2)); S.I. 2000/1034, **art. 2, Sch.**
- F43** Words in s. 22(2) substituted (1.4.1996) by 1995 c. 40, s. 5, **Sch. 4 para. 89(2)**
- F44** S. 22(2)(e) repealed (6.9.1999) by S.I. 1997/2983 (N.I. 21), arts. 1(2), 3(2), **Sch. 2**; S.R. 1999/339, **art. 2**

#### Marginal Citations

- M17** 1984 c. 60.  
**M18** 1988 c. 33.  
**M19** 1988 c. 32.  
**M20** S.I. 1989/1341 (N.I. 12).  
**M21** S.I. 1988/1847 (N.I. 17).

### 23 Furnishing of information and production of documents.

- (1) Every person to whom this Chapter applies shall furnish the Commissioners, within such time and in such form as they may reasonably require, with such information relating to his business as they may reasonably specify.
- (2) Every person to whom this Chapter applies shall, if required to do so by an officer, produce or cause to be produced for inspection by the officer—
  - (a) at that person's principal place of business or at such other place as the officer may reasonably require, and
  - (b) at such time as the officer may reasonably require, any documents which relate to his business.
- (3) Where it appears to an officer that any documents which relate to a business of a person to whom this Chapter applies are in the possession of another person, the officer may require that other person, at such time and place as the officer may reasonably require, to produce those documents or cause them to be produced.
- (4) For the purposes of this section, the documents which relate to a business of a person to whom this Chapter applies shall be taken to include—
  - (a) any profit and loss account and balance sheet, and
  - (b) any documents required to be kept by virtue of section 21(1) above.
- (5) Every person mentioned in section 21(3) above shall furnish the Commissioners, within such time and in such form as they may reasonably require, with such information relating to the importation or exportation of customs goods in which he is concerned as they may reasonably specify.
- (6) Every person mentioned in section 21(3) above shall, if required to do so by an officer, produce or cause to be produced for inspection by the officer at such time and place as the officer may reasonably require, any documents which relate to the importation or exportation of customs goods in which he is concerned.
- (7) An officer may take copies of, or make extracts from, any document produced under this section.

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- (8) If it appears to an officer to be necessary to do so, he may, at a reasonable time and for a reasonable period, remove any document produced under this section.
- (9) Where a document is removed under subsection (8) above—
- (a) if the person from whom the document is removed so requests, he shall be given a record of what was removed;
  - (b) if the document is reasonably required for the proper conduct of any business, the person by whom the document was produced or caused to be produced shall be provided as soon as practicable with a copy of the document free of charge;
  - (c) if the document is lost or damaged, the Commissioners shall be liable to compensate the owner of it for any expenses reasonably incurred by him in replacing or repairing it.
- (10) If a person claims a lien on any document produced by him under subsection (3) or (6) above—
- (a) the production of the document shall be without prejudice to the lien; and
  - (b) the removal of the document under subsection (8) above shall not be regarded as breaking the lien.
- (11) Any person who fails to comply with a requirement imposed under this section shall be liable on summary conviction to a penalty not exceeding level 3 on the standard scale.

## 24 Power of entry.

Where an officer has reasonable cause to believe that—

- (a) any premises are used in connection with a business of a person to whom this Chapter applies, and
- (b) any customs goods are on those premises,

he may at any reasonable time enter and inspect those premises and inspect any goods found on them.

## 25 Order for production of documents.

- (1) Where, on an application by an officer, a justice is satisfied that there are reasonable grounds for believing—
- (a) that an offence in connection with a duty of customs is being, has been or is about to be committed, and
  - (b) that any information or documents which may be required as evidence for the purpose of any proceedings in respect of such an offence is in the possession of any person,
- he may make an order under this section.
- (2) An order under this section is an order that the person who appears to the justice to be in possession of the information or documents to which the application relates shall—
- (a) furnish an officer with the information or produce the document,
  - (b) permit an officer to take copies of or make extracts of any document produced, and
  - (c) permit an officer to remove any document which he reasonably considers necessary,

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not later than the end of the period of seven days beginning with the date of the order or the end of such longer period as the order may specify.

- (3) In this section “justice” means a justice of the peace or, in relation to Scotland, a justice within the meaning of [F45 section 308 of the Criminal Procedure (Scotland) Act 1995].

#### Textual Amendments

**F45** Words in s. 25(3) substituted (1.4.1996) by 1995 c. 40, s. 5, Sch. 4 para. 89(3)

## 26 Procedure when documents are removed.

- (1) An officer who removes any document in the exercise of a power conferred under section 25 above shall, if so requested by a person showing himself—
- (a) to be the occupier of premises from which it was removed, or
  - (b) to have had custody or control of it immediately before the removal,
- provide that person with a record of what he removed.
- (2) The officer shall provide the record within a reasonable time from the making of the request for it.
- (3) Subject to subsection (7) below, if a request for permission to be granted access to any document which—
- (a) has been removed by an officer, and
  - (b) is retained by the Commissioners for the purposes of investigating an offence,
- is made to the officer in charge of the investigation by a person who had custody or control of the document immediately before it was so removed or by someone acting on behalf of such a person, the officer shall allow the person who made the request access to it under the supervision of an officer.
- (4) Subject to subsection (7) below, if a request for a photograph or copy of any such document is made to the officer in charge of the investigation by a person who had custody or control of the document immediately before it was so removed, or by someone acting on behalf of such a person, the officer shall—
- (a) allow the person who made the request access to it under the supervision of an officer for the purpose of photographing it or copying it, or
  - (b) photograph or copy it, or cause it to be photographed or copied.
- (5) Where any document is photographed or copied under subsection (4)(b) above, the photograph or copy shall be supplied to the person who made the request.
- (6) The photograph or copy shall be supplied within a reasonable time from the making of the request.
- (7) There is no duty under this section to grant access to, or to supply a photograph or copy of, any document if the officer in charge of the investigation for the purposes of which it was removed has reasonable grounds for believing that to do so would prejudice—
- (a) that investigation;
  - (b) the investigation of an offence other than the offence for the purposes of the investigation of which the document was removed; or
  - (c) any criminal proceedings which may be brought as a result of—
    - (i) the investigation of which he is in charge; or

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- (ii) any such investigation as is mentioned in paragraph (b) above.
- (8) Any reference in this section to the officer in charge of the investigation is a reference to the person whose name and address are endorsed on the order concerned as being the officer in charge of it.

## 27 Failure of officer to comply with requirements under section 26.

- (1) Where, on an application made as mentioned in subsection (2) below, the appropriate judicial authority is satisfied that a person has failed to comply with a requirement imposed by section 26 above, the authority may order that person to comply with the requirement within such time and in such manner as may be specified in the order.
- (2) An application under subsection (1) above shall be made—
- (a) in the case of a failure to comply with any of the requirements imposed by subsections (1) and (2) of section 26 above, by the occupier of the premises from which the document in question was removed or by the person who had custody or control of it immediately before it was so removed, and
  - (b) in any other case, by the person who has such custody or control.
- (3) In this section “the appropriate judicial authority” means—
- (a) in England and Wales, a magistrates’ court;
  - (b) in Scotland, the sheriff; and
  - (c) in Northern Ireland, a court of summary jurisdiction, as defined in Article 2(2)(a) of the <sup>M22</sup>Magistrates’ Courts (Northern Ireland) Order 1981.
- (4) Any application for an order under this section—
- (a) in England and Wales, shall be made by way of complaint; or
  - (b) in Northern Ireland, shall be made by way of civil proceedings upon complaint.
- (5) Sections 21 and 42(2) of the <sup>M23</sup>Interpretation Act (Northern Ireland) 1954 (rules and orders regulating procedure of courts etc and assignment of business to particular courts) shall apply as if any reference in those provisions to any enactment included a reference to this section.

### Marginal Citations

**M22** S.I. 1981/1675 (N.I. 26).

**M23** 1954 c. 33 (N.I.).

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## CHAPTER IV

### AIR PASSENGER DUTY

#### *The duty*

#### **28 Air passenger duty.**

- (1) A duty to be known as air passenger duty shall be charged in accordance with this Chapter on the carriage on a chargeable aircraft of any chargeable passenger.
- (2) Subject to the provisions of this Chapter about accounting and payment, the duty in respect of any carriage on an aircraft of a chargeable passenger—
  - (a) becomes due when the aircraft first takes off on the passenger’s flight, and
  - (b) shall be paid by the operator of the aircraft.
- (3) Subject to section 29 below, every aircraft designed or adapted to carry persons in addition to the flight crew is a chargeable aircraft for the purposes of this Chapter.
- (4) Subject to sections 31 and 32 below, every passenger on an aircraft is a chargeable passenger for the purposes of this Chapter if his flight begins at an airport in the United Kingdom.
- (5) In this Chapter, “flight”, in relation to any person, means his carriage on an aircraft; and for the purposes of this Chapter, a person’s flight is to be treated as beginning when he first boards the aircraft and ending when he finally disembarks from the aircraft.

#### **29 Chargeable aircraft.**

- (1) Where—
  - (a) the authorised take-off weight in respect of an aircraft is less than ten tonnes, or
  - (b) an aircraft is not authorised to seat twenty or more persons (excluding members of the flight crew and cabin attendants),
 the aircraft is not a chargeable aircraft for the purposes of this Chapter.
- (2) In this section “take-off weight”, in relation to an aircraft, means the total weight of the aircraft and its contents when taking off; and for the purposes of this section the authorised take-off weight of an aircraft is less than ten tonnes if—
  - (a) there is a certificate of airworthiness in force in respect of the aircraft showing that the maximum authorised take-off weight (assuming the most favourable circumstances for take-off) is less than ten tonnes, or
  - (b) the Commissioners are satisfied that the aircraft is not designed or adapted to take off when its take-off weight is ten tonnes or more (assuming the most favourable circumstances for take-off) or the aircraft belongs to a class or description of aircraft in respect of which the Commissioners are so satisfied.
- (3) For the purposes of this section an aircraft is not authorised as mentioned in subsection (1)(b) above if—
  - (a) there is a certificate of airworthiness in force in respect of the aircraft showing that the maximum number of persons who may be seated on the aircraft (excluding members of the flight crew and cabin attendants) is less than twenty, or

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- (b) the Commissioners are satisfied that the aircraft is not designed or adapted to seat twenty or more persons (excluding members of the flight crew and cabin attendants) or the aircraft belongs to a class or description of aircraft in respect of which the Commissioners are so satisfied.

- (4) In this section “certificate of airworthiness” has the same meaning as in the Air Navigation Order.

### 30 The rate of duty.

- (1) Air passenger duty shall be charged on the carriage of each chargeable passenger at the rate [<sup>F46</sup>determined in accordance with subsections (2) to (4) below.]

- [<sup>F47</sup>(2) [<sup>F48</sup>If the place where the passenger’s journey ends] is in the area specified in subsection (3) below and in—

- (a) the United Kingdom or another EEA State, or
- (b) any territory for whose external relations the United Kingdom or another member State is responsible.]

[<sup>F49</sup>the rate shall be determined in accordance with subsection (3A) below.]

- (3) The area referred to in subsection (2) above is the area bounded by the meridians of longitude 32° W and 32° E and the parallels of latitude 26° N and 81° N.

- [<sup>F50</sup>(3A) In a case falling within subsection (2) above—

- (a) if the passenger’s agreement for carriage provides for standard class travel in relation to every flight on his journey, the rate is £5;
- (b) in any other case, the rate is £10.]

- [<sup>F51</sup>(4) In a case not falling within subsection (2) above—

- (a) if the passenger’s agreement for carriage provides for standard class travel in relation to every flight on his journey, the rate is £20;
- (b) in any other case, the rate is £40.]

- (5) Subject to subsection (6) below, the journey of a passenger whose agreement for carriage is evidenced by a ticket ends for the purposes of this section at his final place of destination.

- (6) Where in the case of such a passenger—

- (a) his journey includes two or more flights, and
  - (b) any of those flights is not followed by a connected flight,
- his journey ends for those purposes where the first flight not followed by a connected flight ends.

- (7) The journey of any passenger whose agreement for carriage is not evidenced by a ticket ends for those purposes where his flight ends.

- (8) For the purposes of this Chapter, successive flights are connected if (and only if) they are treated under an order as connected.

- [<sup>F52</sup>(9) In this section “EEA State” means a State which is a Contracting Party to the EEA Agreement but until the EEA Agreement comes into force in relation to Liechtenstein does not include the State of Liechtenstein; and “EEA Agreement” here means the Agreement on the European Economic Area signed at Oporto on 2nd May 1992 as adjusted by the Protocol signed at Brussels on 17th March 1993.]

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- [<sup>F53</sup>(10) In this section “standard class travel”, in relation to carriage on an aircraft, means—
- (a) in the case of an aircraft on which only one class of travel is available, that class of travel;
  - (b) in any other case, the lowest class of travel available on the aircraft.]

#### Textual Amendments

- F46** Words in s. 30(1) substituted (28.7.2000 with application as mentioned in s. 18(8) of the amending Act) by 2000 c. 17, s. 18(2)
- F47** S. 30(2) substituted (*retrospectively*) by 1995 c. 4, s. 15(1)(2)
- F48** Words in s. 30(2) substituted (28.7.2000 with application as mentioned in s. 18(8) of the amending Act) by 2000 c. 17, s. 18(3)(a)
- F49** Words in s. 30(2) added (28.7.2000 with application as mentioned in s. 18(8) of the amending Act) by 2000 c. 17, s. 18(3)(b)
- F50** S. 30(3A) inserted (28.7.2000 with application as mentioned in s. 18(8) of the amending Act) by 2000 c. 17, s. 18(4)
- F51** S. 30(4) substituted (28.7.2000 with application as mentioned in s. 18(8) of the amending Act) by 2000 c. 17, s. 18(5)
- F52** S. 30(9) inserted (*retrospectively*) by 1995 c. 4, s. 15(1)(3)
- F53** S. 30(10) added (with application as mentioned in s. 18(8) of the amending Act) by 2000 c. 17, s. 18(6)

### 31 Passengers: exceptions.

<sup>F54</sup>(1) .....

<sup>F54</sup>(2) .....

- (3) A passenger whose agreement for carriage is evidenced by a ticket is not a chargeable passenger in relation to a flight which is the second or a subsequent flight on his journey if—

- (a) the prescribed particulars of the flight are shown on the ticket, and
- (b) that flight and the previous flight are connected.

- (4) A child who—

- (a) has not attained the age of two years, and
- (b) is not allocated a separate seat before he first boards the aircraft,

is not a chargeable passenger.

[<sup>F55</sup>(4A) A passenger is not a chargeable passenger in relation to a flight if under his agreement for carriage (whether or not it is evidenced by a ticket)—

- (a) the flight is to depart from and return to the same airport, and
- (b) the duration of the flight (excluding any period during which the aircraft’s doors are open for boarding or disembarkation) is not to exceed 60 minutes.]

[<sup>F56</sup>(4B) A passenger is not a chargeable passenger in relation to a flight if under his agreement for carriage (whether or not it is evidenced by a ticket) the flight is to depart from an airport which is in a region of the United Kingdom designated by order.

- (4C) An order may be made for the purposes of subsection (4B) above in respect of any region which has a population density of not more than 12.5 persons per square kilometre.



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(4D) In subsections (4B) and (4C) above, references to a region are references to an area which is determined by the Treasury to constitute a region for the purposes of those subsections.]

- (5) A passenger not carried for reward is not a chargeable passenger if he is carried—
- (a) in pursuance of any requirement imposed under any enactment, or
  - (b) for the purpose only of inspecting matters relating to the aircraft or the flight crew.

<sup>F54</sup>(6) .....

**Textual Amendments**

**F54** S. 31(1)(2)(6) repealed (28.7.2000 with application as mentioned in s. 19(6) of the repealing Act) by 2000 c. 17, ss. 19(2)(4), 156, **Sch. 40 Pt. I(4)**

**F55** S. 31(4A) inserted (29.4.1996) by 1996 c. 8, s. 13(1)

**F56** S. 31(4B)-(4D) inserted (28.7.2000 with application as mentioned in s. 19(6) of the amending Act) by 2000 c. 17, s. 19(3)

**32 Change of circumstances after ticket issued etc.**

(1) [<sup>F57</sup>Subsections (2) and (3) below apply] in the case of a person whose agreement for carriage is evidenced by a ticket.

(2) Where—

- (a) at the time the ticket is issued or, if it is altered, at the time it is last altered, he would not (assuming there is no change of circumstances) be a chargeable passenger in relation to any flight in the course of his journey, and
- (b) by reason only of a change of circumstances not attributable to any act or default of his, he arrives at or departs from an airport in the course of that journey on a flight the prescribed particulars of which were not shown on his ticket at that time,

he shall not by reason of the change of circumstances be treated as a chargeable passenger in relation to that flight.

(3) Where—

- (a) at the time the ticket is issued or, if it is altered, at the time it is last altered, he would (assuming there is no change of circumstances) be a chargeable passenger in relation to one or more flights (“the proposed chargeable flights”) in the course of his journey,
- (b) by reason only of a change of circumstances not attributable to any act or default of his, he arrives at or departs from an airport in the course of that journey on a flight the prescribed particulars of which were not shown on his ticket at that time, and
- (c) but for this subsection he would by reason of the change be a chargeable passenger in relation to a number of flights exceeding the number of the proposed chargeable flights,

he shall not by reason of the change of circumstances be treated as a chargeable passenger in relation to that flight.

[<sup>F58</sup>(4) Where—

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- (a) at the time a passenger's flight begins, by virtue of section 31(4A) above he would not (assuming there is no change of circumstances) be a chargeable passenger in relation to the flight, and
- (b) by reason only of a change of circumstances not attributable to any act or default of his, the flight does not return to the airport from which it departed or exceeds 60 minutes in duration (excluding any period during which the aircraft's doors are open for boarding or disembarkation),

he shall not by reason of the change of circumstances be treated as a chargeable passenger in relation to that flight.]

#### Textual Amendments

**F57** Words in s. 32(1) substituted (29.4.1996) by 1996 c. 8, s. 13(2)(a)

**F58** S. 32(4) added (29.4.1996) by 1996 c. 8, s. 13(2)(b)

#### *Persons liable for the duty*

### 33 Registration of aircraft operators.

- (1) The Commissioners shall under this section keep a register of aircraft operators.
- (2) The operator of a chargeable aircraft becomes liable to be registered under this section if the aircraft is used for the carriage of any chargeable passengers.
- (3) A person who has become liable to be registered under this section ceases to be so liable if the Commissioners are satisfied at any time—
  - (a) that he no longer operates any chargeable aircraft, or
  - (b) that no chargeable aircraft which he operates will be used for the carriage of chargeable passengers.
- (4) A person who is not registered and has not given notice under this subsection shall, if he becomes liable to be registered at any time, give written notice of that fact to the Commissioners not later than the end of the prescribed period beginning with that time.
- (5) Notice under subsection (4) above shall be in such form, be given in such manner and contain such information as the Commissioners may direct.
- (6) If a person who is required to give notice under subsection (4) above fails to do so, his failure shall attract a penalty under section 9 above which, if any amount of duty is then due from him and unpaid, shall be calculated by reference to that amount.
- (7) Regulations may make provision as to the information to be included in, and the correction of, the register kept under this section.
- (8) In particular, the regulations may provide—
  - (a) for the inclusion in the register of persons who have not given notice under this section but appear to the Commissioners to be liable to be registered,
  - (b) for persons who are liable to be registered—
    - (i) not to be included in, or
    - (ii) to be removed from,
 the register in prescribed circumstances,

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- (c) for the removal from the register of persons who have ceased to be so liable, and
- (d) for the time from which an entry in the register is to be effective (which may be earlier than the time when the entry is first made in the register).

### 34 Fiscal representatives.

- (1) An aircraft operator who—
  - (a) is or is liable to be registered, and
  - (b) does not meet the requirements of subsection (3) below, is required to have a fiscal representative.
- (2) In this Chapter “fiscal representative”, in relation to an aircraft operator, means a person who meets those requirements and stands appointed by the operator for the purposes of this section.
- (3) A person meets the requirements of this subsection if—
  - (a) he has any business establishment or other fixed establishment in the United Kingdom, or
  - (b) if he is an individual, he has his usual place of residence in the United Kingdom.
- (4) Where any person is appointed under this section to be the fiscal representative of any aircraft operator (in this section referred to as his “principal”), then, subject to subsection (5) below [<sup>F59</sup>and section 34A], the fiscal representative—
  - (a) shall be entitled to act on his principal’s behalf for any of the purposes of the enactments relating to duty,
  - (b) shall, subject to such provisions as may be made by regulations, secure (where appropriate by acting on his principal’s behalf) his principal’s compliance with and discharge of the obligations and liabilities to which his principal is subject by virtue of those enactments, and
  - (c) shall be personally liable in respect of any failure of his principal to comply with or discharge any such obligation or liability as if the obligations and liabilities imposed on his principal were imposed jointly and severally on the fiscal representative and his principal.
- (5) A fiscal representative shall not be liable by virtue of subsection (4) above himself to be registered under section 33 above, but regulations may—
  - (a) require the names of fiscal representatives to be shown in such manner as may be prescribed against the names of their principals in the register kept under that section, and
  - (b) make it the duty of a fiscal representative, for the purposes of registration, to notify the Commissioners, within such period as may be prescribed, that his appointment has taken effect or has ceased to have effect.

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#### Textual Amendments

**F59** Words in s. 34(4) inserted (31.7.1998) by 1998 c. 36, s. 15(2)

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### **[<sup>F60</sup>34A Administrative representatives.**

- (1) Subject to the following provisions of this section, where—
  - (a) the appointment of any person to be the fiscal representative of an aircraft operator contains a statement that the appointment is made for administrative purposes only,
  - (b) the operator has complied with any obligations for the provision of security imposed, in relation to appointments containing such statements, by any general directions given by the Commissioners, and
  - (c) the operator is not for the time being in contravention of any requirement to provide any security that he is required to provide under section 36 below,
 that appointment shall have effect in accordance with subsection (2) below.
- (2) Where the appointment of any person as a fiscal representative has effect in accordance with this subsection section 34(4)(b) and (c) above shall be taken, in the case of that person—
  - (a) not to impose any requirement on the representative to secure the payment of amounts of duty which are or may become due from his principal, and
  - (b) not to make him personally liable either to pay any such amounts or in respect of any failure by his principal to pay them.
- (3) The security that may be required by general directions given by the Commissioners for the purposes of this section is any such security for the payment of amounts of duty which are or may become due from the person providing the security as may be determined in accordance with the directions.
- (4) The power of the Commissioners under section 36 below to require the provision of security shall not include any power to require a fiscal representative of an aircraft operator whose appointment has effect in accordance with subsection (2) above to provide any security for the payment of amounts of duty which are or may become due from his principal.
- (5) In this section references to an amount of duty include references to any penalty or interest that is recoverable as if it were an amount of duty, but only in so far as the penalty or interest is in respect of a failure by an aircraft operator to pay an amount of duty, or to pay such an amount before a certain time.]

#### **Textual Amendments**

**F60** S. 34A inserted (31.7.1998) by 1998 c. 36, s. 15(1)

### **35 Fiscal representatives: supplementary.**

- (1) Regulations may make provision about—
  - (a) the manner in which a person is to be appointed as a fiscal representative, and
  - (b) the circumstances in which a person is to be treated as having ceased to be a fiscal representative.
- (2) If any aircraft operator who is required to have a fiscal representative fails to appoint such a representative before the prescribed time, his failure shall attract a penalty under section 9 above.

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- (3) Any failure of a fiscal representative to give any notice which he is required to give by regulations under section 34(5)(b) above shall attract a penalty under section 9 above.

### **36 Security for payment of duty.**

- (1) The Commissioners may require—
- (a) any operator of an aircraft who is or is liable to be registered, or
  - (b) any fiscal representative,
- to provide such security, or further security, as they may think appropriate for the payment of any duty which is or may become due from the operator.
- (2) Any failure by a person to provide any security which he is required by the Commissioners to provide under subsection (1) above shall attract a penalty under section 9 above.
- (3) For the purposes of this section, a person shall not be treated as having been required to provide security under subsection (1) above unless the Commissioners have either—
- (a) served notice of the requirement on him, or
  - (b) taken all such other steps as appear to them to be reasonable for bringing the requirement to his attention.

### **37 Handling agents.**

- (1) Where any amount of duty becomes payable at any time by the operator of an aircraft and, within the period of ninety days beginning with that time, that amount, or any other amount which becomes payable by him within the period, is not paid, the Commissioners may give notice under this section to any handling agent of his.
- (2) If any operator of an aircraft who is required to have a fiscal representative fails to appoint such a representative before the prescribed time, the Commissioners may give notice under this section to any handling agent of his.
- (3) In this Chapter “handling agent”, in relation to the operator of an aircraft (“the principal”), means any person (other than an individual) who, under an agreement with the principal, makes arrangements for—
- (a) the allocation of seats to passengers on aircraft operated by the principal, or
  - (b) the supervision of the boarding of such aircraft by passengers.
- (4) A notice under this section—
- (a) may be given on the ground referred to in subsection (1) above only if the Commissioners consider it necessary to do so for the protection of the revenue, and
  - (b) may at any time be withdrawn by the Commissioners.
- (5) A notice under this section shall become effective on the date stated in it or, if later, the time when the notice is received by the handling agent and shall continue to be effective until withdrawn.
- (6) If, where a notice given to a handling agent under this section is effective—
- (a) the allocation of seats to passengers on aircraft operated by his principal, or the supervision of the boarding of such aircraft by passengers, is carried out

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in pursuance of arrangements made by him under any agreement with his principal, and

(b) any duty payable in respect of those passengers is not paid, the handling agent shall be liable jointly and severally with his principal for the payment of the duty.

### 38 Accounting for and payment of duty.

- (1) Regulations shall require aircraft operators who are registered or liable to be registered—
  - (a) to keep accounts for the purposes of duty in such form and manner as may be prescribed, and
  - (b) to make returns in respect of duty—
    - (i) by reference to such periods as may be prescribed or as may be allowed by the Commissioners, in relation to a particular operator, in accordance with regulations, and
    - (ii) at such time and in such manner as may be prescribed or specified.
- (2) Any person from whom any duty is due shall pay the duty at such time and in such manner as may be prescribed or specified.
- (3) In this section “specified” means specified in a notice published, and not withdrawn, by the Commissioners.
- (4) Any failure by any person to comply with regulations under this section shall, unless he is complying with the corresponding provisions of such a notice, attract a penalty under section 9 above and, in the case of any failure to keep accounts, daily penalties.

### 39 Schemes for simplifying operation of reliefs etc.

- (1) If in the opinion of the Commissioners it is expedient to do so in the light of difficulties encountered or expected to be encountered by any registered operator in obtaining and recording information about passengers and their journeys, they may in accordance with the provisions of this section prepare a scheme for the registered operator.
  - (2) Any scheme so prepared shall specify the period for which it is to have effect.
- [<sup>F61</sup>(2A) A scheme may be either a standard scheme or an extended scheme.]
- (3) [<sup>F62</sup>A standard scheme] for a registered operator shall relate only to passengers—
    - (a) who are carried on chargeable aircraft operated by that operator,
    - (b) whose flights begin in the United Kingdom, and
    - (c) who are not passengers of a description mentioned in section 31(4) or (5) above;
 and in this section any reference to the relevant passengers of a registered operator is a reference to passengers who fall within this subsection in relation to him.
  - (4) [<sup>F62</sup>A standard scheme] for a registered operator shall provide, in relation to passengers who are relevant passengers of his in the period specified in the scheme, for methods of calculating—
    - (a) how many of those relevant passengers may be treated as passengers who are not chargeable passengers, and

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- (b) how many of them may be treated as passengers on the carriage of whom duty shall be charged
    - [<sup>F63</sup>(i) at the rate mentioned in paragraph (a) of section 30(3A) above, and
    - (ii) at the rate mentioned in paragraph (b) of that provision]
- [<sup>F64</sup>(4A) An extended scheme for a registered operator shall relate to all persons who are carried—
- (a) on chargeable aircraft operated by that operator, and
  - (b) in circumstances where the aircraft take off in the United Kingdom;
- and in this section any reference to persons travelling with a registered operator is a reference to persons who fall within this subsection in relation to him.
- (4B) An extended scheme for a registered operator shall provide, in relation to persons travelling with him in the period specified in the scheme, for methods of calculating—
- (a) how many of them may be treated as persons who are not passengers,
  - (b) how many of them may be treated as passengers who are not chargeable passengers, and
  - (c) how many of them may be treated as passengers on the carriage of whom duty shall be charged—
    - [ at the rate mentioned in paragraph (a) of section 30(3A) above, and
    - <sup>F65</sup>(i)
    - (ii) at the rate mentioned in paragraph (b) of that provision]]
- (5) A calculation provided for by the scheme may be provided by reference to such factors as appear to the Commissioners to be expedient in the circumstances, including in particular information—
- (a) derived from surveys of [<sup>F66</sup>persons] carried on chargeable aircraft operated by the operator for whom the scheme is prepared, or
  - (b) relating to airports and routes used by that operator,
- whether obtained before or during the specified period.
- (6) No scheme prepared in accordance with this section shall be of any effect unless the registered operator for whom it is prepared elects in writing to be bound by it for the specified period.
- (7) If the registered operator makes such an election the scheme shall have effect for the specified period <sup>F67</sup> . . . .
- (8) [<sup>F68</sup>Where a standard scheme has effect for the specified period, this Chapter shall have effect for that period] as if, except in accordance with provision made to the contrary by the scheme (by virtue of subsection (4) above)—
- (a) each of the passengers who are relevant passengers of the registered operator were chargeable passengers, and
  - (b) duty were charged—
    - [<sup>F69</sup>(i) on the carriage of each of those falling within paragraph (a) of section 30(4) above at the rate mentioned in that paragraph, and
    - (ii) on the carriage of each of those falling within paragraph (b) of section 30(4) above at the rate mentioned in that paragraph]
- [<sup>F70</sup>(8A) Where an extended scheme has effect for the specified period, this Chapter shall have effect for that period as if, except in accordance with provision made to the contrary by the scheme (by virtue of subsection (4B) above)—

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- (a) each of the persons travelling with the registered operator were passengers of his,
- (b) each of those passengers were chargeable passengers, and
- (c) duty were charged—

[ on the carriage of each of those falling within paragraph (a) of <sup>F71</sup>(i) section 30(4) above at the rate mentioned in that paragraph, and  
(ii) on the carriage of each of those falling within paragraph (b) of section 30(4) above at the rate mentioned in that paragraph]]

- (9) Regulations may make further provision with respect to schemes under this section, including in particular provision amending this section.

#### Textual Amendments

- F61** S. 39(2A) inserted (1.6.1995) by S.I. 1995/1216, **reg. 2(2)**
- F62** Words in s. 39(3)(4) substituted (1.6.1995) by S.I. 1995/1216, **reg. 2(3)(4)**
- F63** S. 39(4)(b)(i)(ii) substituted for words in s. 39(4)(b) (28.7.2000 with application as mentioned in s. 18(8) of the amending Act) by 2000 c. 17, **s. 18(7)(a)**
- F64** S. 39(4A)(4B) inserted (1.6.1995) by S.I. 1995/1216, **reg. 2(5)**
- F65** S. 39(4B)(c)(i)(ii) substituted for words in s. 39(4B)(c) (28.7.2000 with application as mentioned in s. 18(8) of the amending Act) by 2000 c. 17, **s. 18(7)(b)**
- F66** Word in s. 39(5)(a) substituted (1.6.1995) by S.I. 1995/1216, **reg. 2(6)**
- F67** Words in s. 39(7) omitted (1.6.1995) by virtue of S.I. 1995/1216, **reg. 2(7)**
- F68** Words in s. 39(8) substituted (1.6.1995) by S.I. 1995/1216, **reg. 2(8)**
- F69** S. 39(8)(b)(i)(ii) substituted for words in s. 39(8)(b) (28.7.2000 with application as mentioned in s. 18(8) of the amending Act) by 2000 c. 17, **s. 18(7)(c)**
- F70** S. 39(8A) inserted (1.6.1995) by S.I. 1995/1216, **reg. 2(9)**
- F71** S. 39(8A)(c)(i)(ii) substituted for words in s. 39(8A)(c) (28.7.2000 with application as mentioned in s. 18(8) of the amending Act) by 2000 c. 17, **s. 18(7)(d)**

#### *Administration and enforcement*

#### **40 Administration and enforcement.**

- (1) Air passenger duty shall be a duty of excise and, accordingly, shall be under the care and management of the Commissioners.
- (2) Schedule 6 to this Act (administration and enforcement) shall have effect.

#### **41 Offences.**

- (1) A person who is knowingly concerned—
  - (a) in the fraudulent evasion (by him or another person) of duty, or
  - (b) in taking steps with a view to such fraudulent evasion,
is guilty of an offence.
- (2) A person guilty of an offence under subsection (1) above is liable—
  - (a) on summary conviction, to a penalty of—
    - (i) the statutory maximum, or
    - (ii) if greater, treble the amount of the duty evaded or sought to be evaded,



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- or to imprisonment for a term not exceeding six months, or to both, or
- (b) on conviction on indictment, to a penalty of any amount or to imprisonment for a term not exceeding seven years, or to both.
- (3) A person who in connection with duty—
- (a) makes a statement that he knows to be false in a material particular or recklessly makes a statement that is false in a material particular, or
- (b) with intent to deceive, produces or makes use of a book, account, return or other document that is false in a material particular,
- is guilty of an offence.
- (4) A person guilty of an offence under subsection (3) above is liable—
- (a) on summary conviction, to a penalty of the statutory maximum or to imprisonment for a term not exceeding six months, or to both, or
- (b) on conviction on indictment, to a penalty of any amount or to imprisonment for a term not exceeding two years, or to both.

### *Supplementary*

## **42 Regulations and orders.**

- (1) In this Chapter “regulations” means regulations made by the Commissioners and “order” means an order made by the Treasury.
- (2) Regulations and orders may make different provision for different cases or circumstances and make incidental, supplemental, saving or transitional provision.
- (3) Any power to make regulations or an order is exercisable by statutory instrument.
- (4) No order which appears to the Treasury to extend the circumstances in which passengers are to be treated as chargeable passengers shall be made unless a draft of the order has been laid before and approved by the House of Commons.
- (5) Any other order, and any regulations, shall be subject to annulment in pursuance of a resolution of the House of Commons.

## **43 Interpretation.**

- (1) In this Chapter—
- “accounting period” means any period prescribed or allowed for the purposes of section 38 above,
- “agreement for carriage”, in relation to the carriage of any person, means the agreement or arrangement under which he is carried, whether the carriage is by a single carrier or successive carriers,
- “Air Navigation Order” has the same meaning as in the <sup>M24</sup>Civil Aviation Act 1982,
- “airport” means any aerodrome (within the meaning of that Act),
- “carriage” means carriage wholly or partly by air, and “carried” is to be read accordingly,
- “connected”, in relation to any flights, has the meaning given by section 30(8) above,

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- “document” includes information recorded in any form,  
 “duty” means air passenger duty,  
 “fiscal representative” has the meaning given by section 34(2) above,  
 “flight” has the meaning given by section 28(5) above,  
 “operator”, in relation to any aircraft, means the person having the management of the aircraft for the time being,  
 “passenger”, in relation to any aircraft, means—
- (a) where the operator is an air transport undertaking (within the meaning of the Air Navigation Order), any person carried on the aircraft other than—
- (i) a member of the flight crew,
  - (ii) a cabin attendant, or
  - (iii) a person who is not carried for reward, who is an employee of any aircraft operator and who satisfies such other requirements as may be prescribed, and
- (b) in any other case, any person carried on the aircraft for reward,  
 “prescribed” means prescribed by regulations,  
 “reward”, in relation to the carriage of any person, includes any form of consideration received or to be received wholly or partly in connection with the carriage, irrespective of the person by whom or to whom the consideration has been or is to be given, and  
 “ticket” means a document or documents evidencing an agreement (wherever made) for the carriage of any person.
- (2) <sup>F72</sup> . . . , in this Chapter, in relation to a passenger whose agreement for carriage is evidenced by a ticket—
- “journey” means the journey from his original place of departure to his final place of destination, and  
 “original place of departure” and “final place of destination” mean the original place of departure and the final place of destination indicated on his ticket.

<sup>F73</sup>(3) . . . . .

- (4) Subject to the preceding provisions of this section, expressions used in this Chapter and in the <sup>M25</sup>Customs and Excise Management Act 1979 have the same meaning as in that Act.

#### Textual Amendments

**F72** Words in s. 43(2) repealed (28.7.2000 with effect as mentioned in s. 19(6) of the repealing Act) by 2000 c. 17, ss. 19(5)(a), 156, **Sch. 40 Pt. I(4)**

**F73** S. 43(3) repealed (28.7.2000 with effect as mentioned in s. 19(6) of the repealing Act) by 2000 c. 17, ss. 19(5)(b), 156, **Sch. 40 Pt. I(4)**

#### Marginal Citations

**M24** 1982 c. 16.

**M25** 1979 c. 2.

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#### 44 Commencement.

- (1) This Chapter applies to any carriage of a passenger on an aircraft which begins after 31st October 1994.
- (2) For the purpose of determining whether or not a person is a chargeable passenger in relation to any carriage on an aircraft beginning after that date, the provisions of section 31 above and any order made by virtue of that section shall be treated as having applied to any such carriage of that person which began on or before that date as they would apply to any such carriage of that person beginning after that date.

## PART II

### VALUE ADDED TAX

<sup>F74</sup>45 .....

#### Textual Amendments

**F74** S. 45 repealed (1.9.1994) by 1994 c. 23, ss. 100(2), 101(1), Sch. 15

#### 46 Repayment supplement.

- (1) Section 20 of the Finance Act 1985 (repayment supplement) shall be amended as follows.
- (2) In subsection (1) (supplement of 5 per cent. or £30, whichever is greater) for “£30” there shall be substituted “ £50 ”.
- (3) In subsection (2)(a) (return or claim must be received not later than one month after last day on which it is required) the words “one month after” shall be omitted.
- (4) This section shall apply where the requisite return or claim is received after the expiry of the period of one month beginning with the day after that on which this Act is passed.

<sup>F75</sup>47 .....

#### Textual Amendments

**F75** S. 47 repealed (1.9.1994) by 1994 c. 23, ss. 100(2), 101(1), Sch. 15

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## PART III

### INSURANCE PREMIUM TAX

#### *The basic provisions*

#### **48 Insurance premium tax.**

- (1) A tax, to be known as insurance premium tax, shall be charged in accordance with this Part.
- (2) The tax shall be under the care and management of the Commissioners of Customs and Excise.

#### **49 Charge to tax.**

Tax shall be charged on the receipt of a premium by an insurer if the premium is received—

- (a) under a taxable insurance contract, and
- (b) on or after 1st October 1994.

#### **50 Chargeable amount.**

- (1) Tax shall be charged by reference to the chargeable amount.
- (2) For the purposes of this Part, the chargeable amount is such amount as, with the addition of the tax chargeable, is equal to the amount of the premium.
- (3) [<sup>F76</sup>Subsections (1) and (2)] above shall have effect subject to section 69 below.

#### **Textual Amendments**

**F76** Words in s. 23(3) substituted (19.3.1997 with effect as mentioned in s. 24 of the amending Act) by 1997 c. 16, s. 23(2)

#### **[<sup>F77</sup>51 Rate of tax.**

- (1) Tax shall be charged—
  - (a) at the higher rate, in the case of a premium which is liable to tax at that rate; and
  - (b) at the standard rate, in any other case.
- (2) For the purposes of this Part—
  - (a) the higher rate is 17.5 per cent.; and
  - (b) the standard rate is [<sup>F78</sup>5 per cent.].]

#### **Textual Amendments**

**F77** S. 51 substituted (19.3.1997 with effect as mentioned in s. 24 of the amending Act) by 1997 c. 16, s. 21(1)

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**F78** Words in s. 51(2)(b) substituted (27.7.1999 with effect as mentioned in s. 125(2) of the amending Act) by 1999 c. 16, s. 125(1)

[<sup>F79</sup>**51A Premiums liable to tax at the higher rate.**

- (1) A premium received under a taxable insurance contract by an insurer is liable to tax at the higher rate if it falls within one or more of the paragraphs of Part II of Schedule 6A to this Act.
- (2) Part I of Schedule 6A to this Act shall have effect with respect to the interpretation of that Schedule.
- (3) Provision may be made by order amending Schedule 6A as it has effect for the time being.
- (4) This section is subject to section 69 below.]

**Textual Amendments**

**F79** S. 51A inserted (19.3.1997 with effect as mentioned in s. 24 of the amending Act) by 1997 c. 16, s. 22(1)

**52 Liability to pay tax.**

- (1) Tax shall be payable by the person who is the insurer in relation to the contract under which the premium is received.
- (2) Subsection (1) above shall have effect subject to any regulations made under section 65 below.

[<sup>F80</sup>**52A Certain fees to be treated as premiums under higher rate contracts.**

- (1) This section applies where—
  - (a) at or about the time when a higher rate contract is effected, and
  - (b) in connection with that contract,a fee in respect of an insurance-related service is charged by a taxable intermediary to a person who is or becomes the insured (or one of the insured) under the contract or to a person who acts for or on behalf of such a person.
- (2) Where this section applies—
  - (a) a payment in respect of the fee shall be treated for the purposes of this Part as a premium received under a taxable insurance contract by an insurer, and
  - (b) that premium—
    - (i) shall be treated for the purposes of this Part as so received at the time when the payment is made, and
    - (ii) shall be chargeable to tax at the higher rate.
- (3) Tax charged by virtue of subsection (2) above shall be payable by the taxable intermediary as if he were the insurer under the contract mentioned in paragraph (a) of that subsection.
- (4) For the purposes of this section, a contract of insurance is a “higher rate contract” if—

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- (a) it is a taxable insurance contract; and
  - (b) the whole or any part of a premium received under the contract by the insurer is (apart from this section) liable to tax at the higher rate.
- (5) For the purposes of this Part a “taxable intermediary” is a person falling within subsection (6) [<sup>F81</sup> or (6A)] below who—
- (a) at or about the time when a higher rate contract is effected, and
  - (b) in connection with that contract,
- charges a fee in respect of an insurance-related service to a person who is or becomes the insured (or one of the insured) under the contract or to a person who acts for or on behalf of such a person.
- [ A person falls within this subsection if the higher rate contract mentioned in <sup>F82</sup>(6) subsection (1) above falls within paragraph 2 or 3 of Schedule 6A to this Act (motor cars or motor cycles, or relevant goods) and the person is—
- (a) within the meaning of the paragraph in question, a supplier of motor cars or motor cycles or, as the case may be, of relevant goods; or
  - (b) a person connected with a person falling within paragraph (a) above; or
  - (c) a person who in the course of his business pays—
    - (i) the whole or any part of the premium received under that contract, or
    - (ii) a fee connected with the arranging of that contract,
 to a person falling within paragraph (a) or (b) above.
- (6A) A person falls within this subsection if the higher rate contract mentioned in subsection (1) above falls within paragraph 4 of Schedule 6A to this Act (travel insurance) and the person is—
- (a) the insurer under that contract; or
  - (b) a person through whom that contract is arranged in the course of his business; or
  - (c) a person connected with the insurer under that contract; or
  - (d) a person connected with a person falling within paragraph (b) above; or
  - (e) a person who in the course of his business pays—
    - (i) the whole or any part of the premium received under that contract, or
    - (ii) a fee connected with the arranging of that contract,
 to a person falling within any of paragraphs (a) to (d) above.]

(8) For the purposes of this section, any question whether a person is connected with another shall be determined in accordance with section 839 of the Taxes Act 1988.

(9) In this section—

“insurance-related service” means any service which is related to, or connected with, insurance;

<sup>F83</sup> . . .]

#### Textual Amendments

**F80** s. 52A inserted (19.3.1997 with effect as mentioned in s. 25(2) of the amending Act) by 1997 c. 16, s. 25(1)(2)

**F81** Words in s. 52A(5) inserted (31.7.1998 with effect as mentioned in s. 147(5) of the amending Act) by 1998 c. 36, s. 147(2) (with Sch. 18 para. 6(3))

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- F82** S. 52A(6)(6A) substituted for s. 52A(6)(7) (31.7.1998 with effect as mentioned in s. 147(5) of the amending Act) by 1998 c. 36, s. 147(3) (with Sch. 18 para. 6(3))
- F83** Definition in s. 52A(9) repealed (31.7.1998 with effect as mentioned in s. 147(5) of the repealing Act) by 1998 c. 36, ss. 147(4), 165, Sch. 27 Pt. V(1), Note (with Sch. 18 para. 6(3))

### Administration

#### 53 Registration of insurers.

- (1) A person who—
  - (a) receives, as insurer, premiums in the course of a taxable business, and
  - (b) is not registered,is liable to be registered.

[<sup>F84</sup>(1A) The register kept under this section may contain such information as the Commissioners think is required for the purposes of the care and management of the tax.]

- (2) A person who—
  - (a) at any time forms the intention of receiving, as insurer, premiums in the course of a taxable business, and
  - (b) is not already receiving, as insurer, premiums in the course of another taxable business,

shall notify the Commissioners of those facts.

- (3) A person who at any time—
  - (a) ceases to have the intention of receiving, as insurer, premiums in the course of a taxable business, and
  - (b) has no intention of receiving, as insurer, premiums in the course of another taxable business,

shall notify the Commissioners of those facts.

- (4) Where a person is liable to be registered by virtue of subsection (1) above the Commissioners shall register him with effect from the time when he begins to receive premiums in the course of the business concerned; and it is immaterial whether or not he notifies the Commissioners under subsection (2) above.

- (5) Where a person—
  - (a) notifies the Commissioners under subsection (3) above, [<sup>F85</sup>and]
  - (b) satisfies them of the facts there mentioned, <sup>F86</sup> . . .
  - <sup>F86</sup>(c) . . . . .

the Commissioners shall cancel his registration with effect from the earliest practicable time after he ceases to receive, as insurer, premiums in the course of any taxable business.

- [<sup>F87</sup>(5A) In a case where—
  - (a) the Commissioners are satisfied that a person has ceased to receive, as insurer, premiums in the course of any taxable business, but
  - (b) he has not notified them under subsection (3) above,

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they may cancel his registration with effect from the earliest practicable time after he so ceased.]

- (6) For the purposes of this section regulations may make provision—
- (a) as to the time within which a notification is to be made;
  - (b) as to the circumstances in which premiums are to be taken to be received in the course of a taxable business;
  - (c) as to the form and manner in which any notification is to be made and as to the information to be contained in or provided with it;
  - (d) requiring a person who has made a notification to notify the Commissioners if any information contained in or provided in connection with it is or becomes inaccurate;
  - (e) as to the correction of entries in the register.
- (7) References in this section to receiving premiums are to receiving premiums on or after 1st October 1994.

#### Textual Amendments

- F84** S. 53(1A) inserted (1.5.1995) by 1995 c. 4, s. 34, Sch. 5 para. 3
- F85** Word after s. 53(5)(a) inserted (1.5.1995 with application as mentioned in Sch. 5 para. 2(4) of the amending Act) by 1995 c. 4, s. 34, Sch. 5 para. 2(2)(a)
- F86** S. 53(5)(c) and the word immediately preceding it repealed (1.5.1995 with application as mentioned in Sch. 5 para. 2(4) of the repealing Act) by 1995 c. 4, ss. 34, 162, Sch. 5 para. 2(2)(b), Sch. 29 Pt. VII, Note
- F87** S. 53(5A) inserted (1.5.1995) by 1995 c. 4, s. 34, Sch. 5 para. 2(3)

#### [<sup>F88</sup>53AA] Registration of taxable intermediaries.

- (1) A person who—
  - (a) is a taxable intermediary, and
  - (b) is not registered,
 is liable to be registered.
- (2) The register kept under this section may contain such information as the Commissioners think is required for the purposes of the care and management of the tax.
- (3) A person who—
  - (a) at any time forms the intention of charging taxable intermediary's fees, and
  - (b) is not already charging such fees in the course of another business,
 shall notify the Commissioners of those facts.
- (4) A person who at any time—
  - (a) ceases to have the intention of charging taxable intermediary's fees in the course of his business, and
  - (b) has no intention of charging such fees in the course of another business of his,
 shall notify the Commissioners of those facts.
- (5) Where a person is liable to be registered by virtue of subsection (1) above, the Commissioners shall register him with effect from the time when he begins to charge



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taxable intermediary's fees in the course of the business concerned; and it is immaterial whether or not he notifies the Commissioners under subsection (3) above.

(6) Where a person—

- (a) notifies the Commissioners under subsection (4) above, and
- (b) satisfies them of the facts there mentioned,

the Commissioners shall cancel his registration with effect from the earliest practicable time after he ceases to charge taxable intermediary's fees in the course of any business of his.

(7) In a case where—

- (a) the Commissioners are satisfied that a person has ceased to charge taxable intermediary's fees in the course of any business of his, but
- (b) he has not notified them under subsection (4) above,

they may cancel his registration with effect from the earliest practicable time after he so ceased.

(8) For the purposes of this section regulations may make provision—

- (a) as to the time within which a notification is to be made;
- (b) as to the form and manner in which any notification is to be made and as to the information to be contained in or provided with it;
- (c) requiring a person who has made a notification to notify the Commissioners if any information contained in or provided in connection with it is or becomes inaccurate;
- (d) as to the correction of entries in the register.

(9) In this Part “taxable intermediary's fees” means fees which, to the extent of any payment in respect of them, are chargeable to tax by virtue of section 52A above.]

#### Textual Amendments

**F88** S. 53AA inserted after s. 53 (19.3.1997) by 1997 c. 16, s. 26

#### [<sup>F89</sup>53A Information required to keep register up to date.

(1) Regulations may make provision requiring a registrable person to notify the Commissioners of particulars which—

- (a) are of changes in circumstances relating to the registrable person or any business carried on by him,
- (b) appear to the Commissioners to be required for the purpose of keeping the register kept under section 53 [<sup>F90</sup>or 53AA] above up to date, and
- (c) are of a prescribed description.

(2) Regulations may make provision—

- (a) as to the time within which a notification is to be made;
- (b) as to the form and manner in which a notification is to be made;
- (c) requiring a person who has made a notification to notify the Commissioners if any information contained in it is inaccurate.]

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#### Textual Amendments

**F89** S. 53A inserted (1.5.1995) by 1995 c. 4, s. 34, Sch. 5, para. 4

**F90** Words in s. 53A inserted (19.3.1997) by 1997 c. 16, s. 27(2)

### 54 Accounting for tax and time for payment.

Regulations may provide that a registrable person shall—

- (a) account for tax by reference to such periods (accounting periods) as may be determined by or under the regulations;
- (b) make, in relation to accounting periods, returns in such form as may be prescribed and at such times as may be so determined;
- (c) pay tax at such times and in such manner as may be so determined.

### 55 Credit.

- (1) Regulations may provide that where an insurer [<sup>F91</sup>or taxable intermediary] has paid tax and all or part of the premium [<sup>F92</sup>or taxable intermediary's fee (as the case may be)] is repaid, the insurer [<sup>F91</sup>or taxable intermediary] shall be entitled to credit of such an amount as is found in accordance with prescribed rules.
- (2) Regulations may provide that where—
  - (a) by virtue of regulations made under section 68 below tax is charged in relation to a premium which is shown in the accounts of an insurer as due to him,
  - (b) that tax is paid, and
  - (c) it is shown to the satisfaction of the Commissioners that the premium, or part of it, will never actually be received by or on behalf of the insurer,
 the insurer shall be entitled to credit of such an amount as is found in accordance with prescribed rules.
- (3) Regulations may make provision as to the manner in which an insurer [<sup>F91</sup>or taxable intermediary] is to benefit from credit, and in particular may make provision—
  - (a) that an insurer [<sup>F91</sup>or taxable intermediary] shall be entitled to credit by reference to accounting periods;
  - (b) that an insurer [<sup>F91</sup>or taxable intermediary] shall be entitled to deduct an amount equal to his total credit for an accounting period from the total amount of tax due from him for the period;
  - (c) that if no tax is due from an insurer [<sup>F91</sup>or taxable intermediary] for an accounting period but he is entitled to credit for the period, the amount of the credit shall be paid to him by the Commissioners;
  - (d) that if the amount of credit to which an insurer [<sup>F91</sup>or taxable intermediary] is entitled for an accounting period exceeds the amount of tax due from him for the period, an amount equal to the excess shall be paid to him by the Commissioners;
  - (e) for the whole or part of any credit to be held over to be credited for a subsequent accounting period;
  - (f) as to the manner in which a person who has ceased to be registrable [<sup>F93</sup>(whether under section 53 or section 53AA)] is to benefit from credit.

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- (4) Regulations under subsection (3)(c) or (d) above may provide that where at the end of an accounting period an amount is due to an insurer [<sup>F91</sup>or taxable intermediary] who has failed to submit returns for an earlier period as required by this Part, the Commissioners may withhold payment of the amount until he has complied with that requirement.
- (5) Regulations under subsection (3)(e) above may provide for credit to be held over either on the insurer's [<sup>F94</sup>or taxable intermediary's] application or in accordance with general or special directions given by the Commissioners from time to time.
- (6) Regulations may provide that—
  - (a) no deduction or payment shall be made in respect of credit except on a claim made in such manner and at such time as may be determined by or under regulations;
  - (b) payment in respect of credit shall be made subject to such conditions (if any) as the Commissioners think fit to impose, including conditions as to repayment in specified circumstances;
  - (c) deduction in respect of credit shall be made subject to such conditions (if any) as the Commissioners think fit to impose, including conditions as to the payment to the Commissioners, in specified circumstances, of an amount representing the whole or part of the amount deducted.
- (7) Regulations may require a claim by an insurer [<sup>F91</sup>or taxable intermediary] to be made in a return required by provision made under section 54 above.
- (8) Regulations may provide that where—
  - (a) all or any of the tax payable in respect of a premium [<sup>F95</sup>or taxable intermediary's fee] has not been paid, and
  - (b) the circumstances are such that a person would be entitled to credit if the tax had been paid,prescribed adjustments shall be made as regards any amount of tax due from any person.

#### Textual Amendments

- F91** Words in s. 55 inserted (19.3.1997) by 1997 c. 16, s. 27(3)(a)  
**F92** Words in s. 55(1) inserted (19.3.1997) by 1997 c. 16, s. 27(3)(b)  
**F93** Words in s. 55(3)(f) inserted (19.3.1997) by 1997 c. 16, s. 27(3)(c)  
**F94** Words in s. 55(5) inserted (19.3.1997) by 1997 c. 16, s. 27(3)(d)  
**F95** Words in s. 55(8)(a) inserted (19.3.1997) by 1997 c. 16, s. 27(3)(e)

## 56 Power to assess.

- (1) In a case where—
  - (a) a person has failed to make any returns required to be made under this Part,
  - (b) a person has failed to keep any documents necessary to verify returns required to be made under this Part,
  - (c) a person has failed to afford the facilities necessary to verify returns required to be made under this Part, or
  - (d) it appears to the Commissioners that returns required to be made by a person under this Part are incomplete or incorrect,

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the Commissioners may assess the amount of tax due from the person concerned to the best of their judgment and notify it to him.

- (2) Where a person has for an accounting period been paid an amount to which he purports to be entitled under regulations made under section 55 above, then, to the extent that the amount ought not to have been paid or would not have been paid had the facts been known or been as they later turn out to be, the Commissioners may assess the amount as being tax due from him for that period and notify it to him accordingly.
- (3) Where a person is assessed under subsections (1) and (2) above in respect of the same accounting period the assessments may be combined and notified to him as one assessment.
- (4) Where the person failing to make a return, or making a return which appears to the Commissioners to be incomplete or incorrect, was required to make the return as a personal representative, trustee in bankruptcy, trustee in sequestration, receiver, liquidator or person otherwise acting in a representative capacity in relation to another person, subsection (1) above shall apply as if the reference to tax due from him included a reference to tax due from that other person.
- (5) An assessment under subsection (1) or (2) above of an amount of tax due for an accounting period shall not be made after the later of the following—
  - (a) two years after the end of the accounting period;
  - (b) one year after evidence of facts, sufficient in the Commissioners' opinion to justify the making of the assessment, comes to their knowledge;
 but where further such evidence comes to their knowledge after the making of an assessment under subsection (1) or (2) above another assessment may be made under the subsection concerned in addition to any earlier assessment.
- (6) In a case where—
  - (a) as a result of a person's failure to make a return for an accounting period the Commissioners have made an assessment under subsection (1) above for that period,
  - (b) the tax assessed has been paid but no proper return has been made for the period to which the assessment related, and
  - (c) as a result of a failure to make a return for a later accounting period, being a failure by the person referred to in paragraph (a) above or a person acting in a representative capacity in relation to him, as mentioned in subsection (4) above, the Commissioners find it necessary to make another assessment under subsection (1) above,
 then, if the Commissioners think fit, having regard to the failure referred to in paragraph (a) above, they may specify in the assessment referred to in paragraph (c) above an amount of tax greater than that which they would otherwise have considered to be appropriate.
- (7) Where an amount has been assessed and notified to any person under subsection (1) or (2) above it shall be deemed to be an amount of tax due from him and may be recovered accordingly unless, or except to the extent that, the assessment has subsequently been withdrawn or reduced.
- (8) For the purposes of this section notification to—
  - (a) a personal representative, trustee in bankruptcy, trustee in sequestration, receiver or liquidator, or

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- (b) a person otherwise acting in a representative capacity in relation to another person,  
shall be treated as notification to the person in relation to whom the person mentioned in paragraph (a) above, or the first person mentioned in paragraph (b) above, acts.

### *Tax representatives*

## **57 Tax representatives.**

- (1) Where at any time (a relevant time) a person who is an insurer [<sup>F96</sup>or taxable intermediary]—
- (a) is registered, or liable to be registered, under section 53 [<sup>F97</sup>or, as the case may be, section 53AA] above, and
  - (b) does not have any business establishment or other fixed establishment in the United Kingdom,
- this section shall have effect with a view to securing that another person is the insurer's [<sup>F98</sup>or taxable intermediary's] tax representative at that time.
- (2) If, at the time the insurer [<sup>F96</sup>or taxable intermediary] first falls within subsection (1) above, the insurer [<sup>F96</sup>or taxable intermediary] has a representative fulfilling the requirements of section 10 of the <sup>M26</sup>Insurance Companies Act 1982—
- (a) the Commissioners shall be taken to approve that person at that time as the insurer's [<sup>F98</sup>or taxable intermediary's] tax representative, and
  - (b) that person shall be the insurer's [<sup>F98</sup>or taxable intermediary's] tax representative at any relevant time falling after the time mentioned in paragraph (a) above and before the Commissioners' approval is withdrawn.
- (3) If, at the time the insurer [<sup>F96</sup>or taxable intermediary] first falls within subsection (1) above, the insurer [<sup>F96</sup>or taxable intermediary] does not have a representative fulfilling the requirements of section 10 of the Insurance Companies Act 1982, the insurer [<sup>F96</sup>or taxable intermediary] shall take action as mentioned in subsection (4) below.
- (4) The insurer [<sup>F96</sup>or taxable intermediary] takes action as mentioned in this subsection if—
- (a) he requests the Commissioners to approve a particular person as his tax representative, and
  - (b) the request is made with a view to securing that a person approved by the Commissioners becomes the insurer's [<sup>F98</sup>or taxable intermediary's] tax representative within the relevant period.
- (5) If the Commissioners approve a person as the insurer's [<sup>F98</sup>or taxable intermediary's] tax representative in a case where action has been taken as mentioned in subsection (4) above, that person shall be the insurer's [<sup>F98</sup>or taxable intermediary's] tax representative at any relevant time falling after the Commissioners' approval is given and before their approval is withdrawn.
- (6) Subsection (7) below applies where the Commissioners believe that the revenue would not be sufficiently protected if—
- (a) a person were to become the insurer's [<sup>F98</sup>or taxable intermediary's] tax representative by virtue of subsection (2) above, or
  - (b) a person who by virtue of any of the provisions of this section is the insurer's [<sup>F98</sup>or taxable intermediary's] tax representative were to continue to be so.

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- (7) If the Commissioners require the insurer [F<sup>96</sup>or taxable intermediary] to take action as mentioned in subsection (4) above the insurer [F<sup>96</sup>or taxable intermediary] shall comply with that requirement.
- (8) In a case where—
- (a) a person is the insurer's [F<sup>98</sup>or taxable intermediary's] tax representative,
  - (b) the insurer [F<sup>96</sup>or taxable intermediary] withdraws his agreement that that person should act as his tax representative, or that person withdraws his agreement to act as the insurer's [F<sup>98</sup>or taxable intermediary's] tax representative, or the insurer [F<sup>96</sup>or taxable intermediary] and that person agree that that person should no longer be the insurer's [F<sup>98</sup>or taxable intermediary's] tax representative, and
  - (c) that person notifies the Commissioners accordingly,
- the Commissioners shall be taken to have withdrawn their approval of that person at the time they inform the insurer [F<sup>96</sup>or taxable intermediary] that they have received the notification, and that person shall cease at that time to be the insurer's [F<sup>98</sup>or taxable intermediary's] tax representative.
- (9) Where subsection (8) above applies the insurer [F<sup>96</sup>or taxable intermediary] shall take action as mentioned in subsection (4) above.
- (10) If at any time after the insurer [F<sup>96</sup>or taxable intermediary] first falls within subsection (1) above—
- (a) the insurer [F<sup>96</sup>or taxable intermediary] (otherwise than in pursuance of a duty under subsection (3), (7) or (9) above) requests the Commissioners to approve a particular person as his tax representative, and
  - (b) the Commissioners approve that person,
- that person shall be the insurer's [F<sup>98</sup>or taxable intermediary's] tax representative at any relevant time falling after the Commissioners' approval is given and before their approval is withdrawn.
- (11) The Commissioners may at any time direct that a person who is an agent of the insurer [F<sup>96</sup>or taxable intermediary] and is specified in the direction shall be the insurer's [F<sup>98</sup>or taxable intermediary's] tax representative; and—
- (a) the direction shall be taken to signify the Commissioners' approval of that person as the insurer's [F<sup>98</sup>or taxable intermediary's] tax representative;
  - (b) that person shall be the insurer's [F<sup>98</sup>or taxable intermediary's] tax representative at any relevant time falling after the Commissioners' direction is made and before their approval is withdrawn;
  - (c) the direction shall not prejudice any duty of the insurer [F<sup>96</sup>or taxable intermediary] under subsection (3), (7) or (9) above;
  - (d) subsection (8) above shall not apply in the case of the person specified in the direction.
- (12) Where the Commissioners approve a person under this section as the insurer's [F<sup>98</sup>or taxable intermediary's] tax representative—
- (a) at the time the approval is given they shall be taken to withdraw their approval of any person who was the insurer's [F<sup>98</sup>or taxable intermediary's] tax representative immediately before the approval was given, and
  - (b) that person shall cease at that time to be the insurer's [F<sup>98</sup>or taxable intermediary's] tax representative.

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- (13) The fact that a person ceases to be an insurer's [<sup>F98</sup>or taxable intermediary's] tax representative shall not prevent his subsequent approval under this section.
- (14) The Commissioners may not withdraw their approval of a person as a tax representative except by virtue of subsection (8) or (12) above.
- (15) Regulations may make provision as to the time at which—
- (a) the Commissioners' approval is to be treated as given in a case where action has been taken as mentioned in subsection (4) above or a request has been made as mentioned in subsection (10) above;
  - (b) the Commissioners are to be taken to inform the insurer [<sup>F96</sup>or taxable intermediary] under subsection (8) above;
  - (c) a direction of the Commissioners is to be treated as made under subsection (11) above.
- (16) The relevant period for the purposes of subsection (4) above is—
- (a) where subsection (4) above applies by virtue of subsection (3) above, the period of 30 days beginning with the day on which the insurer [<sup>F96</sup>or taxable intermediary] first falls within subsection (1) above;
  - (b) where subsection (4) above applies by virtue of subsection (7) above, the period of 30 days beginning with the day on which the requirement mentioned in subsection (7) above is made;
  - (c) where subsection (4) above applies by virtue of subsection (9) above, the period of 30 days beginning with the day on which the person mentioned in subsection (8) above ceases to be the insurer's [<sup>F98</sup>or taxable intermediary's] tax representative;
- but if in any case the Commissioners allow a longer period than that found under paragraphs (a) to (c) above, the relevant period is that longer period.

#### Textual Amendments

- F96** Words in s. 57 inserted (19.3.1997) by 1997 c. 16, s. 27(4)(a)  
**F97** Words in s. 57(1)(a) inserted (19.3.1997) by 1997 c. 16, s. 27(4)(c)  
**F98** Words in s. 57 inserted (19.3.1997) by 1997 c. 16, s. 27(4)(b)

#### Marginal Citations

- M26** 1982 c. 50.

## 58 Rights and duties of tax representatives.

- (1) Where a person is an insurer's [<sup>F99</sup>or taxable intermediary's] tax representative at any time, the tax representative—
- (a) shall be entitled to act on the insurer's [<sup>F99</sup>or taxable intermediary's] behalf for the purposes of legislation relating to insurance premium tax,
  - (b) shall secure (where appropriate by acting on the insurer's [<sup>F99</sup>or taxable intermediary's] behalf) the insurer's [<sup>F99</sup>or taxable intermediary's] compliance with and discharge of the obligations and liabilities to which the insurer [<sup>F100</sup>or taxable intermediary] is subject by virtue of legislation relating to insurance premium tax (including obligations and liabilities arising before the person became the insurer's [<sup>F99</sup>or taxable intermediary's] tax representative), and

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- (c) shall be personally liable in respect of any failure to secure the insurer's [<sup>F99</sup>or taxable intermediary's] compliance with or discharge of any such obligation or liability, and in respect of anything done for purposes connected with acting on the insurer's [<sup>F99</sup>or taxable intermediary's] behalf,  
 as if the obligations and liabilities imposed on the insurer [<sup>F100</sup>or taxable intermediary] were imposed jointly and severally on the tax representative and the insurer [<sup>F100</sup>or taxable intermediary].
- (2) A tax representative shall not be liable by virtue of subsection (1) above himself to be registered under this Part, but regulations may—
- (a) require the registration of the names of tax representatives against the names of the insurers in any register kept under this Part;
  - (b) make provision for the deletion of the names of persons who cease to be tax representatives.
- (3) A tax representative shall not by virtue of subsection (1) above be guilty of any offence except in so far as—
- (a) the tax representative has consented to, or connived in, the commission of the offence by the insurer [<sup>F100</sup>or taxable intermediary],
  - (b) the commission of the offence by the insurer [<sup>F100</sup>or taxable intermediary] is attributable to any neglect on the part of the tax representative, or
  - (c) the offence consists in a contravention by the tax representative of an obligation which, by virtue of that subsection, is imposed both on the tax representative and on the insurer [<sup>F100</sup>or taxable intermediary].
- (4) Subsection (1)(b) above shall have effect subject to such provisions as may be made by regulations.

#### Textual Amendments

- F99** Words in s. 58 inserted (19.3.1997) by 1997 c. 16, s. 27(5)(b)  
**F100** Words in s. 58 inserted (19.3.1997) by 1997 c. 16, s. 27(5)(a)

### *Review and appeal*

#### **59 Review of Commissioners' decisions.**

- (1) This section applies to any decision of the Commissioners with respect to any of the following matters—
- (a) the registration or cancellation of registration of any person under this Part;
  - (b) whether tax is chargeable in respect of a premium or how much tax is chargeable;
  - <sup>F101</sup>(bb) whether a payment falls to be treated under section 52A(2) above as a premium received under a taxable insurance contract by an insurer and chargeable to tax at the higher rate;]
  - (c) whether a person is entitled to credit by virtue of regulations under section 55 above or how much credit a person is entitled to or the manner in which he is to benefit from credit;
  - (d) an assessment [<sup>F102</sup>falling within subsection (1A) below] or the amount of such an assessment;



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- (e) any refusal of an application under section 63 below;
  - (f) whether a notice may be served on a person by virtue of regulations made under section 65 below;
  - (g) an assessment under regulations made under section 65 below or the amount of such an assessment;
  - (h) whether a scheme established by regulations under section 68 below applies to an insurer as regards an accounting period;
  - (i) the requirement of any security under paragraph 24 of Schedule 7 to this Act or its amount;
  - (j) any liability to a penalty under paragraphs 12 to 19 of Schedule 7 to this Act;
  - (k) the amount of any penalty or interest specified in an assessment under paragraph 25 of Schedule 7 to this Act;
  - (l) a claim for the repayment of an amount under paragraph 8 of Schedule 7 to this Act;
  - (m) any liability of the Commissioners to pay interest under paragraph 22 of Schedule 7 to this Act or the amount of the interest payable.
- [<sup>F103</sup>(1A) An assessment falls within this subsection if it is an assessment under section 56 above in respect of an accounting period in relation to which a return required to be made by virtue of regulations under section 54 above has been made.]
- (2) Any person who is or will be affected by any decision to which this section applies may by notice in writing to the Commissioners require them to review the decision.
  - (3) The Commissioners shall not be required under this section to review any decision unless the notice requiring the review is given before the end of the period of 45 days beginning with the day on which written notification of the decision, or of the assessment containing the decision, was first given to the person requiring the review.
  - (4) For the purposes of subsection (3) above it shall be the duty of the Commissioners to give written notification of any decision to which this section applies to any person who—
    - (a) requests such a notification,
    - (b) has not previously been given written notification of that decision, and
    - (c) if given such a notification, will be entitled to require a review of the decision under this section.
  - (5) A person shall be entitled to give a notice under this section requiring a decision to be reviewed for a second or subsequent time only if—
    - (a) the grounds on which he requires the further review are that the Commissioners did not, on any previous review, have the opportunity to consider certain facts or other matters, and
    - (b) he does not, on the further review, require the Commissioners to consider any facts or matters which were considered on a previous review except in so far as they are relevant to any issue not previously considered.
  - (6) Where the Commissioners are required in accordance with this section to review any decision, it shall be their duty to do so; and on the review they may withdraw, vary or confirm the decision.
  - (7) In a case where—
    - (a) it is the duty under this section of the Commissioners to review any decision, and

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- (b) they do not, within the period of 45 days beginning with the day on which the review was required, give notice to the person requiring it of their determination on the review,
- they shall be assumed for the purposes of this Part to have confirmed the decision.
- (8) The Commissioners shall not by virtue of any requirement under this section to review a decision have any power, apart from their power in pursuance of paragraph 13 of Schedule 7 to this Act, to mitigate the amount of any penalty imposed under this Part.

#### Textual Amendments

**F101** S. 59(1)(bb) inserted (19.3.1997) by 1997 c. 16, s. 27(6)

**F102** Words in s. 59(1)(d) substituted (1.5.1995 with application as mentioned in Sch. 5 para. 5(4) of the amending Act) by 1995 c. 4, s. 34, Sch. 5 para. 5(2)

**F103** S. 59(1A) inserted (1.5.1995 with application as mentioned in Sch. 5 para. 5(4) of the amending Act) by 1995 c. 4, s. 34, Sch. 5 para. 5(3)

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

**C13** S. 59 extended (19.3.1997) by 1997 c. 16, s. 50(1), Sch. 5 para. 19(2)

#### Commencement Information

**I14** S. 59 wholly in force at 1.10.1994 by S.I. 1994/1773, art. 2

## 60 Appeals.

- (1) Subject to the following provisions of this section, an appeal shall lie to an appeal tribunal with respect to any of the following decisions—
- (a) any decision by the Commissioners on a review under section 59 above (including a deemed confirmation under subsection (7) of that section);
  - (b) any decision by the Commissioners on such review of a decision referred to in section 59(1) above as the Commissioners have agreed to undertake in consequence of a request made after the end of the period mentioned in section 59(3) above.
- (2) Without prejudice to paragraph 13 of Schedule 7 to this Act, nothing in subsection (1) above shall be taken to confer on a tribunal any power to vary an amount assessed by way of penalty or interest except in so far as it is necessary to reduce it to the amount which is appropriate under paragraphs 12 to 21 of that Schedule.
- (3) Where an appeal is made under this section by a person who is required to make returns by virtue of regulations under section 54 above, the appeal shall not be entertained unless the appellant—
- (a) has made all the returns which he is required to make by virtue of those regulations, and
  - (b) has paid the amounts shown in those returns as payable by him;
- but the restriction in paragraph (b) above shall not apply in the case of an appeal against a decision with respect to the matter mentioned in section 59(1)(i) above.
- (4) Where the appeal is against a decision with respect to any of the matters mentioned in paragraphs (b) and (d) of section 59(1) above it shall not be entertained unless—
- (a) the amount which the Commissioners have determined to be payable as tax has been paid or deposited with them, or

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- (b) on being satisfied that the appellant would otherwise suffer hardship the Commissioners agree or the tribunal decides that it should be entertained notwithstanding that that amount has not been so paid or deposited.
- (5) Where on an appeal against a decision with respect to any of the matters mentioned in section 59(1)(d) above—
- (a) it is found that the amount specified in the assessment is less than it ought to have been, and
- (b) the tribunal gives a direction specifying the correct amount,
- the assessment shall have effect as an assessment of the amount specified in the direction and that amount shall be deemed to have been notified to the appellant.
- (6) Where on an appeal under this section it is found that the whole or part of any amount paid or deposited in pursuance of subsection (4) above is not due, so much of that amount as is found not to be due shall be repaid with interest at such rate as the tribunal may determine.
- (7) Where on an appeal under this section it is found that the whole or part of any amount due to the appellant by virtue of regulations under section 55(3)(c) or (d) or (f) above has not been paid, so much of that amount as is found not to have been paid shall be paid with interest at such rate as the tribunal may determine.
- (8) Where an appeal under this section has been entertained notwithstanding that an amount determined by the Commissioners to be payable as tax has not been paid or deposited and it is found on the appeal that that amount is due the tribunal may, if it thinks fit, direct that that amount shall be paid with interest at such rate as may be specified in the direction.
- (9) On an appeal against an assessment to a penalty under paragraph 12 of Schedule 7 to this Act, the burden of proof as to the matters specified in paragraphs (a) and (b) of sub-paragraph (1) of paragraph 12 shall lie upon the Commissioners.
- (10) Sections 25 and 29 of the <sup>M27</sup>Finance Act 1985 (settling of appeals by agreement and enforcement of certain decisions of tribunal) shall have effect as if—
- (a) the references to section 40 of the <sup>M28</sup>Value Added Tax Act 1983 included references to this section, and
- (b) the references to value added tax included references to insurance premium tax.

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

**C14** S. 60 extended (19.3.1997) by 1997 c. 16, s. 50(1), **Sch. 5 para. 19(2)**

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**Commencement Information**

**I15** S. 60 wholly in force at 1.10.1994 by S.I. 1994/1773, **art. 2**

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**Marginal Citations**

**M27** 1985 c. 54.

**M28** 1983 c. 55.

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## 61 Review and appeal: commencement.

Sections 59 and 60 above shall come into force on such day as may be appointed by order.

### Subordinate Legislation Made

**P2** S. 61 power exercised: 1.10.1994 appointed by [S.I. 1994/1773](#), **art. 2**

### *Miscellaneous*

## 62 Partnership, bankruptcy, transfer of business, etc.

- (1) Regulations may make provision for determining by what persons anything required by this Part to be done by an insurer [<sup>F104</sup>or taxable intermediary] is to be done where the business concerned is carried on in partnership or by another unincorporated body.
- (2) The registration under this Part of an unincorporated body other than a partnership may be in the name of the body concerned; and in determining whether premiums are received by such a body no account shall be taken of any change in its members.
- (3) Regulations may make provision for determining by what person anything required by this Part to be done by an insurer is to be done in a case where insurance business is carried on by persons who are underwriting members of Lloyd's and are members of a syndicate of such underwriting members.
- (4) Regulations may—
  - (a) make provision for the registration for the purposes of this Part of a syndicate of underwriting members of Lloyd's;
  - (b) provide that for purposes prescribed by the regulations no account shall be taken of any change in the members of such a syndicate;
 and regulations under paragraph (a) above may modify section 53 above.
- (5) As regards any case where a person carries on a business of an insurer [<sup>F104</sup>or taxable intermediary] who has died or become bankrupt or incapacitated or been sequestrated, or of an insurer [<sup>F104</sup>or taxable intermediary] which is in liquidation or receivership or in relation to which an administration order is in force, regulations may—
  - (a) require the person to inform the Commissioners of the fact that he is carrying on the business and of the event that has led to his carrying it on;
  - (b) make provision allowing the person to be treated for a limited time as if he were the insurer [<sup>F104</sup>or taxable intermediary];
  - (c) make provision for securing continuity in the application of this Part where a person is so treated.
- (6) Regulations may make provision for securing continuity in the application of this Part in cases where a business carried on by a person is transferred to another person as a going concern.
- (7) Regulations under subsection (6) above may in particular provide—
  - (a) for liabilities and duties under this Part of the transferor to become, to such extent as may be provided by the regulations, liabilities and duties of the transferee;

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- (b) for any right of either of them to repayment or credit in respect of tax to be satisfied by making a repayment or allowing a credit to the other;
- but the regulations may provide that no such provision as is mentioned in paragraph (a) or (b) of this subsection shall have effect in relation to any transferor and transferee unless an application in that behalf has been made by them under the regulations.

#### Textual Amendments

**F104** Words in s. 62(1)(5) inserted (19.3.1997) by 1997 c. 16, s. 27(7)

### 63 Groups of companies.

- (1) Where under the following provisions of this section any bodies corporate are treated as members of a group, for the purposes of this Part—
- (a) any taxable business carried on by a member of the group shall be treated as carried on by the representative member,
- [<sup>F105</sup>(aa) any business carried on by a member of the group who is a taxable intermediary shall be treated as carried on by the representative member,]
- (b) the representative member shall be taken to be the insurer in relation to any taxable insurance contract as regards which a member of the group is the actual insurer,
- [<sup>F106</sup>(bb) the representative member shall be taken to be the taxable intermediary in relation to any taxable intermediary's fees as regards which a member of the group is the actual taxable intermediary,]
- (c) any receipt by a member of the group of a premium under a taxable insurance contract shall be taken to be a receipt by the representative member, and
- (d) all members of the group shall be jointly and severally liable for any tax due from the representative member.
- (2) Two or more bodies corporate are eligible to be treated as members of a group if each of them falls within subsection (3) below and—
- (a) one of them controls each of the others,
- (b) one person (whether a body corporate or an individual) controls all of them, or
- (c) two or more individuals carrying on a business in partnership control all of them.
- (3) A body falls within this subsection if it is resident in the United Kingdom or it has an established place of business in the United Kingdom.
- (4) Where an application to that effect is made to the Commissioners with respect to two or more bodies corporate eligible to be treated as members of a group, then—
- (a) from the beginning of an accounting period they shall be so treated, and
- (b) one of them shall be the representative member,
- unless the Commissioners refuse the application; and the Commissioners shall not refuse the application unless it appears to them necessary to do so for the protection of the revenue.
- (5) Where any bodies corporate are treated as members of a group and an application to that effect is made to the Commissioners, then, from the beginning of an accounting period—

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- (a) a further body eligible to be so treated shall be included among the bodies so treated,
  - (b) a body corporate shall be excluded from the bodies so treated,
  - (c) another member of the group shall be substituted as the representative member, or
  - (d) the bodies corporate shall no longer be treated as members of a group,
- unless the application is to the effect mentioned in paragraph (a) or (c) above and the Commissioners refuse the application.
- (6) The Commissioners may refuse an application under subsection (5)(a) or (c) above only if it appears to them necessary to do so for the protection of the revenue.
- (7) Where a body corporate is treated as a member of a group as being controlled by any person and it appears to the Commissioners that it has ceased to be so controlled, they shall, by notice given to that person, terminate that treatment from such date as may be specified in the notice.
- (8) An application under this section with respect to any bodies corporate must be made by one of those bodies or by the person controlling them and must be made not less than 90 days before the date from which it is to take effect, or at such later time as the Commissioners may allow.
- (9) For the purposes of this section a body corporate shall be taken to control another body corporate if it is empowered by statute to control that body's activities or if it is that body's holding company within the meaning of section 736 of the <sup>M29</sup>Companies Act 1985; and an individual or individuals shall be taken to control a body corporate if he or they, were he or they a company, would be that body's holding company within the meaning of that section.

#### Textual Amendments

**F105** S. 63(1)(aa) inserted (19.3.1997) by 1997 c. 16, s. 27(8)(a)

**F106** S. 63(1)(bb) inserted (19.3.1997) by 1997 c. 16, s. 27(8)(b)

#### Marginal Citations

**M29** 1985 c. 6.

## 64 Information, powers, penalties, etc.

Schedule 7 to this Act (which contains provisions relating to information, powers, penalties and other matters) shall have effect.

## 65 Liability of insured in certain cases.

- (1) Regulations may make provision under this section with regard to any case where at any time—
- (a) an insurer does not have any business establishment or other fixed establishment in the United Kingdom, and
  - (b) no person is the insurer's tax representative by virtue of section 57 above.
- (2) Regulations may make provision allowing notice to be served in accordance with the regulations on—

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- (a) the person who is insured under a taxable insurance contract, if there is one insured person, or
  - (b) one or more of the persons who are insured under a taxable insurance contract, if there are two or more insured persons;and a notice so served is referred to in this section as a liability notice.
- (3) Regulations may provide that if a liability notice has been served in accordance with the regulations—
  - (a) the Commissioners may assess to the best of their judgment the amount of any tax due in respect of premiums received by the insurer under the contract concerned after the material date and before the date of the assessment, and
  - (b) that amount shall be deemed to be the amount of tax so due.
- (4) The material date is—
  - (a) where there is one person on whom a liability notice has been served in respect of the contract, the date when the notice was served or such later date as may be specified in the notice;
  - (b) where there are two or more persons on whom liability notices have been served in respect of the contract, the date when the last of the notices was served or such later date as may be specified in the notices.
- (5) Regulations may provide that where—
  - (a) an assessment is made in respect of a contract under provision included in the regulations by virtue of subsection (3) above, and
  - (b) the assessment is notified to the person, or each of the persons, on whom a liability notice in respect of the contract has been served,the persons mentioned in subsection (6) below shall be jointly and severally liable to pay the tax assessed, and that tax shall be recoverable accordingly.
- (6) The persons are—
  - (a) the person or persons mentioned in subsection (5)(b) above, and
  - (b) the insurer.
- (7) Where regulations make provision under subsection (5) above they must also provide that any provision made under that subsection shall not apply if, or to the extent that, the assessment has subsequently been withdrawn or reduced.
- (8) Regulations may make provision as to the time within which, and the manner in which, tax which has been assessed is to be paid.
- (9) Where any amount is recovered from an insured person by virtue of regulations made under this section, the insurer shall be liable to pay to the insured person an amount equal to the amount recovered; and regulations may make provision requiring an insurer to pay interest where this subsection applies.
- (10) Regulations may make provision for adjustments to be made of a person's liability in any case where—
  - (a) an assessment is made under section 56 above in relation to the insurer, and
  - (b) an assessment made by virtue of regulations under this section relates to premiums received (or assumed for the purposes of the assessment to be received) within a period which corresponds to any extent with the accounting period to which the assessment under section 56 relates.

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- (11) Regulations may make provision as regards a case where—
- (a) an assessment made in respect of a contract by virtue of regulations under this section relates to premiums received (or assumed for the purposes of the assessment to be received) within a given period, and
  - (b) an amount of tax is paid by the insurer in respect of an accounting period which corresponds to any extent with that period;
- and the regulations may include provision for determining whether, or how much of, any of the tax paid as mentioned in paragraph (b) above is attributable to premiums received under the contract in the period mentioned in paragraph (a) above.
- (12) Regulations may—
- (a) make provision requiring the Commissioners, in prescribed circumstances, to furnish prescribed information to an insured person;
  - (b) make provision requiring any person on whom a liability notice has been served to keep records, to furnish information, or to produce documents for inspection or cause documents to be produced for inspection;
  - (c) make such provision as the Commissioners think is reasonable for the purpose of facilitating the recovery of tax from the persons having joint and several liability (rather than from the insurer alone);
  - (d) modify the effect of any provision of this Part.
- (13) Regulations may provide for an insured person to be liable to pay tax assessed by virtue of the regulations notwithstanding that he has already paid an amount representing tax as part of a premium.

## **66 Directions as to amounts of premiums.**

- (1) This section applies where—
- (a) anything is received by way of premium under a taxable insurance contract, and
  - (b) the amount of the premium is less than it would be if it were received under the contract in open market conditions.
- (2) The Commissioners may direct that the amount of the premium shall be taken for the purposes of this Part to be such amount as it would be if it were received under the contract in open market conditions.
- (3) A direction under subsection (2) above shall be given by notice in writing to the insurer, and no direction may be given more than three years after the time of the receipt.
- (4) Where the Commissioners make a direction under subsection (2) above in the case of a contract they may also direct that if—
- (a) anything is received by way of premium under the contract after the giving of the notice or after such later date as may be specified in the notice, and
  - (b) the amount of the premium is less than it would be if it were received under the contract in open market conditions,
- the amount of the premium shall be taken for the purposes of this Part to be such amount as it would be if it were received under the contract in open market conditions.
- (5) For the purposes of this section a premium is received in open market conditions if it is received—



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- (a) by an insurer standing in no such relationship with the insured person as would affect the premium, and
  - (b) in circumstances where there is no other contract or arrangement affecting the parties.
- (6) For the purposes of this section it is immaterial whether what is received by way of premium is money or something other than money or both.

## **67 Deemed date of receipt of certain premiums.**

- (1) In a case where—
- (a) a premium under a contract of insurance is received by the insurer after 30th November 1993 and before 1st October 1994, and
  - (b) the period of cover for the risk begins on or after 1st October 1994,
- for the purposes of this Part the premium shall be taken to be received on 1st October 1994.
- (2) Subsection (3) below applies where—
- (a) a premium under a contract of insurance is received by the insurer after 30th November 1993 and before 1st October 1994,
  - (b) the period of cover for the risk begins before 1st October 1994 and ends after 30th September 1995, and
  - (c) the premium, or any part of it, is attributable to such of the period of cover as falls after 30th September 1995.
- (3) For the purposes of this Part—
- (a) so much of the premium as is attributable to such of the period of cover as falls after 30th September 1995 shall be taken to be received on 1st October 1994;
  - (b) so much as is so attributable shall be taken to be a separate premium.
- (4) If a contract relates to more than one risk subsection (1) above shall have effect as if the reference in paragraph (b) to the risk were to any given risk.
- (5) If a contract relates to more than one risk, subsections (2) and (3) above shall apply as follows—
- (a) so much of the premium as is attributable to any given risk shall be deemed for the purposes of those subsections to be a separate premium relating to that risk;
  - (b) those subsections shall then apply separately in the case of each given risk and the separate premium relating to it;
- and any further attribution required by those subsections shall be made accordingly.
- (6) Subsections (1) and (4) above do not apply in relation to a contract if the contract belongs to a class of contract as regards which the normal practice is for a premium to be received by or on behalf of the insurer before the date when cover begins.
- (7) Subsections (2), (3) and (5) above do not apply in relation to a contract if the contract belongs to a class of contract as regards which the normal practice is for cover to be provided for a period exceeding twelve months.
- (8) Any attribution under this section shall be made on such basis as is just and reasonable.

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**[<sup>F107</sup>67A Announced increase in rate of tax: certain premiums treated as received on date of increase.**

- (1) This section applies in any case where a proposed increase is announced by a Minister of the Crown in the rate at which tax is to be charged on a premium if it is received by the insurer on or after a date specified in the announcement (“the date of the change”).
- (2) In a case where—
  - (a) a premium under a contract of insurance is received by the insurer on or after the date of the announcement but before the date of the change, and
  - (b) the period of cover for the risk begins on or after the date of the change,
 for the purposes of this Part the premium shall be taken to be received on the date of the change.
- (3) Subsection (4) below applies where—
  - (a) a premium under a contract of insurance is received by the insurer on or after the date of the announcement but before the date of the change;
  - (b) the period of cover for the risk begins before the date of the change and ends on or after the first anniversary of the date of the change; and
  - (c) the premium, or any part of it, is attributable to such of the period of cover as falls on or after the first anniversary of the date of the change.
- (4) For the purposes of this Part—
  - (a) so much of the premium as is attributable to such of the period of cover as falls on or after the first anniversary of the date of the change shall be taken to be received on the date of the change; and
  - (b) so much as is so attributable shall be taken to be a separate premium.
- (5) In determining whether the condition in subsection (2)(a) or (3)(a) above is satisfied, the provisions of regulations made by virtue of subsection (3) or (7) of section 68 below apply as they would apart from this section; but, subject to that, where subsection (2) or (4) above applies—
  - (a) that subsection shall have effect notwithstanding anything in section 68 below or regulations made under that section; and
  - (b) any regulations made under that section shall have effect as if the entry made in the accounts of the insurer showing the premium as due to him had been made as at the date of the change.
- (6) Any attribution under this section shall be made on such basis as is just and reasonable.
- (7) In this section—
 

“increase”, in relation to the rate of tax, includes the imposition of a charge to tax by adding to the descriptions of contract which are taxable insurance contracts;

“Minister of the Crown” has the same meaning as in the Ministers of the <sup>M30</sup>Crown Act 1975.]

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**Textual Amendments**

**F107** Ss. 67A-67C inserted (with effect *retrospectively* to 26.11.1996) by 1997 c. 16, s. 29(1)(3)

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

**C15** Ss. 67A-67C modified (19.3.1997) by 1997 c. 16, s. 29(2)

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Ss. 67A-67C modified (31.7.1998) by 1998 c. 36, s. 146(5)

Ss. 67A-67C modified (27.7.1999) by 1999 c. 16, s. 125(5)

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**Marginal Citations**

**M30** 1975 c. 26.

[<sup>F108</sup>**67B Announced increase in rate of tax: certain contracts treated as made on date of increase.**

- (1) This section applies in any case where—
  - (a) an announcement falling within section 67A(1) above is made; but
  - (b) a proposed exception from the increase in question is also announced by a Minister of the Crown; and
  - (c) the proposed exception is to apply in relation to a premium only if the conditions described in subsection (2) below are satisfied in respect of the premium.
- (2) Those conditions are—
  - (a) that the premium is in respect of a contract made before the date of the change;
  - (b) that the premium falls, by virtue of regulations under section 68 below, to be regarded for the purposes of this Part as received under the contract by the insurer before such date (“the concessionary date”) as is specified for the purpose in the announcement.
- (3) In a case where—
  - (a) a premium under a contract of insurance is received by the insurer on or after the date of the announcement but before the concessionary date, and
  - (b) the period of cover for the risk begins on or after the date of the change,the rate of tax applicable in relation to the premium shall be determined as if the contract had been made on the date of the change.
- (4) Subsection (5) below applies where—
  - (a) a premium under a contract of insurance is received by the insurer on or after the date of the announcement but before the concessionary date;
  - (b) the period of cover for the risk begins before the date of the change and ends on or after the first anniversary of the date of the change; and
  - (c) the premium, or any part of it, is attributable to such of the period of cover as falls on or after the first anniversary of the date of the change.
- (5) Where this subsection applies—
  - (a) the rate of tax applicable in relation to so much of the premium as is attributable to such of the period of cover as falls on or after the first anniversary of the date of the change shall be determined as if the contract had been made on the date of the change; and
  - (b) so much of the premium as is so attributable shall be taken to be a separate premium.
- (6) Any attribution under this section shall be made on such basis as is just and reasonable.
- (7) In this section—

“the date of the change” has the same meaning as in section 67A above;

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“Minister of the Crown” has the same meaning as in section 67A above.]

#### Textual Amendments

**F108** Ss. 67A-67C inserted (with effect *retrospectively* to 26.11.1996) by 1997 c. 16, s. 29(1)(3)

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

**C16** Ss. 67A-67C modified (19.3.1997) by 1997 c. 16, s. 29(2)  
 Ss. 67A-67C modified (31.7.1998) by 1998 c. 36, s. 146(5)  
 Ss. 67A-67C modified (27.7.1999) by 1999 c. 16, s. 125(5)

### [<sup>F109</sup>67C Announced increase in rate of tax: exceptions and apportionments.

- (1) Sections 67A(2) and 67B(3) above do not apply in relation to a premium if the risk to which that premium relates belongs to a class of risk as regards which the normal practice is for a premium to be received by or on behalf of the insurer before the date when cover begins.
- (2) Sections 67A(3) and (4) and 67B(4) and (5) above do not apply in relation to a premium if the risk to which that premium relates belongs to a class of risk as regards which the normal practice is for cover to be provided for a period exceeding twelve months.
- (3) If a contract relates to more than one risk, then, in the application of section 67A(2), 67A(3) and (4), 67B(3) or 67B(4) and (5) above—
  - (a) the reference in section 67A(2)(b) or (3)(b) or 67B(3)(b) or (4)(b), as the case may be, to the risk shall be taken as a reference to any given risk,
  - (b) so much of the premium as is attributable to any given risk shall be taken for the purposes of section 67A(2), 67A(3) and (4), 67B(3) or 67B(4) and (5) above, as the case may be, to be a separate premium relating to that risk,
  - (c) those provisions shall then apply separately in the case of each given risk and the separate premium relating to it, and
  - (d) any further attribution required by section 67A(3) and (4) or 67B(4) and (5) above shall be made accordingly,
 and subsections (1) and (2) above shall apply accordingly.
- (4) Any attribution under this section shall be made on such basis as is just and reasonable.]

#### Textual Amendments

**F109** Ss. 67A-67C inserted (with effect *retrospectively* to 26.11.1996) by 1997 c. 16, s. 29(1)(3)

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

**C17** Ss. 67A-67C modified (19.3.1997) by 1997 c. 16, s. 29(2)  
 Ss. 67A-67C modified (31.7.1998) by 1998 c. 36, s. 146(5)  
 Ss. 67A-67C modified (27.7.1999) by 1999 c. 16, s. 125(5)

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## 68 Special accounting schemes.

- (1) Regulations may make provision establishing a scheme in accordance with the following provisions of this section; and in this section “a relevant accounting period”, in relation to an insurer, means an accounting period as regards which the scheme applies to the insurer.
- (2) Regulations may provide that if an insurer notifies the Commissioners that the scheme should apply to him as regards accounting periods beginning on or after a date specified in the notification and prescribed conditions are fulfilled, then, subject to any provision made under subsection (9) below, the scheme shall apply to the insurer as regards accounting periods beginning on or after that date.
- (3) Regulations may provide that where—
  - (a) an entry is made in the accounts of an insurer showing a premium under a taxable insurance contract as due to him, and
  - (b) the entry is made as at a particular date which falls within a relevant accounting period,then (whether or not that date is one on which the premium is actually received by the insurer or on which the premium would otherwise be treated for the purposes of this Part as received by him) the premium shall for the purposes of this Part be taken to be received by the insurer on that date or, in prescribed circumstances, to be received by him on a different date determined in accordance with the regulations.
- (4) Where regulations make provision under subsection (3) above they may also provide that, for the purposes of this Part, the amount of the premium shall be taken to be the amount which the entry in the accounts treats as its amount.
- (5) Regulations may provide that provision made under subsections (3) and (4) above shall apply even if the premium, or part of it, is never actually received by the insurer or on his behalf; and the regulations may include provision that, where the premium is never actually received because the contract under which it would have been received is never entered into or is terminated, the premium is nonetheless to be taken for the purposes of this Part to be received under a taxable insurance contract.
- (6) Regulations may provide that any provision made under subsection (4) above shall be subject to any directions made under section 66 above.
- (7) Regulations may provide that where a premium is treated as received on a particular date by virtue of provision made under subsection (3) above and there is another date on which the premium—
  - (a) is actually received by the insurer, or
  - (b) would, apart from the regulations, be treated for the purposes of this Part as received by him,the premium shall be taken for the purposes of this Part not to be received by him on that other date.
- (8) Regulations may provide that provision made under subsection (7) above shall apply only to the extent that there is no excess of the actual amount of the premium over the amount which, by virtue of regulations under this section or of a direction under section 66 above, is to be taken for the purposes of this Part to be its amount; and the regulations may include provision that where there is such an excess, the excess amount shall be taken for the purposes of this Part to be a separate premium and to be received by the insurer on a date determined in accordance with the regulations.

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(9) Regulations may provide that if a notification has been given in accordance with provision made under subsection (2) above and subsequently—

- (a) the insurer gives notice to the Commissioners that the scheme should not apply to him as regards accounting periods beginning on or after a date specified in the notice, or
- (b) the Commissioners give notice to the insurer that the scheme is not to apply to him as regards accounting periods beginning on or after a date specified in the notice,

then, if prescribed conditions are fulfilled, the scheme shall not apply to the insurer as regards an accounting period beginning on or after the date specified in the notice mentioned in paragraph (a) or (b) above unless the circumstances are such as may be prescribed.

(10) Regulations may include provision—

- (a) enabling an insurer to whom the scheme applies as regards an accounting period to account for tax due in respect of that period on the assumption that the scheme will apply to him as regards subsequent accounting periods;
- (b) designed to secure that, where the scheme ceases to apply to an insurer, any tax which by virtue of provision made under paragraph (a) above has not been accounted for is accounted for and paid.

(11) Regulations may provide that where—

- (a) an entry in the accounts of an insurer shows a premium as due to him,
- (b) the entry is made as at a date falling before 1st October 1994,
- (c) tax in respect of the receipt of the premium would, apart from the regulations, be charged by reference to a date (whether or not the date on which the premium is actually received by the insurer) falling on or after 1st October 1994,
- (d) the date by reference to which tax would be charged falls within a relevant accounting period, and
- (e) prescribed conditions are fulfilled,

the premium, or such part of it as may be found in accordance with prescribed rules, shall be taken for the purposes of this Part to have been received by the insurer before 1st October 1994.

(12) Without prejudice to subsection (13) below, regulations may include provision modifying any provision made under this section so as to secure the effective operation of the provision in a case where a premium consists wholly or partly of anything other than money.

(13) Regulations may modify the effect of any provision of this Part.

(14) The reference in subsection (3)(a) above to a premium under a taxable insurance contract includes a reference to anything that, although not actually received by or on behalf of the insurer, would be such a premium if it were so received.

## **[<sup>F110</sup>69 Charge to tax where different rates of tax apply.**

(1) This section applies for the purpose of determining the chargeable amount in a case where a contract provides cover falling within any one of the following paragraphs, that is to say—

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- (a) cover for one or more exempt matters,
  - (b) cover for one or more standard rate matters, or
  - (c) cover for one or more higher rate matters,
- and also provides cover falling within another of those paragraphs.
- (2) In the following provisions of this section “the non-exempt premium” means the difference between—
- (a) the amount of the premium; and
  - (b) such part of the premium as is attributable to any exempt matter or matters or, if no part is so attributable, nil.
- (3) If the contract provides cover for one or more exempt matters and also provides cover for either—
- (a) one or more standard rate matters, or
  - (b) one or more higher rate matters,
- the chargeable amount is such amount as, with the addition of the tax chargeable at the standard rate or (as the case may be) the higher rate, is equal to the non-exempt premium.
- (4) If the contract provides cover for both—
- (a) one or more standard rate matters, and
  - (b) one or more higher rate matters,
- the higher rate element and the standard rate element shall be found in accordance with the following provisions of this section.
- (5) For the purposes of this section—
- (a) “the higher rate element” is such portion of the non-exempt premium as is attributable to the higher rate matters (including tax at the higher rate); and
  - (b) “the standard rate element” is the difference between—
    - (i) the non-exempt premium; and
    - (ii) the higher rate element.
- (6) In a case falling within subsection (4) above, tax shall be charged separately—
- (a) at the standard rate, by reference to the standard rate chargeable amount, and
  - (b) at the higher rate, by reference to the higher rate chargeable amount,
- and the tax chargeable in respect of the premium is the aggregate of those amounts of tax.
- (7) For the purposes of this section—
- “the higher rate chargeable amount” is such amount as, with the addition of the tax chargeable at the higher rate, is equal to the higher rate element;
  - “the standard rate chargeable amount” is such amount as, with the addition of the tax chargeable at the standard rate, is equal to the standard rate element.
- (8) References in this Part to the chargeable amount shall, in a case falling within subsection (4) above, be taken as referring separately to the standard rate chargeable amount and the higher rate chargeable amount.
- (9) In applying subsection (2)(b) above, any amount that is included in the premium as being referable to tax (whether or not the amount corresponds to the actual amount of tax payable in respect of the premium) shall be taken to be wholly attributable to the non-exempt matter or matters.

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- (10) In applying subsection (5)(a) above, any amount that is included in the premium as being referable to tax at the higher rate (whether or not the amount corresponds to the actual amount of tax payable at that rate in respect of the premium) shall be taken to be wholly attributable to the higher rate element.
- (11) Subject to subsections (9) and (10) above, any attribution under subsection (2)(b) or (5)(a) above shall be made on such basis as is just and reasonable.
- (12) For the purposes of this section—
  - (a) an “exempt matter” is any matter such that, if it were the only matter for which the contract provided cover, the contract would not be a taxable insurance contract;
  - (b) a “non-exempt matter” is a matter which is not an exempt matter;
  - (c) a “standard rate matter” is any matter such that, if it were the only matter for which the contract provided cover, tax at the standard rate would be chargeable on the chargeable amount;
  - (d) a “higher rate matter” is any matter such that, if it were the only matter for which the contract provided cover, tax at the higher rate would be chargeable on the chargeable amount.
- (13) If the contract relates to a lifeboat and lifeboat equipment, the lifeboat and the equipment shall be taken together in applying this section.
- (14) For the purposes of this section “lifeboat” and “lifeboat equipment” have the same meaning as in paragraph 6 of Schedule 7A to this Act.]

**Textual Amendments**  
**F110** S. 69 substituted (19.3.1997) by 1997 c. 16, s. 23(1)

*Supplementary*

**70 Interpretation: taxable insurance contracts.**

- (1) Subject to [<sup>F111</sup>subsection (1A) below], any contract of insurance is a taxable insurance contract.
- [<sup>F112</sup>(1A) A contract is not a taxable insurance contract if it falls within one or more of the paragraphs of Part I of Schedule 7A to this Act.
- (1B) Part II of Schedule 7A to this Act (interpretation of certain provisions of Part I) shall have effect.]
- <sup>F113</sup>(2) .....
- <sup>F113</sup>(3) .....
- <sup>F113</sup>(4) .....
- <sup>F113</sup>(5) .....
- <sup>F113</sup>(6) .....
- <sup>F113</sup>(7) .....



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<sup>F113</sup>(8) .....

<sup>F113</sup>(9) .....

<sup>F113</sup>(10) .....

(11) This section has effect subject to section 71 below.

(12) This section and section 71 below have effect for the purposes of this Part.

**Textual Amendments**

**F111** Words in s. 70(1) substituted (1.10.1994) by S.I. 1994/1698, art. 4(a)

**F112** S. 70(1A)(1B) inserted (1.10.1994) by S.I. 1994/1698, art. 4(b)

**F113** S. 70(2)-(10) deleted (1.10.1994) by S.I. 1994/1698, art. 4(c)

**71 Taxable insurance contracts: power to change definition.**

- (1) Provision may be made by order that—
- (a) a contract of insurance that would otherwise not be a taxable insurance contract shall be a taxable insurance contract if it falls within a particular description;
  - (b) a contract of insurance that would otherwise be a taxable insurance contract shall not be a taxable insurance contract if it falls within a particular description.
- (2) A description referred to in subsection (1) above may be by reference to the nature of the insured or by reference to such other factors as the Treasury think fit.
- (3) Provision under this section may be made in such way as the Treasury think fit, and in particular may be made by amending this Part.
- (4) An order under this section may amend or modify the effect of section 69 above in such way as the Treasury think fit.

**72 Interpretation: premium.**

- (1) In relation to a taxable insurance contract, a premium is any payment received under the contract by the insurer, and in particular includes any payment wholly or partly referable to—
- (a) any risk,
  - (b) costs of administration,
  - (c) commission,
  - (d) any facility for paying in instalments or making deferred payment (whether or not payment for the facility is called interest), or
  - (e) tax.
- <sup>F114</sup>(1A) Where an amount is charged to the insured by any person in connection with a taxable insurance contract, any payment in respect of that amount is to be regarded as a payment received under that contract by the insurer unless—
- (a) the payment is chargeable to tax at the higher rate by virtue of section 52A above; or

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- (b) the amount is charged under a separate contract and is identified in writing to the insured as a separate amount so charged.]
- (2) A premium may consist wholly or partly of anything other than money, and references to payment in subsection (1) above shall be construed accordingly.
- (3) Where a premium is to any extent received in a form other than money, its amount shall be taken to be—
  - (a) an amount equal to the value of whatever is received in a form other than money, or
  - (b) if money is also received, the aggregate of the amount found under paragraph (a) above and the amount received in the form of money.
- (4) The value to be taken for the purposes of subsection (3) above is open market value at the time of the receipt by the insurer.
- (5) The open market value of anything at any time shall be taken to be an amount equal to such consideration in money as would be payable on a sale of it at that time to a person standing in no such relationship with any person as would affect that consideration.
- (6) Where (apart from this subsection) anything received under a contract by the insurer would be taken to be an instalment of a premium, it shall be taken to be a separate premium.
- (7) Where anything is received by any person on behalf of the insurer—
  - (a) it shall be treated as received by the insurer when it is received by the other person, and
  - (b) the later receipt of the whole or any part of it by the insurer shall be disregarded.
- [<sup>F115</sup>(7A) Where any person is authorised by or on behalf of an employee to deduct from anything due to the employee under his contract of employment an amount in respect of a payment due under a taxable insurance contract, subsection (7) above shall not apply to the receipt on behalf of the insurer by the person so authorised of the amount deducted.]
- (8) In a case where—
  - (a) a payment under a taxable insurance contract is made to a person (the intermediary) by or on behalf of the insured, and
  - (b) the whole or part of the payment is referable to commission to which the intermediary is entitled,

in determining for the purposes of subsection (7) above whether, or how much of, the payment is received by the intermediary on behalf of the insurer any of the payment that is referable to that commission shall be regarded as received by the intermediary on behalf of the insurer notwithstanding the intermediary's entitlement.
- [<sup>F116</sup>(8A) Where, by virtue of subsection (7A) above, subsection (7) above does not apply to the receipt of an amount by a person and the whole or part of the amount is referable to commission to which he is entitled—
  - (a) if the whole of the amount is so referable, the amount shall be treated as received by the insurer when it is deducted by that person; and
  - (b) otherwise, the part of the amount that is so referable shall be treated as received by the insurer when the remainder of the payment concerned is or is treated as received by him.]

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(9) References in subsection (8) above to a payment include references to a payment in a form other than money.

(10) This section has effect for the purposes of this Part.

#### Textual Amendments

**F114** S. 72(1A) inserted (19.3.1997 with effect as mentioned in s. 28(2) of the amending Act) by 1997 c. 16, s. 28(1)

**F115** S. 72(7A) inserted (19.3.1997 with effect as mentioned in s. 30(3) of the amending Act) by 1997 c. 16, s. 30(1)

**F116** S. 72(8A) inserted (19.3.1997 with effect as mentioned in s. 30(3) of the amending Act) by 1997 c. 16, s. 30(2)

### 73 Interpretation: other provisions.

(1) Unless the context otherwise requires—

“accounting period” shall be construed in accordance with section 54 above;

“appeal tribunal” means a VAT and duties tribunal;

“authorised person” means any person acting under the authority of the Commissioners;

“the Commissioners” means the Commissioners of Customs and Excise;

“conduct” includes any act, omission or statement;

[<sup>F117</sup>“the higher rate” shall be construed in accordance with section 51 above;]

[<sup>F118</sup>“insurance business” means a business which consists of or includes the provision of insurance;]

“insurer” means a person or body of persons (whether incorporated or not) carrying on insurance business;

“legislation relating to insurance premium tax” means this Part (as defined by subsection (9) below), any other enactment (whenever passed) relating to insurance premium tax, and any subordinate legislation made under any such enactment;

“prescribed” means prescribed by an order or regulations under this Part;

[<sup>F117</sup>“the standard rate” shall be construed in accordance with section 51 above;]

“tax” means insurance premium tax;

“tax representative” shall be construed in accordance with section 57 above;

“taxable business” means a business which consists of or includes the provision of insurance under taxable insurance contracts;

“taxable insurance contract” shall be construed in accordance with section 70 above.

[<sup>F119</sup>“taxable intermediary” shall be construed in accordance with section 52A above;]

[<sup>F119</sup>“taxable intermediary’s fees” has the meaning given by section 53AA(9) above.]

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- (2) A risk is situated in the United Kingdom if, by virtue of section 96A(3) of the <sup>M31</sup>Insurance Companies Act 1982, it is situated in the United Kingdom for the purposes of that Act.
- (3) [<sup>F120</sup>Subject to subsection (3A) below,] a registrable person is a person who—
- (a) is registered under section 53 above, or
  - (b) is liable to be registered under that section.
- [<sup>F121</sup>(3A) References in sections 53A and 54 above and paragraphs 1, 9 and 12 of Schedule 7 to this Act to a registrable person include a reference to a person who—
- (a) is registered under section 53AA above; or
  - (b) is liable to be registered under that section.]
- (4) A commercial ship is a ship which is—
- (a) of a gross tonnage of 15 tons or more, and
  - (b) not designed or adapted for use for recreation or pleasure.
- (5) A commercial aircraft is an aircraft which is—
- (a) of a weight of 8,000 kilogrammes or more, and
  - (b) not designed or adapted for use for recreation or pleasure.
- (6) A lifeboat is a vessel used or to be used solely for rescue or assistance at sea; and lifeboat equipment is anything used or to be used solely in connection with a lifeboat.
- (7) Foreign or international railway rolling stock is railway rolling stock used principally for journeys taking place wholly or partly outside the United Kingdom.
- (8) Goods in foreign or international transit are goods in transit where their carriage—
- (a) begins and ends outside the United Kingdom,
  - (b) begins outside but ends in the United Kingdom, or
  - (c) ends outside but begins in the United Kingdom.
- (9) A reference to this Part includes a reference to any order or regulations made under it and a reference to a provision of this Part includes a reference to any order or regulations made under the provision, unless otherwise required by the context or any order or regulations.
- (10) This section has effect for the purposes of this Part.

#### Textual Amendments

**F117** Definitions in s. 73(1) inserted (19.3.1997 with effect as mentioned in s. 24 of the amending Act) by 1997 c. 16, s. 21(2)

**F118** Definition in s. 73(1) inserted (1.5.1995) by 1995 c. 4, s. 34, Sch. 5 para. 6

**F119** Definitions in s. 73(1) inserted (19.3.1997) by 1997 c. 16, s. 27(9)

**F120** Words in s. 73(3) inserted (19.3.1997) by 1997 c. 16, s. 27(10)

**F121** S. 73(3A) inserted (19.3.1997) by 1997 c. 16, s. 27(10)

#### Marginal Citations

**M31** 1982 c. 50.

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## 74 Orders and regulations.

- (1) The power to make an order under section 61 above shall be exercisable by the Commissioners, and the power to make an order under any other provision of this Part shall be exercisable by the Treasury.
- (2) Any power to make regulations under this Part shall be exercisable by the Commissioners.
- (3) Any power to make an order or regulations under this Part shall be exercisable by statutory instrument.
- (4) An order under section [<sup>F122</sup>51A or] 71 above shall be laid before the House of Commons; and unless it is approved by that House before the expiration of a period of 28 days beginning with the date on which it was made it shall cease to have effect on the expiration of that period, but without prejudice to anything previously done under the order or to the making of a new order.
- (5) In reckoning any such period as is mentioned in subsection (4) above no account shall be taken of any time during which Parliament is dissolved or prorogued or during which the House of Commons is adjourned for more than four days.
- (6) A statutory instrument containing an order or regulations under this Part (other than an order under section [<sup>F123</sup>51A or] 71 above) shall be subject to annulment in pursuance of a resolution of the House of Commons.
- (7) Any power to make an order or regulations under this Part—
  - (a) may be exercised as regards prescribed cases or descriptions of case;
  - (b) may be exercised differently in relation to different cases or descriptions of case.
- (8) An order or regulations under this Part may include such supplementary, incidental, consequential or transitional provisions as appear to the Treasury or the Commissioners (as the case may be) to be necessary or expedient.
- (9) No specific provision of this Part about an order or regulations shall prejudice the generality of subsections (7) and (8) above.

### Textual Amendments

**F122** Words in s. 74(4) inserted (19.3.1997 with effect as mentioned in s. 24 of the amending Act) by 1997 c. 16, s. 22(2)(a)

**F123** Words in s. 74(6) inserted (19.3.1997 with effect as mentioned in s. 24 of the amending Act) by 1997 c. 16, s. 22(2)(b)

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## PART IV

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

#### CHAPTER I

##### GENERAL

###### *Income tax: charge, rates and reliefs*

#### 75 Charge and rates of income tax for 1994-95.

- (1) Income tax shall be charged for the year 1994-95, and for that year—
  - (a) the lower rate shall be 20 per cent.,
  - (b) the basic rate shall be 25 per cent., and
  - (c) the higher rate shall be 40 per cent.
- (2) For the year 1994-95 section 1(2) of the Taxes Act 1988 shall apply as if—
  - (a) the amount specified in paragraph (aa) were £3,000 (the lower rate limit), and
  - (b) the amount specified in paragraph (b) were £23,700 (the basic rate limit);
 and accordingly section 1(4) of that Act (indexation) shall not apply for the year 1994-95.

#### 76 Personal allowance.

Section 257 of the Taxes Act 1988 (personal allowance) shall apply for the year 1994-95 as if the amounts specified in it were the same as the amounts specified in it as it applies for the year 1993-94, and accordingly section 257C(1) of that Act (indexation) so far as relating to section 257 shall not apply for the year 1994-95.

#### 77 Rate of relief to married couples etc.

- (1) “ The provisions of section 256 of the Taxes Act 1988 (general provision as to personal reliefs) shall become subsection (1) of that section and after that subsection there shall be inserted the following subsections— ”
  - “(2) Where under any provision of this Chapter the relief to which a person is entitled for any year of assessment consists in an income tax reduction calculated by reference to a specified amount, the effect of that relief shall be that the amount of that person’s liability for that year to income tax on his total income shall be the amount to which he would have been liable apart from that provision less whichever is the smaller of—
    - (a) the amount equal to 20 per cent. of the specified amount; and
    - (b) the amount which reduces his liability to nil.
  - (3) In determining for the purposes of subsection (2) above the amount of income tax to which a person would be liable apart from any provision providing for an income tax reduction, no account shall be taken—
    - (a) where that provision is section 259 or 261A, of any income tax reduction under any of the other provisions of this Chapter;

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- (b) where that provision is section 262(1), of any income tax reduction under any of the other provisions of this Chapter except section 259 or 261A; or
- (c) whatever that provision—
  - (i) of any relief by way of a reduction of liability to tax which is given in accordance with any arrangements having effect by virtue of section 788 or by way of a credit under section 790(1); or
  - (ii) of any tax at the basic rate on so much of that person’s income as is income the income tax on which he is entitled to charge against any other person or to deduct, retain or satisfy out of any payment;

but paragraph (a) above, so far as it relates to any income tax reduction under section 261A, is without prejudice to the provisions of subsection (2) of that section.”

(2) In section 257A of that Act (married couple’s allowance)—

- <sup>F124</sup>(a) .....
- (b) in subsection (2), for the words from “to a deduction” to “the deduction” there shall be substituted “ for that year to an income tax reduction calculated by reference to £2,665 (instead of to the reduction ”; and
- (c) in subsection (3), for the words from “to a deduction” to “the deduction” there shall be substituted “ for that year to an income tax reduction calculated by reference to £2,705 (instead of to the reduction ”.

<sup>F125</sup>(3) .....

<sup>F125</sup>(4) .....

<sup>F126</sup>(5) .....

(6) The Taxes Act 1988 and the <sup>M32</sup>Taxes Management Act 1970 shall have effect with the amendments specified in Schedule 8 to this Act (which supplements the provisions of this section).

(7) This section and Schedule 8 to this Act shall have effect for the year 1994-95 and, subject to the following provisions of this section, for subsequent years of assessment.

(8) For the year 1995-96 and subsequent years of assessment section 256(2)(a) of the Taxes Act 1988 shall have effect with the substitution of “ 15 per cent ” for the words “20 per cent.”

(9) For the year 1995-96, section 257A of the Taxes Act 1988 shall have effect—

- (a) as if the same amount (namely £1,720) were specified in subsection (1) as is specified in that subsection as it applies for the year 1994-95;
- (b) as if the amount specified in subsection (2) were “£2,995”; and
- (c) as if the amount specified in subsection (3) were “£3,035”.

(10) Section 257C(1) of the Taxes Act 1988 (indexation), so far as relating to section 257A (1) to (3) of that Act, shall not apply for the year 1994-95 or for the year 1995-96 but shall not be prevented by anything in this section from applying for the year 1996-97 or any subsequent year of assessment.

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#### Textual Amendments

- F124** S. 77(2)(a) repealed (27.7.1999 with effect as mentioned in Sch. 20 Pt. III(3), Note 2 in the repealing Act) by 1999 c. 16, s. 139, **Sch. 20 Pt. III(3)**, Note 2
- F125** S. 77(3)(4) repealed (27.7.1999 with effect as mentioned in Sch. 20 Pt. III(4), Note in the repealing Act) by 1999 c. 16, s. 139, **Sch. 20 Pt. III(4)**, Note
- F126** S. 77(5) repealed (27.7.1999 with effect as mentioned in Sch. 20 Pt. III(5), Note 2 in the repealing Act) by 1999 c. 16, s. 139, **Sch. 20 Pt. III(5)**, Note 2

#### Marginal Citations

- M32** 1970 c. 9.

### 78 Amount by reference to which MCA is reduced.

Section 257A(5) of the Taxes Act 1988 (reduction of married couple's allowance if claimant's total income exceeds a certain amount) shall apply for the year 1994-95 as if the amount specified in it were the same as the amount specified in it as it applies for the year 1993-94, and accordingly section 257C(1) of that Act (indexation) so far as relating to section 257A(5) shall not apply for the year 1994-95.

### 79 Relief for maintenance payments.

- (1) Sections 347A and 347B of the <sup>M33</sup>Taxes Act 1988 <sup>F127</sup>. . . (which contain provision with respect to the deductions from income allowed on account of maintenance payments) shall have effect in relation to payments becoming due on or after 6th April 1994 with the following modifications.
- <sup>F128</sup>(2) . . . . .
- (3) In subsection (2) of section 347B (relief for qualifying maintenance payments)—
- (a) the words “Notwithstanding section 347A(1)(a) but” shall be omitted; and
  - (b) for the words from “in computing” to “to deduct” there shall be substituted “for a year of assessment to an income tax reduction calculated by reference to”.
- (4) In subsection (3) of section 347B (restriction of relief to amount of married couple's allowance), for the words from the beginning to “exceed” there shall be substituted “The amount by reference to which any income tax reduction is to be calculated under this section shall be limited to”.
- <sup>F128</sup>(5) . . . . .
- (6) After subsection (5) of section 347B there shall be inserted the following subsections—
- “(5A) Where any person is entitled under this section for any year of assessment to an income tax reduction calculated by reference to the amount determined in accordance with subsections (2) to (5) above (“the relevant amount”), the amount of that person's liability for that year to income tax on his total income shall be the amount to which he would have been liable apart from this section less whichever is the smaller of—
- (a) the amount equal to the appropriate percentage of the relevant amount; and



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(b) the amount which reduces his liability to nil;  
and in this subsection “the appropriate percentage” means 20 per cent. for the year 1994-95 and 15 per cent. for the year 1995-96 and subsequent years of assessment.

(5B) In determining for the purposes of subsection (5A) above the amount of income tax to which a person would be liable apart from any income tax reduction under this section, no account shall be taken of—

- (a) any income tax reduction under Chapter I of Part VII;
- (b) any relief by way of a reduction of liability to tax which is given in accordance with any arrangements having effect by virtue of section 788 or by way of a credit under section 790(1); or
- (c) any tax at the basic rate on so much of that person’s income as is income the income tax on which he is entitled to charge against any other person or to deduct, retain or satisfy out of any payment.”

F128(7) .....

F128(8) .....

**Textual Amendments**

**F127** Words in s. 79(1) repealed (27.7.1999 with effect as mentioned in Sch. 20 Pt. III(6), Note in the repealing Act) by 1999 c. 16, s. 139, **Sch. 20 Pt. III(6)**, Note

**F128** S. 79(2)(5)(7)(8) repealed (27.7.1999 with effect as mentioned in Sch. 20 Pt. III(6), Note in the repealing Act) by 1999 c. 16, s. 139, **Sch. 20 Pt. III(6)**, Note

**Marginal Citations**

**M33** 1988 c. 39.

**80 Limit on relief for interest.**

For each of the years 1994-95 and 1995-96 the qualifying maximum defined in section 367(5) of the Taxes Act 1988 (limit on relief for interest on certain loans) shall be £30,000.

**81 Mortgage interest relief etc.**

(1) For subsection (1) of section 353 of the Taxes Act 1988 (general provision for relief for interest payments) there shall be substituted the following subsection—

“(1) Where a person pays interest in any year of assessment, that person, if he makes a claim to the relief, shall for that year of assessment be entitled (subject to sections 354 to 368) to relief in accordance with this section in respect of so much (if any) of the amount of that interest as is eligible for relief under this section by virtue of sections 354 to 365.”

(2) After that subsection there shall be inserted the following subsections—

“(1A) Where a person is entitled for any year of assessment to relief under this section in respect of any amount of interest which—

- (a) is eligible for that relief by virtue of section 354 or 365, and

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- (b) so far as eligible by virtue of section 354, is so eligible in a case which falls, or is treated as falling, within section 355(1)(a), 356 or 358, that relief shall consist in an income tax reduction for that year calculated by reference to that amount.
- (1B) Where a person is entitled for any year of assessment to relief under this section in respect of any amount of interest which—
- (a) is eligible for that relief otherwise than by virtue of section 354 or 365, or
- (b) is eligible for that relief by virtue of section 354 in a case falling within section 355(1)(b),
- that relief shall consist (subject to sections 237(5)(b) and 355(4)) in a deduction or set-off of that amount from or against that person's income for that year.
- (1C) Without prejudice to subsection (1E) below, where the whole or any part of an amount of interest is eligible for relief under this section by virtue of section 354 in a case which (apart from this subsection) would fall, or be treated as falling, within both section 355(1)(a) or 356 and section 355(1)(b), then that case shall be treated for the purposes of this section and the following provisions of this Act—
- (a) except in relation to payments to which an election made for the purposes of this subsection by the person entitled to the relief applies, as falling within section 355(1)(b) and not within section 355(1)(a) or 356; and
- (b) in relation to payments to which such an election does apply, as falling within section 355(1)(a) or, as the case may be, 356, and not within section 355(1)(b).
- (1D) An election for the purposes of subsection (1C)—
- (a) shall be made, and may be withdrawn, by the giving of written notice to an officer of the Board;
- (b) shall apply to every payment of interest which—
- (i) is made after the time specified in the notice of that election as the time as from which it takes effect; and
- (ii) is not made after a time specified in a notice of the withdrawal of that election as the time as from which that election is withdrawn;
- (c) shall not be made so as to take effect as from any time except the beginning of a year of assessment or a time as from which the conditions for the case to fall, or be treated as falling, within both section 355(1)(a) or 356 and section 355(1)(b) have begun to be satisfied in relation to payments of interest on the loan in question;
- (d) shall not be withdrawn except as from the beginning of a year of assessment; and
- (e) shall not be made so as to take effect, and shall not be withdrawn, as from any time before the beginning of the year of assessment immediately before that in which the notice of the election or, as the case may be, of the withdrawal is given to an officer of the Board.
- (1E) Where any person is entitled for any year of assessment to relief under this section in respect of any amount of interest as is eligible for that relief

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partly as mentioned in subsection (1A) above and partly as mentioned in subsection (1B) above, that amount of interest shall be apportioned between the cases to which each of those subsections applies without regard to what parts of the total amount borrowed remain outstanding but according to the following factors, that is to say—

- (a) the proportions of the total amount borrowed which were applied for different purposes; and
  - (b) in the case of so much of any amount of interest which is, or in pursuance of an apportionment under paragraph (a) above is treated as, eligible for relief by virtue of section 354, the different uses to which the land or other property in question is put from time to time;
- and subsection (1A) or (1B) above shall apply accordingly in relation to the interest apportioned to the case to which that subsection applies.

(1F) Where any person is entitled under this section for any year of assessment to an income tax reduction calculated by reference to an amount of interest, the amount of that person's liability for that year to income tax on his total income shall be the amount to which he would have been liable apart from this section less whichever is the smaller of—

- (a) the amount equal to the applicable percentage of that amount of interest; and
- (b) the amount which reduces his liability to nil.

(1G) In subsection (1F) above “the applicable percentage”—

- (a) in relation to so much of any interest as is eligible for relief under this section by virtue of section 354, means 20 per cent.; and
- (b) in relation to so much of any interest as is eligible for relief under this section by virtue of section 365, means the percentage which is the basic rate for the year of assessment in question;

but, in relation to any payment of interest which (whenever falling due) is made in the year 1995-96 or any subsequent year of assessment, paragraph (a) above shall have effect with the substitution of “15 per cent.” for “20 per cent.”

(1H) In determining for the purposes of subsection (1F) above the amount of income tax to which a person would be liable apart from any income tax reduction under this section, no account shall be taken of—

- (a) any income tax reduction under Chapter I of Part VII or section 347B;
- (b) any relief by way of a reduction of liability to tax which is given in accordance with any arrangements having effect by virtue of section 788 or by way of a credit under section 790(1); or
- (c) any tax at the basic rate on so much of that person's income as is income the income tax on which he is entitled to charge against any other person or to deduct, retain or satisfy out of any payment.”

<sup>F129</sup>(3) .....

(4) For subsections (3) to (5B) of section 369 of that Act (provisions balancing deduction of relevant loan interest from income against charge to tax) there shall be substituted the following subsection—

“(3) The following payments, that is to say—

- (a) payments of relevant loan interest to which this section applies, and

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(b) payments which would be such payments but for section 373(5), shall not be allowable as deductions for any purpose of the Income Tax Acts except in so far as they fall to be treated as such payments by virtue only of section 375(2) and would be allowable apart from this subsection.”

(5) Schedule 9 to this Act (which for the purposes of or in connection with the provisions of this section makes further modifications of certain enactments in relation to tax relief on interest payments) shall have effect.

(6) The preceding provisions of this section and that Schedule—  
(a) shall have effect in relation to payments of interest made on or after 6th April 1994 (whenever falling due); and  
(b) shall also have effect, so far as they relate to relevant loan interest, in relation to any payments of interest becoming due on or after 6th April 1994 which have been made at any time before that date but on or after 30th November 1993.

(7) Any provision made before the passing of this Act by reference to the basic rate of income tax and contained in any instrument or agreement under or in accordance with which payments of relevant loan interest have been or are to be made shall be taken, in relation to any such payment as is mentioned in subsection (6)(a) or (b) above, to have been made, instead, by reference to a rate which, in the case of that payment, is the applicable percentage for the purposes of subsection (1) of section 369 of the Taxes Act 1988.

<sup>F129</sup>(8) .....

(9) In this section “relevant loan interest” has the same meaning as in Part IX of the Taxes Act 1988.

**Textual Amendments**  
**F129** S. 81(3)(8) repealed (27.7.1999 with effect as mentioned in Sch. 20 Pt. III(7), Note 4 in the repealing Act) by 1999 c. 16, s. 139, Sch. 20 Pt. III(7), Note 4

**82 Relief for blind persons.**

(1) In section 265(1) of the Taxes Act 1988 (blind person’s allowance) for “£1,080” there shall be substituted “£1,200”.

(2) This section shall apply for the year 1994-95 and subsequent years of assessment.

<sup>F130</sup>**83** .....

**Textual Amendments**  
**F130** S. 83 repealed (31.7.1997 with effect as mentioned in Sch. 8 Pt. II(2), Note in the repealing Act) by 1997 c. 58, s. 52, Sch. 8 Pt. II(2), Note

<sup>F131</sup>**84** .....

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### Textual Amendments

**F131** S. 84 repealed (27.7.1999 with effect as mentioned in s. 59(3)(b), Sch. 20 Pt. III(15), Note in the repealing Act) by 1999 c. 16, ss. 59(3)(b), 139, **Sch. 20 Pt. III(15)**, Note; S.I. 2000/2004, **art. 2**

## Corporation tax charge and rate

### 85 Charge and rate of corporation tax for 1994.

Corporation tax shall be charged for the financial year 1994 at the rate of 33 per cent.

### 86 Small companies.

- (1) For the financial year 1994—
  - (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.
- (2) In section 13(3) of that Act (limits of marginal relief) in paragraphs (a) and (b)—
  - (a) for “£250,000” there shall be substituted “ £300,000 ”, and
  - (b) for “£1,250,000” there shall be substituted “ £1,500,000 ”.
- (3) Subsection (2) above shall have effect for the financial year 1994 and subsequent financial years; and where by virtue of that subsection section 13 of the Taxes Act 1988 has effect with different relevant maximum amounts in relation to different parts of a company's accounting period, then for the purposes of that section those parts shall be treated as if they were separate accounting periods and the profits and basic profits of the company for that period shall be apportioned between those parts.

## Benefits in kind

### 87 Car fuel.

- (1) In section 158 of the Taxes Act 1988 (car fuel) for the Tables in subsection (2) (tables of cash equivalents) there shall be substituted—

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#### “ TABLE A

<i>Cylinder capacity of car in cubic centimetres</i>	<i>Cash equivalent</i>
1,400 or less	£640
More than 1,400 but not more than 2,000	£810
More than 2,000	£1,200

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#### TABLE AB

<i>Cylinder capacity of car in cubic centimetres</i>	<i>Cash equivalent</i>
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2,000 or less	£580
More than 2,000	£750

**TABLE B**

<i>Description of car</i>	<i>Cash equivalent</i>
Any car	£1,200”

(2) This section shall have effect for the year 1994-95 and subsequent years of assessment.

**88 Beneficial loan arrangements.**

(1) In section 160(1) of the Taxes Act 1988 (charge to tax of benefit of loan obtained by reason of employment) for the words following paragraph (b) there shall be substituted—

“an amount equal to whatever is the cash equivalent of the benefit of the loan for that year shall, subject to the provisions of this Chapter, be treated as emoluments of the employment, and accordingly chargeable to tax under Schedule E; and where that amount is so treated, the employee is to be treated as having paid interest on the loan in that year of the same amount.

(1A) Interest treated as paid by virtue of subsection (1) above—

- (a) shall be treated as paid for all the purposes of the Tax Acts (other than this Chapter, including Schedule 7), but shall not be treated for any purpose as income of the person making the loan or be treated as relevant loan interest to which section 369 applies, and
- (b) shall be treated as accruing during, and paid by the employee at the end of, the year or, if different, the period in the year during which he is employed in employment to which this Chapter applies and the loan is outstanding.

(1B) All the loans between the same lender and borrower which—

- (a) are outstanding at any time, as to any amount, in any year,
- (b) are not qualifying loans, and
- (c) are made in the same currency,

are, if a cash equivalent for them falls to be ascertained, to be treated for the purposes of subsections (1) and (1A) above and Part II of Schedule 7 as a single loan.

(1C) In this section and section 161 “qualifying loan” means any loan made to any person where, assuming interest is being paid on the loan (whether or not it is in fact being paid), the whole or any part of the interest—

- (a) is eligible for relief under section 353 or would be so eligible but for subsection (2) of that section or section 357(1)(b), or
- (b) is deductible in computing the amount of the profits or gains to be charged under Case I or II of Schedule D in respect of a trade, profession or vocation carried on by him.”

(2) At the end of section 160(5) of that Act (interpretation, including “official rate of interest”) there shall be added—

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“and, without prejudice to the generality of section 178 of the Finance Act 1989, regulations under that section may make different provision in relation to a loan outstanding for the whole or part of a year if—

- (i) it was made in the currency of a country or territory outside the United Kingdom,
- (ii) the benefit of the loan is obtained by reason of the employment of a person who normally lives in that country or territory, and
- (iii) that person has lived in that country or territory at some time in the period of six years ending with that year”.

(3) For section 161(1) of that Act (exemption for loans the cash equivalent of which does not exceed £300) there shall be substituted—

“(1) The cash equivalent of the benefit of any such loan as is referred to in section 160(1) is not to be treated as emoluments of the employment if—

- (a) at no time in the year does the amount outstanding on the loan (or, if two or more such loans as are referred to in section 160(1) are outstanding in the year, the aggregate of the amounts outstanding on them) exceed £5000, or
- (b) where paragraph (a) above does not apply, the loan is not a qualifying loan and at no time in the year does the amount outstanding on the loan (or, if two or more such loans as are referred to in section 160(1) and are not qualifying loans are outstanding in the year, the aggregate of the amounts outstanding on them) exceed £5000.

(1A) Section 160(1) does not in any year apply to a loan made at any time in that or an earlier year by a person in the ordinary course of a business carried on by him which includes the lending of money if—

- (a) comparable loans were available, at the time the loan in question was made, to all those who might be expected to avail themselves of the services which he provides in the course of that business,
- (b) of the total number of the loan in question and comparable loans made by him at or about the time the loan in question was made, a substantial proportion were made to members of the public at large with whom he was dealing at arm’s length, and
- (c) the loan in question, and comparable loans in general made by him at or about that time to members of the public at large with whom he was dealing at arm’s length, are held on the same terms and, if those terms differ from the terms applicable immediately after the loan was first made, they were imposed in the ordinary course of his business.

(1B) For the purposes of subsection (1A) above, a loan is comparable to the loan in question if it is made for the same or similar purposes, and on the same terms and conditions, as that loan.”

(4) In Schedule 7 to that Act (beneficial loan arrangements)—

- (a) in paragraph 1(5) for “Sub-paragraph (2) above does” there shall be substituted “ Sub-paragraphs (2) and (4) above do ” and the words “his employer, being” shall cease to have effect, and
- (b) Parts III to V shall cease to have effect.

<sup>F132</sup>(5) .....

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(6) This section shall have effect for the year 1994-95 and subsequent years of assessment.

#### Textual Amendments

**F132** S. 88(5) repealed (28.7.2000 with effect as mentioned in s. 57(2), Sch. 40 Pt. II(2), Note in the repealing Act) by 2000 c. 17, ss. 57(2), 156, Sch. 40 Pt. II(2) Note

## 89 Vouchers and credit-tokens.

(1) Section 141 of the Taxes Act 1988 (non-cash vouchers) shall be amended as follows.

(2) In subsection (1)—

- (a) in paragraph (a), for the words from “the expense incurred” to “exchanged;” there shall be substituted “the expense incurred (“the chargeable expense”)—
- (i) by the person at whose cost the voucher and the money, goods or services for which it is capable of being exchanged are provided,
  - (ii) in or in connection with that provision;” and
- (b) the words following paragraph (b) shall be omitted.

(3) In subsection (6B), in paragraph (a) for the words “the person providing the non-cash voucher” there shall be substituted “ the person at whose cost the voucher and the entertainment are provided ”.

(4) Section 142 of the Taxes Act 1988 (credit-tokens) shall be amended as follows.

(5) In subsection (1)(a), for the words from “the expense incurred” to “obtained;” there shall be substituted “the expense incurred—

- (i) by the person at whose cost the money, goods or services are provided,
- (ii) in or in connection with that provision;”.

(6) In subsection (3) for the words “providing the credit-token as mentioned in subsection (1)(a) above” there shall be substituted “ mentioned in subsection (1)(a) (i) above ”.

(7) In subsection (3B), in paragraph (a) for the words “providing the credit-token” there shall be substituted “ mentioned in subsection (1)(a)(i) above ”.

(8) Section 143 of the Taxes Act 1988 (cash vouchers) shall be amended as follows.

(9) In subsection (1) for the words from “(and in particular section 203)” to “paid by his employer” there shall be substituted “—

- (a) he shall be treated as having received”.

(10) In subsection (3) for the words “in providing the voucher by the person who provides it” there shall be substituted “ by the person at whose cost the voucher is provided ”.

(11) In subsection (4)—

- (a) in paragraph (a) for the words “in providing the voucher by the person who provides it” there shall be substituted “ by the person at whose cost the voucher, stamp or similar document is provided ”; and



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- (b) in the words following paragraph (b) for the words from “the expense incurred” to the end there shall be substituted “ the expense incurred by the person mentioned in paragraph (a) above shall be treated as reduced by the difference or part of the difference mentioned in paragraph (b) above. ”
- (12) Section 144 of the Taxes Act 1988 (supplementary provisions relating to sections 141 to 143) shall be amended as follows.
- (13) In subsection (1)—
- (a) for the words “or credit-tokens” there shall be substituted “ , credit-tokens or cash vouchers ”; and
  - (b) for the words “141 or 142” there shall be substituted “ 141, 142 or 143 ”.
- (14) In subsection (3)—
- (a) for the words “141 and 142” there shall be substituted “ 141, 142 and 143 ”; and
  - (b) for the words “by him of non-cash” there shall be substituted “ of ”.

### *Chargeable gains*

#### **90 Annual exempt amount for 1994-95.**

For the year 1994-95 section 3 of the <sup>M34</sup>Taxation of Chargeable Gains Act 1992 (annual exempt amount) shall have effect as if the amount specified in subsection (2) were £5,800, and accordingly subsection (3) of that section (indexation) shall not apply for that year.

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#### **Marginal Citations**

**M34** 1992 c. 12.

#### **91 Relief on re-investment.**

- (1) Schedule 11 to this Act (which extends the relief on re-investment for individuals and trustees provided by Chapter IA of Part V of the Taxation of Chargeable Gains Act 1992) shall have effect.
- (2) That Schedule shall have effect in relation to disposals made on or after 30th November 1993.
- (3) In section 164H(1) of that Act—
  - (a) for “is greater than” there shall be substituted “ exceeds ”, and
  - (b) at the end there shall be added “ or half the value of the company’s assets as a whole (whichever is the greater); and section 294(3) and (4) of the Taxes Act (meaning of value of company’s assets as a whole) applies for the purposes of this subsection as it applies for the purposes of section 294 of that Act ”.
- (4) Subsection (3) above shall apply to determine whether a company is a qualifying company on or after 30th November 1993.

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### Textual Amendments

**F133** S. 92 repealed (31.7.1998 with effect as mentioned in Sch. 27 Pt. III(31), Note in the repealing Act) by 1998 c. 36, s. 165, **Sch. 27 Pt. III(31)** Note

## 93 Indexation losses.

- (1) In section 53 of the Taxation of Chargeable Gains Act 1992 (indexation allowance), in subsection (1), for the words following “contrary” to the end of paragraph (c) there shall be substituted “if on the disposal of an asset there is an unindexed gain, an allowance (“the indexation allowance”) shall be allowed against the unindexed gain—
  - (a) so as to give the gain for the purposes of this Act, or
  - (b) if the indexation allowance equals or exceeds the unindexed gain, so as to extinguish it (in which case the disposal shall be one on which, after taking account of the indexation allowance, neither a gain nor a loss accrues)”.
- (2) In subsection (2) of that section—
  - (a) for “subsection (1) above” there shall be substituted “ this Chapter ”,
  - (b) for paragraph (a) there shall be substituted—
    - “(a) “unindexed gain” means the amount of the gain on the disposal computed in accordance with this Part”, and
  - (c) in paragraph (b), for “gain or loss” there shall be substituted “ gain ”.
- (3) After that subsection there shall be inserted—
 

“(2A) Notwithstanding anything in section 16 of this Act, this section shall not apply to a disposal on which a loss accrues.”
- (4) In section 55 of that Act (assets acquired on a no gain/no loss disposal), after subsection (6) there shall be inserted—
  - “(7) The rules in subsection (8) below apply (after the application of section 53 but before the application of section 35(3) or (4)) to give the gain or loss for the purposes of this Act where—
    - (a) subsection (6) above applies to the disposal (the “disposal in question”) of an asset by any person (the “transferor”), and
    - (b) but for paragraph (b) of that subsection, the consideration the transferor would be treated as having given for the asset would include an amount or amounts of indexation allowance brought into account by virtue of section 56(2) on any disposal made before 30th November 1993.
  - (8) The rules are as follows—
    - (a) where (apart from this subsection) there would be a loss, an amount equal to the rolled-up indexation shall be added to it so as to increase it,
    - (b) where (apart from this subsection) the unindexed gain or loss would be nil, there shall be a loss of an amount equal to the rolled-up indexation, and
    - (c) where (apart from this subsection)—

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- (i) there would be an unindexed gain, and
- (ii) the gain or loss would be nil but the amount of the indexation allowance used to extinguish the gain would be less than the rolled-up indexation,

the difference shall constitute a loss.

- (9) In this section the “rolled-up indexation” means, subject to subsections (10) and (11) below, the amount or, as the case may be, the aggregate of the amounts referred to in subsection (7)(b) above; and subsections (10) and (11) below shall, as well as applying on the disposal in question, be treated as having applied on any previous part disposal by the transferor.
  - (10) Where, for the purposes of any disposal of the asset by the transferor, any amount falling within any, or any combination of, paragraphs (a) to (c) of section 38(1) is required by any enactment to be excluded, reduced or written down, the amount or aggregate referred to in subsection (9) above (or so much of it as remains after the application of this subsection and subsection (11) below on a previous part disposal) shall be reduced in proportion to any reduction made in the amount falling within the paragraph, or the combination of paragraphs, in question.
  - (11) Where the transferor makes a part disposal of the asset at any time, then, for the purposes of that and any subsequent disposal, the amount or aggregate referred to in subsection (9) above (or so much of it as remains after the application of this subsection and subsection (10) above on a previous part disposal by him or after the application of subsection (10) above on the part disposal) shall be apportioned between the property disposed of and the property which remains in the same proportions as the sums falling within section 38(1)(a) and (b).”
- (5) In section 56 of that Act (amount of consideration on no gain/no loss disposals)—
- (a) in subsection (2) for the words preceding paragraph (a) there shall be substituted “ On a no gain/no loss disposal by any person (“the transferor”)”, and
  - (b) after that subsection there shall be added—
    - “(3) Where apart from this subsection—
      - (a) a loss would accrue on the disposal of an asset, and
      - (b) the sums allowable as a deduction in computing that loss would include an amount attributable to the application of the assumption in subsection (2) above on any no gain/no loss disposal made on or after 30th November 1993,those sums shall be determined as if that subsection had not applied on any such disposal made on or after that date and the loss shall be reduced accordingly or, if those sums are then equal to or less than the consideration for the disposal, the disposal shall be one on which neither a gain nor a loss accrues.
  - (4) For the purposes of this section a no gain/no loss disposal is one which, by virtue of any enactment other than section 35(4), 53(1) or this section, is treated as a disposal on which neither a gain nor a loss accrues to the person making the disposal.”

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- (6) In section 110 of that Act (indexation allowance for share pools), after subsection (6) there shall be inserted—

“(6A) Where a disposal to a person acquiring or adding to a new holding is treated by virtue of any enactment as one on which neither a gain nor a loss accrues to the person making the disposal—

- (a) section 56(2) shall not apply to the disposal (and, accordingly, the amount of the consideration shall not be calculated on the assumption that a gain of an amount equal to the indexation allowance accrues to the person making the disposal), but
- (b) an amount equal to the indexation allowance on the disposal shall be added to the indexed pool of expenditure for the holding acquired or, as the case may be, held by the person to whom the disposal is made (and, where it is added to the indexed pool of expenditure for a holding so held, it shall be added after any increase required by subsection (8)(a) below).”

- (7) Sections 103 (collective investment schemes, etc.), 111 (building society etc. shares), 182 to 184 (groups and associated companies) and 200 (oil industry assets) of that Act (all of which relate to indexation allowance) shall cease to have effect.

- (8) In Schedule 7A to that Act (restriction on set-off of pre-entry losses), in paragraph 2—

- (a) in sub-paragraph (2), for the definitions of “B” and “C” there shall be substituted—

“B is the amount of the item of relevant allowable expenditure for which an amount falls to be determined under this paragraph;

C is the total amount of all the relevant allowable expenditure”;

- (b) in sub-paragraph (4), “except in relation to the calculation of any indexed rise” shall cease to have effect,
- (c) after sub-paragraph (8) there shall be inserted—

“(8A) Where by virtue of section 55(8) the allowable loss accruing on the disposal of a pre-entry asset, or any part of the loss, is attributable to an amount (“the rolled-up amount”) of rolled-up indexation (as defined in section 55(9) to (11)), then, for the purposes of this paragraph—

- (a) the total amount of all the relevant allowable expenditure shall be treated as increased by the rolled-up amount, and
- (b) the amount of each item of relevant allowable expenditure shall be treated as increased by so much (if any) of the rolled-up amount as is attributable to that item.

(8B) Where—

- (a) section 56(3) applies on the disposal of a pre-entry asset on which an allowable loss accrues, and
- (b) in accordance with that subsection, the total amount of all the relevant allowable expenditure is reduced by any amount (“the global reduction”),

the amount of each item of relevant allowable expenditure shall be treated for the purposes of this paragraph as reduced by so much (if any) of the global reduction as is attributable to that item”, and

- (d) in sub-paragraph (9), the definition of “indexed rise” shall cease to have effect.

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- (9) In paragraph 4 of that Schedule—
- (a) in sub-paragraph (12) the words from “together” to the end, and
  - (b) sub-paragraph (13),
- shall cease to have effect.
- (10) In paragraph 5 of that Schedule, after sub-paragraph (2) there shall be inserted—
- “(2A) In determining for the purposes of sub-paragraph (2)(a) above the amount of any loss which would have accrued if the asset had been disposed of at the relevant time at its market value at that time—
- (a) it shall be assumed that the amendments of this Act made by section 93(1) to (5) of the Finance Act 1994 (indexation losses) had effect in relation to that disposal and, accordingly,
  - (b) references in those amendments and in subsection (11) of that section to 30th November 1993 shall be read as references to the day on which the relevant time falls.”
- (11) This section shall have effect in relation to disposals made on or after 30th November 1993 and Schedule 12 to this Act (which gives transitional relief) shall have effect for the years 1993–94 and 1994–95.

#### 94 Set-off of pre-entry losses.

- (1) Schedule 7A to the <sup>M35</sup>Taxation of Chargeable Gains Act 1992 (set off of pre-entry losses) shall be amended as follows.
- (2) In sub-paragraph (3)(a) of paragraph 2 (calculation of pre-entry proportion of loss), for “assumption applying by virtue of sub-paragraphs (4) and (5)” there shall be substituted “assumptions applying by virtue of sub-paragraphs (4) to (6B)”, and for sub-paragraph (7) of that paragraph there shall be substituted the following sub-paragraphs—
- “(6A) Notwithstanding anything in section 56(2), where in the case of the disposal of any pre-entry asset—
- (a) any company has at any time between the relevant time and the time of the disposal acquired that asset or the equivalent asset, and
  - (b) the acquisition was either an acquisition in pursuance of a disposal on which there is treated by virtue of section 171 as having been neither a gain nor a loss accruing or an acquisition by virtue of which an asset is treated as the equivalent asset,
- the items of relevant allowable expenditure and the times when those items shall be treated as having been incurred shall be determined for the purposes of this paragraph on the assumptions specified in sub-paragraph (6B) below.
- (6B) Those assumptions are that—
- (a) the company by reference to which the asset in question is a pre-entry asset, and
  - (b) the company mentioned in sub-paragraph (6A) above and every other company which has made an acquisition which, in relation to the disposal of that asset, falls within that sub-paragraph,
- were the same person and, accordingly, that the pre-entry asset had been acquired by the company disposing of it at the time when it or the equivalent

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asset would have been treated for the purposes of this paragraph as acquired by the company mentioned in paragraph (a) above.

- (7) In sub-paragraphs (5) to (6B) above the references to the equivalent asset, in relation to another asset acquired or disposed of by any company, are references to any asset which falls in relation to that company to be treated (whether by virtue of paragraph 1(8) above or otherwise) as the same as the other asset or which would fall to be so treated after applying, as respects other assets, the assumptions for which those sub-paragraphs provide.”
- (3) In paragraph 9(2)(c) (cases where a group is relevant if a company was a member of it in the accounting period in which it joined another relevant group), after “paragraph (a)” there shall be inserted “ or (b) ”.
- (4) This section shall apply in relation to the making in respect of any loss of any deduction from a chargeable gain where either the gain or the loss is one accruing on or after 11th March 1994.

**Marginal Citations**

M35 1992 c. 12.

**95 Commodity and financial futures.**

- (1) In section 143 of the <sup>M36</sup>Taxation of Chargeable Gains Act 1992 (commodity and financial futures and qualifying options), subsection (4) shall cease to have effect and for subsection (6) there shall be substituted the following subsections—
- “(6) In any case where, in the course of dealing in commodity or financial futures, a person has entered into a futures contract and—
- (a) he has not closed out the contract (as mentioned in subsection (5) above), and
  - (b) he becomes entitled to receive or liable to make a payment, whether under the contract or otherwise, in full or partial settlement of any obligations under the contract,
- then, for the purposes of this Act, he shall be treated as having disposed of an asset (namely, that entitlement or liability) and the payment received or made by him shall be treated as consideration for the disposal or, as the case may be, as incidental costs to him of making the disposal.
- (7) Section 46 shall not apply to obligations under—
- (a) a commodity or financial futures contract which is entered into by a person in the course of dealing in such futures on a recognised futures exchange; or
  - (b) a commodity or financial futures contract to which an authorised person or listed institution is a party.
- (8) In this section—
- “authorised person” has the same meaning as in the Financial Services Act 1986, and
- “listed institution” has the same meaning as in section 43 of that Act.”

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- (2) This section shall apply in relation to contracts entered into on or after 30th November 1993.

**Marginal Citations**

M36 1992 c.12.

**96 Cash-settled options.**

- (1) After section 144 of the <sup>M37</sup>Taxation of Chargeable Gains Act 1992 (options and forfeited deposits) there shall be inserted the following section—

**“144A Cash-settled options.**

- (1) In any case where—
- (a) an option is exercised; and
  - (b) the nature of the option (or its exercise) is such that the grantor of the option is liable to make, and the person exercising it is entitled to receive, a payment in full settlement of all obligations under the option,
- subsections (2) and (3) below shall apply in place of subsections (2) and (3) of section 144.
- (2) As regards the grantor of the option—
- (a) he shall be treated as having disposed of an asset (namely, his liability to make the payment) and the payment made by him shall be treated as incidental costs to him of making the disposal; and
  - (b) the grant of the option and the disposal shall be treated as a single transaction and the consideration for the option shall be treated as the consideration for the disposal.
- (3) As regards the person exercising the option—
- (a) he shall be treated as having disposed of an asset (namely, his entitlement to receive the payment) and the payment received by him shall be treated as the consideration for the disposal;
  - (b) the acquisition of the option (whether directly from the grantor or not) and the disposal shall be treated as a single transaction and the cost of acquiring the option shall be treated as expenditure allowable as a deduction under section 38(1)(a) from the consideration for the disposal; and
  - (c) for the purpose of computing the indexation allowance (if any) on the disposal, the cost of the option shall be treated (notwithstanding paragraph (b) above) as incurred when the option was acquired.
- (4) In any case where subsections (2) and (3) above would apply as mentioned in subsection (1) above if the reference in that subsection to full settlement included a reference to partial settlement, those subsections and subsections (2) and (3) of section 144 shall both apply but with the following modifications—

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- (a) for any reference to the grant or acquisition of the option there shall be substituted a reference to the grant or acquisition of so much of the option as relates to the making and receipt of the payment or, as the case may be, the sale or purchase by the grantor; and
  - (b) for any reference to the consideration for, or the cost of or of acquiring, the option there shall be substituted a reference to the appropriate proportion of that consideration or cost.
- (5) In this section “appropriate proportion” means such proportion as may be just and reasonable in all the circumstances.”
- (2) This section shall apply in relation to options granted on or after 30th November 1993.

#### Marginal Citations

M37 1992 c.12.

#### 97 Settlements with foreign element: information.

- (1) The <sup>M38</sup>Taxation of Chargeable Gains Act 1992 shall be amended as mentioned in subsections (2) to (4) below.
- (2) In Chapter II of Part III (settlements) the following section shall be inserted after section 98—

#### “98A Settlements with foreign element: information.

Schedule 5A to this Act (which contains general provisions about information relating to settlements with a foreign element) shall have effect.”

- (3) The following Schedule shall be inserted after Schedule 5—

#### “SCHEDULE 5A

Section 98A.

#### SETTLEMENTS WITH FOREIGN ELEMENT: INFORMATION

- 1 In this Schedule “the commencement day” means the day on which the Finance Act 1994 was passed.
- 2 (1) This paragraph applies if—
- (a) a settlement was created before 19th March 1991,
  - (b) on or after the commencement day a person transfers property to the trustees otherwise than under a transaction entered into at arm’s length and otherwise than in pursuance of a liability incurred by any person before that day,
  - (c) the trustees are not resident or ordinarily resident in the United Kingdom at the time the property is transferred, and
  - (d) the transferor knows, or has reason to believe, that the trustees are not so resident or ordinarily resident.
- (2) Before the expiry of the period of twelve months beginning with the relevant day, the transferor shall deliver to the Board a return which—
- (a) identifies the settlement, and



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- (b) specifies the property transferred, the day on which the transfer was made, and the consideration (if any) for the transfer.
- (3) For the purposes of sub-paragraph (2) above the relevant day is the day on which the transfer is made.
- 3 (1) This paragraph applies if a settlement is created on or after the commencement day, and at the time it is created—
  - (a) the trustees are not resident or ordinarily resident in the United Kingdom, or
  - (b) the trustees are resident or ordinarily resident in the United Kingdom but fall to be regarded for the purposes of any double taxation relief arrangements as resident in a territory outside the United Kingdom.
- (2) Any person who—
  - (a) is a settlor in relation to the settlement at the time it is created, and
  - (b) at that time fulfils the condition mentioned in sub-paragraph (3) below,
 shall, before the expiry of the period of three months beginning with the relevant day, deliver to the Board a return specifying the particulars mentioned in sub-paragraph (4) below.
- (3) The condition is that the person concerned is domiciled in the United Kingdom and is either resident or ordinarily resident in the United Kingdom.
- (4) The particulars are—
  - (a) the day on which the settlement was created;
  - (b) the name and address of the person delivering the return;
  - (c) the names and addresses of the persons who are the trustees immediately before the delivery of the return.
- (5) For the purposes of sub-paragraph (2) above the relevant day is the day on which the settlement is created.
- 4 (1) This paragraph applies if a settlement is created on or after 19th March 1991, and at the time it is created—
  - (a) the trustees are not resident or ordinarily resident in the United Kingdom, or
  - (b) the trustees are resident or ordinarily resident in the United Kingdom but fall to be regarded for the purposes of any double taxation relief arrangements as resident in a territory outside the United Kingdom.
- (2) Any person who—
  - (a) is a settlor in relation to the settlement at the time it is created,
  - (b) at that time does not fulfil the condition mentioned in sub-paragraph (3) below, and
  - (c) first fulfils that condition at a time falling on or after the commencement day,
 shall, before the expiry of the period of twelve months beginning with the relevant day, deliver to the Board a return specifying the particulars mentioned in sub-paragraph (4) below.

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- (3) The condition is that the person concerned is domiciled in the United Kingdom and is either resident or ordinarily resident in the United Kingdom.
  - (4) The particulars are—
    - (a) the day on which the settlement was created;
    - (b) the name and address of the person delivering the return;
    - (c) the names and addresses of the persons who are the trustees immediately before the delivery of the return.
  - (5) For the purposes of sub-paragraph (2) above the relevant day is the day on which the person first fulfils the condition as mentioned in paragraph (c) of that sub-paragraph.
- 5 (1) This paragraph applies if—
- (a) the trustees of a settlement become at any time (the relevant time) on or after the commencement day neither resident nor ordinarily resident in the United Kingdom, or
  - (b) the trustees of a settlement, while continuing to be resident and ordinarily resident in the United Kingdom, become at any time (the relevant time) on or after the commencement day trustees who fall to be regarded for the purposes of any double taxation relief arrangements as resident in a territory outside the United Kingdom.
- (2) Any person who was a trustee of the settlement immediately before the relevant time shall, before the expiry of the period of twelve months beginning with the relevant day, deliver to the Board a return specifying—
- (a) the day on which the settlement was created,
  - (b) the name and address of each person who is a settlor in relation to the settlement immediately before the delivery of the return, and
  - (c) the names and addresses of the persons who are the trustees immediately before the delivery of the return.
- (3) For the purposes of sub-paragraph (2) above the relevant day is the day when the relevant time falls.
- 6 (1) Nothing in paragraph 2, 3, 4 or 5 above shall require information to be contained in the return concerned to the extent that—
- (a) before the expiry of the period concerned the information has been provided to the Board by any person in pursuance of the paragraph concerned or of any other provision, or
  - (b) after the expiry of the period concerned the information falls to be provided to the Board by any person in pursuance of any provision other than the paragraph concerned.
- (2) Nothing in paragraph 2, 3, 4 or 5 above shall require a return to be delivered if—
- (a) before the expiry of the period concerned all the information concerned has been provided to the Board by any person in pursuance of the paragraph concerned or of any other provision, or
  - (b) after the expiry of the period concerned all the information concerned falls to be provided to the Board by any person in pursuance of any provision other than the paragraph concerned.”

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- (4) In Schedule 5, paragraphs 11 to 14 (information) shall be omitted.
- (5) Subsection (4) above shall have effect where the relevant day falls on or after the day on which this Act is passed.
- (6) In the Table in section 98 of the <sup>M39</sup>Taxes Management Act 1970 (penalties) at the end of the second column there shall be inserted—  
 “ Paragraphs 2 to 6 of Schedule 5A to the 1992 Act. ”

**Marginal Citations**

- M38 1992 c. 12.
- M39 1970 c. 9.

*Profit-related pay*

F134<sup>98</sup> .....

**Textual Amendments**

F134 S. 98 repealed (19.3.1997 with effect as mentioned in s. 61(2)(3), Sch. 18 Pt. VI(3), Notes 1, 2 in the repealing Act) by 1997 c. 16, ss. 61(2)(3), 113, Sch. 18 Pt. VI(3), Notes 1, 2

F135<sup>99</sup> .....

**Textual Amendments**

F135 S. 99 repealed (19.3.1997 with effect as mentioned in s. 61(2)(3), Sch. 18 Pt. VI(3), Notes 1, 2 in the repealing Act) by 1997 c. 16, ss. 61(2)(3), 113, Sch. 18 Pt. VI(3), Notes 1, 2

*Profit sharing schemes*

**100 Relevant age for purpose of appropriate percentage.**

- (1) Schedule 10 to the Taxes Act 1988 (profit sharing schemes) shall be amended as follows.
- (2) In paragraph 3 (the appropriate percentage for purposes of tax charge) the words from “In this paragraph” to the end of the paragraph shall be omitted.
- (3) The following paragraph shall be inserted after paragraph 3—  
 “3A  
 (1) In paragraph 3 above the reference to the relevant age shall be construed as follows.

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- (2) Where the scheme is approved before 25th July 1991 and the event occurs before 30th November 1993, the relevant age is pensionable age.
- (3) Where—
  - (a) the scheme is approved before 25th July 1991,
  - (b) the event occurs on or after 30th November 1993,
  - (c) the scheme defines the period of retention by reference to the age of 60 for both men and women, and
  - (d) the reference to that age is incorporated in the definition by virtue of an alteration approved by the Board under paragraph 4 of Schedule 9 before the event occurs,
 the relevant age is 60.
- (4) Where—
  - (a) the scheme is approved before 25th July 1991,
  - (b) the event occurs on or after 30th November 1993, and
  - (c) sub-paragraph (3) above does not apply,
 the relevant age is pensionable age.
- (5) Where the scheme is approved on or after 25th July 1991, the relevant age is the specified age.”

#### **101 Acceptance of qualifying corporate bonds for shares.**

- (1) Schedule 10 to the Taxes Act 1988 (profit sharing schemes) shall be amended as mentioned in subsections (2) to (4) below.
- (2) In paragraph 1 (limitations on contractual obligations of participants) in sub-paragraph (1) the following paragraph shall be inserted after paragraph (c)—
  - “(cc) directing the trustees to accept an offer of a qualifying corporate bond, whether alone or with cash or other assets or both, for his shares if the offer forms part of a general offer which is made as mentioned in paragraph (c) above; or”.
- (3) In paragraph 1 the following sub-paragraph shall be inserted after sub-paragraph (3)—
  - “(4) In sub-paragraph (1)(cc) above “qualifying corporate bond” shall be construed in accordance with section 117 of the 1992 Act.”
- (4) The following paragraph shall be inserted after paragraph 5 (company reconstructions)
  - 
  - “5A (1) Paragraph 5(2) to (6) above apply where there occurs in relation to any of a participant’s shares (“the original holding”) a relevant transaction which would result in a new holding being equated with the original holding for the purposes of capital gains tax, were it not for the fact that what would be the new holding consists of or includes a qualifying corporate bond; and “relevant transaction” here means a transaction mentioned in Chapter II of Part IV of the 1992 Act.
  - (2) In paragraph 5(2) to (6) above as applied by this paragraph—

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- (a) references to a company reconstruction are to the transaction referred to in sub-paragraph (1) above;
  - (b) references to the new holding are to what would be the new holding were it not for the fact mentioned in sub-paragraph (1) above;
  - (c) references to the original holding shall be construed in accordance with sub-paragraph (1) above (and not paragraph 5(1));
  - (d) references to shares, in the context of the new holding, include securities and rights of any description which form part of the new holding.
- (3) In sub-paragraph (1) above “qualifying corporate bond” shall be construed in accordance with section 117 of the 1992 Act.”
- (5) In paragraph 32(1) of Schedule 9 to the Taxes Act 1988 (requirements applicable to profit sharing schemes) for “or (c)” there shall be substituted “, (c) or (cc)”.
- (6) In paragraph 33(a) of Schedule 9 to the Taxes Act 1988 (which provides that the trust instrument must contain certain provision by reference to new shares within the meaning of paragraph 5 of Schedule 10) the reference to paragraph 5 of Schedule 10 shall be construed as including a reference to that paragraph as applied by paragraph 5A.
- (7) Subsections (2) and (3) above shall have effect where a direction is made on or after the day on which this Act is passed.
- (8) Subsection (4) above shall have effect where what would be the new holding comes into being on or after the day on which this Act is passed; but this is subject to subsection (13) below.
- (9) Subsection (5) above shall have effect in relation to any scheme not approved before the day on which this Act is passed.
- (10) In a case where—
  - (a) a scheme is approved before the day on which this Act is passed, and
  - (b) on or after that day the trust instrument is altered in such a way that paragraph 32(1) of Schedule 9 to the Taxes Act 1988 would be fulfilled if subsection (5) above applied in relation to the scheme,subsection (5) above shall apply in relation to the scheme with effect from the time the alteration is made.
- (11) Subsection (6) above shall have effect in relation to any scheme not approved before the day on which this Act is passed.
- (12) In a case where—
  - (a) a scheme is approved before the day on which this Act is passed, and
  - (b) on or after that day the trust instrument is altered in such a way that paragraph 33(a) of Schedule 9 to the Taxes Act 1988 would be fulfilled if subsection (6) above applied in relation to the scheme,subsection (6) above shall apply in relation to the scheme with effect from the time the alteration is made.
- (13) In a case where—
  - (a) a scheme is approved before the day on which this Act is passed,

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- (b) subsection (4) above would apply in relation to the scheme by virtue of subsection (8) above and apart from this subsection, and
  - (c) the trust instrument is not altered as mentioned in subsection (12)(b) above before what would be the new holding comes into being,
- subsection (4) above shall not apply in relation to the scheme.
- (14) Subsection (6) above shall not imply a contrary intention for the purposes of section 20(2) of the <sup>M40</sup>Interpretation Act 1978 in its application to other references to paragraph 5 of Schedule 10 to the Taxes Act 1988.

#### Marginal Citations

M40 1978 c.30.

### *Employee share ownership trusts*

#### **102 Employee share ownership trusts.**

Schedule 13 to this Act (which contains provisions about employee share ownership trusts) shall have effect.

### *Retirement benefits schemes*

#### **103 The administrator.**

- (1) The following section shall be inserted after section 611 of the Taxes Act 1988—

##### **“611AA Definition of the administrator.**

- (1) In this Chapter references to the administrator, in relation to a retirement benefits scheme, are to the person who is, or the persons who are, for the time being the administrator of the scheme by virtue of the following provisions of this section.
- (2) Subject to subsection (7) below, where—
  - (a) the scheme is a trust scheme, and
  - (b) at any time the trustee, or any of the trustees, is or are resident in the United Kingdom,
 the administrator of the scheme at that time shall be the trustee or trustees of the scheme.
- (3) Subject to subsection (7) below, where—
  - (a) the scheme is a non-trust scheme, and
  - (b) at any time the scheme sponsor, or any of the scheme sponsors, is or are resident in the United Kingdom,
 the administrator of the scheme at that time shall be the scheme sponsor or scheme sponsors.
- (4) At any time when the trustee of a trust scheme is not resident in the United Kingdom or (if there is more than one trustee) none of the trustees is so

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resident, the trustee or trustees shall ensure that there is a person, or there are persons—

- (a) resident in the United Kingdom, and
- (b) appointed by the trustee or trustees to be responsible for the discharge of all duties relating to the scheme which are imposed on the administrator under this Chapter.

(5) At any time when the scheme sponsor of a non-trust scheme is not resident in the United Kingdom or (if there is more than one scheme sponsor) none of the scheme sponsors is so resident, the scheme sponsor or scheme sponsors shall ensure that there is a person, or there are persons—

- (a) resident in the United Kingdom, and
- (b) appointed by the scheme sponsor or scheme sponsors to be responsible for the discharge of all duties relating to the scheme which are imposed on the administrator under this Chapter.

(6) Without prejudice to subsections (4) and (5) above—

- (a) the trustee or trustees of a trust scheme, or
- (b) the scheme sponsor or scheme sponsors of a non-trust scheme,

may at any time appoint a person who is, or persons who are, resident in the United Kingdom to be responsible for the discharge of all duties relating to the scheme which are imposed on the administrator under this Chapter.

(7) Where at any time there is or are a person or persons—

- (a) for the time being appointed under subsection (4), (5) or (6) above as regards a scheme, and
- (b) resident in the United Kingdom,

the administrator of the scheme at that time shall be that person or those persons (and no other person).

(8) Any appointment under subsection (4), (5) or (6) above—

- (a) must be in writing, and
- (b) if made after the time when the scheme is established, shall constitute an alteration of the scheme for the purposes of section 591B(2).

(9) In this section—

- (a) references to a trust scheme are to a retirement benefits scheme established under a trust or trusts;
- (b) references to the trustee or trustees, in relation to a trust scheme and to a particular time, are to the person who is the trustee, or the persons who are the trustees, of the scheme at that time;
- (c) references to a non-trust scheme are to a retirement benefits scheme not established under a trust or trusts, and
- (d) references to the scheme sponsor or scheme sponsors, in relation to a retirement benefits scheme and to a particular time, are references to any person who established the scheme and is in existence at that time or, if more than one, all such persons.”

(2) In consequence of subsection (1) above, in section 612(1) of the Taxes Act 1988 (interpretation of Chapter I of Part XIV) the definition of “administrator” shall cease to have effect.

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(3) This section—

- (a) so far as it relates to section 591B(1) of the Taxes Act 1988, shall apply in relation to notices given on or after the day on which this Act is passed;
- (b) so far as it relates to section 593(3) of that Act, shall apply in relation to contributions paid on or after that day;
- (c) so far as it relates to section 596A(3) of that Act, shall apply in relation to benefits received on or after that day;
- (d) so far as it relates to sections 598(2) and (4), 599(3) and 599A(2) of that Act, shall apply in relation to payments made on or after that day;
- (e) so far as it relates to section 602(1) and (2) of that Act and regulations made under section 602, shall apply in relation to amounts becoming recoverable on or after that day;
- (f) so far as it relates to section 604(1) of that Act, shall apply in relation to applications made on or after that day;
- (g) so far as it relates to section 605(1) and (4) of that Act, shall apply in relation to notices given on or after that day.

**104 Default of administrator etc.**

(1) The following section shall be substituted for section 606 of the Taxes Act 1988—

**“606 Default of administrator etc.**

- (1) This section applies in relation to a retirement benefits scheme if at any time—
  - (a) there is no administrator of the scheme, or
  - (b) the person who is, or all of the persons who are, the administrator of the scheme cannot be traced, or
  - (c) the person who is, or all of the persons who are, the administrator of the scheme is or are in default for the purposes of this section.
- (2) If the scheme is a trust scheme, then—
  - (a) if subsection (1)(b) or (c) above applies and at the time in question the condition mentioned in subsection (3) below is fulfilled, the trustee or trustees shall at that time be responsible for the discharge of all duties imposed on the administrator under this Chapter (whenever arising) and liable for any tax due from the administrator in the administrator’s capacity as such (whenever falling due);
  - (b) if subsection (1)(a) above applies, or subsection (1)(b) or (c) above applies and at the time in question the condition mentioned in subsection (3) below is not fulfilled, the employer shall at that time be so responsible and liable;

and paragraph (b) above shall apply to a person in his capacity as the employer even if he is also the administrator, or a trustee, of the scheme.
- (3) The condition is that there is at least one trustee of the scheme who—
  - (a) can be traced,
  - (b) is resident in the United Kingdom, and
  - (c) is not in default for the purposes of this section.
- (4) If the scheme is a non-trust scheme, then—



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- (a) if subsection (1)(b) or (c) above applies and at the time in question the condition mentioned in subsection (5) below is fulfilled, the scheme sponsor or scheme sponsors shall at that time be responsible for the discharge of all duties imposed on the administrator under this Chapter (whenever arising) and liable for any tax due from the administrator in the administrator's capacity as such (whenever falling due);
- (b) if subsection (1)(a) above applies, or subsection (1)(b) or (c) above applies and at the time in question the condition mentioned in subsection (5) below is not fulfilled, the employer shall at that time be so responsible and liable;

and paragraph (b) above shall apply to a person in his capacity as the employer even if he is also the administrator of the scheme, or a scheme sponsor.

- (5) The condition is that there is at least one scheme sponsor who—
  - (a) can be traced,
  - (b) is resident in the United Kingdom, and
  - (c) is not in default for the purposes of this section.
- (6) Where at any time—
  - (a) paragraph (b) or (c) of subsection (1) above applies in relation to a scheme, and
  - (b) a person is by virtue of this section responsible for the discharge of any duties, or liable for any tax, in relation to the scheme,then at that time the person or persons mentioned in paragraph (b) or (as the case may be) paragraph (c) of subsection (1) above shall not, by reason only of being the administrator of the scheme, be responsible for the discharge of those duties or liable for that tax.
- (7) Where the scheme is a trust scheme and the employer is not a contributor to the scheme, subsection (2) above shall have effect as if—
  - (a) for “the employer”, in the first place where those words occur, there were substituted “the scheme sponsor or scheme sponsors”, and
  - (b) for “the employer”, in the second place where those words occur, there were substituted “scheme sponsor”.
- (8) Where the scheme is a non-trust scheme and the employer is not a contributor to the scheme, subsection (4) above shall have effect as if paragraph (b) and the words after that paragraph were omitted.
- (9) No liability incurred under this Chapter—
  - (a) by the administrator of a scheme, or
  - (b) by a person by virtue of this section,shall be affected by the termination of a scheme or by its ceasing to be an approved scheme or to be an exempt approved scheme.
- (10) Where by virtue of this section a person becomes responsible for the discharge of any duties, or liable for any tax, the Board shall, as soon as is reasonably practicable, notify him of that fact; but any failure to give such notification shall not affect that person's being responsible or liable by virtue of this section.
- (11) A person is in default for the purposes of this section if—

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- (a) he has failed to discharge any duty imposed on him under this Chapter, or
  - (b) he has failed to pay any tax due from him by virtue of this Chapter, and (in either case) the Board consider the failure to be of a serious nature.
- (12) References in this section to a trust scheme, a non-trust scheme, trustees and scheme sponsors shall be construed in accordance with section 611AA.
- (13) References in this section to the employer include, where the employer is resident outside the United Kingdom, references to any branch or agent of the employer in the United Kingdom, and in this subsection “branch or agent” has the meaning given by section 118(1) of the Management Act.
- (14) This section does not apply for the purposes of sections 602 and 603 and Schedule 22.”
- (2) In consequence of subsection (1) above, in section 607(3)(b)(iii) of the Taxes Act 1988 for the words “section 606(1) and (3)” there shall be substituted “ section 606(2)(b), (4)(b), (7), (8) and (13) ”.
- (3) This section shall apply where the time in question falls on or after the day on which this Act is passed.

## 105 Information.

- (1) The Taxes Act 1988 shall be amended in accordance with subsections (2) and (3) below.
- (2) In section 605 (information) at the beginning there shall be inserted the following subsections—
- “(1A) The Board may by regulations make any of the following provisions—
- (a) provision requiring prescribed persons to furnish to the Board at prescribed times information relating to any of the matters mentioned in subsection (1B) below;
  - (b) provision enabling the Board to serve a notice requiring prescribed persons to furnish to the Board, within a prescribed time, particulars relating to any of those matters;
  - (c) provision enabling the Board to serve a notice requiring prescribed persons to produce to the Board, within a prescribed time, documents relating to any of those matters;
  - (d) provision enabling the Board to serve a notice requiring prescribed persons to make available for inspection on behalf of the Board books, documents and other records, being books, documents and records which relate to any of those matters;
  - (e) provision requiring prescribed persons to preserve for a prescribed time books, documents and other records, being books, documents and records which relate to any of those matters.
- (1B) The matters referred to in subsection (1A) above are—
- (a) an approved scheme;
  - (b) a relevant statutory scheme;

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- (c) an annuity contract by means of which benefits provided under an approved scheme or a relevant statutory scheme have been secured;
  - (d) a retirement benefits scheme which is not an approved scheme but in relation to which an application for approval for the purposes of this Chapter has been made.
- (1C) A person who fails to comply with regulations made under subsection (1A) (e) above shall be liable to a penalty not exceeding £3,000.
- (1D) Regulations under subsection (1A) above may make different provision for different descriptions of case.
- (1E) In subsection (1A) above “prescribed” means prescribed by regulations made under that subsection.”
- (3) Subsections (1) and (2) of section 605 shall cease to have effect.
- (4) In section 98 of the <sup>M41</sup>Taxes Management Act 1970 (penalties for failure to provide information etc.)—
- (a) in the first column of the Table after the entry “regulations under section 602;” there shall be inserted the entry “ regulations under section 605(1A)(b) to (d); ”;
  - (b) in the first column of the Table for the entry “section 605(1), (2), (3)(b) and (4);” there shall be substituted the entry “ section 605(3)(b) and (4); ”;
  - (c) in the second column of the Table after the entry “regulations under section 602;” there shall be inserted the entry “ regulations under section 605(1A)(a); ”.
- (5) Subsections (3) and (4)(b) above shall come into force on such day as the Treasury may by order appoint.

#### Subordinate Legislation Made

**P3** S. 105(5) power exercised: 1.1.1996 appointed by S.I. 1995/3125, art. 2

#### Commencement Information

**I16** S 105 wholly in force at 1.1.1996; s. 105 in force at Royal Assent except for s. 105(3)(4)(b) see s. 105(5); s. 105(3)(4)(b) in force at 1.1.1996 by S.I. 1995/3125, art. 2

#### Marginal Citations

**M41** 1970 c. 9.

## 106 False statements etc.

(1) The following section shall be inserted after section 605 of the Taxes Act 1988—

### “605A False statements etc.

- (1) A person who fraudulently or negligently makes a false statement or false representation on making an application for the approval for the purposes of this Chapter of—
- (a) a retirement benefits scheme, or

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(b) an alteration in such a scheme,  
shall be liable to a penalty not exceeding £3,000.

(2) In a case where—

(a) a person fraudulently or negligently makes a false statement or false representation, and

(b) in consequence that person, or any other person, obtains relief from or repayment of tax under this Chapter,

the person mentioned in paragraph (a) above shall be liable to a penalty not exceeding £3,000.”

(2) This section shall apply in relation to things done or omitted after the day on which this Act is passed.

### **107 Discretionary approval.**

(1) Section 591 of the Taxes Act 1988 (discretionary approval of retirement benefits schemes) shall be amended as follows.

(2) In subsection (2)(g) (annuity contracts)—

(a) after “relevant benefits” there shall be inserted “ falling within subsection (2A) below ”;

(b) the words “approved by the Board and” shall be omitted.

(3) The following subsection shall be inserted after subsection (2)—

“(2A) Relevant benefits fall within this subsection if they correspond with benefits that could be provided by an approved scheme, and for this purpose—

(a) a hypothetical scheme (rather than any particular scheme) is to be taken, and

(b) benefits provided by a scheme directly (rather than by means of an annuity contract) are to be taken.”

(4) This section shall apply in relation to a scheme not approved by virtue of section 591 of the Taxes Act 1988 before 1st July 1994.

### **108 Taxation of benefits of non-approved schemes.**

(1) Section 596A of the Taxes Act 1988 (taxation of benefits under non-approved schemes) shall be amended as follows.

(2) In subsection (4), at the beginning there shall be inserted “ Subject to subsection (9) below ”.

(3) For subsection (6) there shall be substituted—

“(6) Tax shall not be charged under this section in the case of—

(a) any pension or annuity which is chargeable to tax under Schedule E by virtue of section 19(1); or

(b) any pension or other benefit chargeable to tax under section 58.”

(4) In subsection (7)—

(a) for the words “by virtue of section 19(1)1”, in the first place where they occur, there shall be substituted “ as mentioned in subsection (6)(a) above ”;

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- (b) in paragraph (a), for the words “subsection (6) above” there shall be substituted “ subsection (6)(a) above ”; and
- (c) in paragraph (b) for the words “section 19(1)1” there shall be substituted “ section 19(1) ”.

(5) For subsections (8) and (9) there shall be substituted—

“(8) Subject to subsection (9) below, tax shall not be charged under this section (or section 19(1) or 148) in the case of a lump sum where—

- (a) the employer has paid any sum or sums with a view to the provision of any relevant benefits under a retirement benefits scheme;
- (b) an employee has been assessed to tax in respect of the sum or sums by virtue of section 595(1); and
- (c) the lump sum is provided under the scheme to the employee, any person falling within section 595(5) in relation to the employee or any other individual designated by the employee.

(9) Where any of the income or gains accruing to the scheme under which the lump sum is provided is not brought into charge to tax, tax shall be charged under this section on the amount of the lump sum received less any deduction applicable under subsection (10) or (11) below.

(10) Subject to subsection (11) below, the deduction applicable is the aggregate of—

- (a) any sum or sums in respect of which the employee has been assessed as mentioned in subsection (8)(b) above, and
- (b) any sum or sums paid by the employee,

which in either case were paid by way of contribution to the provision of the lump sum.

(11) Where—

- (a) the lump sum is provided under the scheme on the disposal of a part of any asset or the surrender of any part of or share in any rights in any asset, and
- (b) the employee, any person falling within section 595(5) in relation to the employee or any person connected with the employee has any right to receive or any expectation of receiving a further lump sum (or further lump sums) under the scheme on a further disposal of any part of the asset or a further surrender of any part of or share in any rights in the asset,

the deduction applicable shall be determined in accordance with the formula in subsection (12) below.

(12) The formula is—

$$D = S \times \frac{A}{B}$$

(13) For the purposes of the formula in subsection (12) above—

D is the deduction applicable;

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S is the aggregate amount of any sum or sums of a description mentioned in paragraphs (a) and (b) of subsection (10) above;

A is the amount of the lump sum received in relation to which the deduction applicable falls to be determined;

B is the market value of the asset in relation to which the disposal or surrender occurred, on the assumption that the valuation is made immediately before the disposal or surrender.

- (14) An individual may not claim that a deduction is applicable in relation to a lump sum more than once.
- (15) For the purposes of subsections (8) and (9) above, it shall be assumed unless the contrary is shown—
- (a) that no sums have been paid, and the employee has not been assessed in respect of any sums paid, with a view to the provision of relevant benefits;
  - (b) that the income or gains accruing to a scheme under which the benefit is provided are not brought into charge to tax; and
  - (c) that no deduction is applicable under subsection (10) or (11) above.
- (16) Section 839 shall apply for the purposes of subsection (11) above.
- (17) In subsection (13) above “market value” shall be construed in accordance with section 272 of the 1992 Act.”
- (6) The amendments of section 596A made by this section shall have effect in relation to retirement benefit schemes—
- (a) entered into on or after 1st December 1993, or
  - (b) entered into before that day if the scheme is varied on or after that day with a view to the provision of the benefit.
- (7) Subject to subsection (8) below, in the Taxes Act 1988—
- (a) in section 188(1), paragraph (c), and
  - (b) in section 189, paragraph (b),
- (exemption from tax where recipient of benefit or lump sum chargeable to tax in respect of sums paid or treated as paid with a view to the provision of the benefit or lump sum) shall cease to have effect in relation to any benefit provided or lump sum paid on or after 1st December 1993.
- (8) The repeals made by subsection (7) above shall not have effect in relation to any benefit provided or lump sum paid on or after 1st December 1993 in pursuance of a scheme or arrangement entered into before that day unless the scheme or arrangement is varied on or after that day with a view to the provision of the benefit or lump sum.

### *Annuities*

#### **109 Annuities derived from personal pension schemes.**

- (1) In Chapter IV of Part XIV of the Taxes Act 1988 (personal pension schemes) the following shall be inserted after section 648—

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*“ Annuities: charge to tax*

**648A Annuities: charge under Schedule E.**

- (1) Subject to subsection (2) below, where funds held for the purposes of an approved personal pension scheme are used to acquire an annuity—
  - (a) the annuity shall be charged to tax under Schedule E and section 203 shall apply accordingly;
  - (b) the annuity shall not be charged to tax under Case III of Schedule D.
- (2) As respects any approved personal pension scheme the Board may direct that, until such date as the Board may specify, annuities acquired with funds held for the purposes of the scheme shall be charged to tax as annual payments under Case III of Schedule D, and tax shall be deductible under sections 348 and 349 accordingly.”

- (2) This section shall apply in relation to payments which are made under annuities on or after 6th April 1995.

**110 Annuities derived from retirement benefits schemes.**

- (1) In section 597 of the Taxes Act 1988 (pensions paid under retirement benefits schemes generally charged under Schedule E) the following subsection shall be inserted after subsection (2)—
  - “(3) Without prejudice to subsection (1) above, where funds held for the purposes of any scheme which is approved or is being considered for approval under this Chapter are used to acquire an annuity—
    - (a) the annuity shall be charged to tax under Schedule E and section 203 shall apply accordingly;
    - (b) the annuity shall not be charged to tax under Case III of Schedule D.”

- (2) This section shall apply in relation to payments which are made under annuities on or after the day on which this Act is passed.

*Authorised unit trusts*

F136 **111** .....

**Textual Amendments**

**F136** S. 111 repealed (29.4.1996 with effect as mentioned in Sch. 41 Pt. V(1) Note 1 of the amending Act) by 1996 c. 8, ss. 73, 205, Sch. 6 para. 28, **Sch. 41 Pt. V(1)** Note 1

**112 Distributions of authorised unit trusts.**

Schedule 14 to this Act (distributions of authorised unit trusts) shall have effect.

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### 113 Umbrella schemes.

- (1) In section 468 of the Taxes Act 1988 (authorised unit trusts), in subsection (6) (definitions) at the beginning there shall be inserted “ Subject to subsections (7) to (9) below ”.
- (2) After that subsection there shall be added—
  - “(7) Each of the parts of an umbrella scheme shall be regarded for the purposes of this Chapter as an authorised unit trust and the scheme as a whole shall not be so regarded.
  - (8) In this section, “umbrella scheme” means a unit trust scheme—
    - (a) which provides arrangements for separate pooling of the contributions of the participants and the profits or income out of which payments are to be made to them;
    - (b) under which the participants are entitled to exchange rights in one pool for rights in another; and
    - (c) in the case of which an order under section 78 of the Financial Services Act 1986 is in force;
 and any reference to a part of an umbrella scheme is a reference to such of the arrangements as relate to a separate pool.
  - (9) In relation to a part of an umbrella scheme, any reference—
    - (a) to investments subject to the trusts of an authorised unit trust, shall have effect as a reference to such of the investments as under the arrangements form part of the separate pool to which the part of the umbrella scheme relates; and
    - (b) to a unit holder, shall have effect as a reference to a person for the time being having rights in that separate pool.”
- (3) In section 469 of the Taxes Act 1988 (other unit trusts)—
  - (a) in subsection (1)(a) (application of section) for the words “that is not an authorised unit trust” there shall be substituted “ that is neither an authorised unit trust nor an umbrella scheme ”; and
  - (b) after subsection (6) there shall be inserted—
 

“(6A) In this section “umbrella scheme” has the same meaning as in section 468.”
- (4) Subject to what follows, the amendments made by subsections (1) to (3) above shall have effect on and after 1st April 1994 in relation to unit trust schemes and their participants.
- (5) Nothing in those amendments shall have effect before the relevant date in relation to a unit trust scheme which immediately before 1st April 1994 falls within the definition of an umbrella scheme contained in those amendments.
- (6) In this section “the relevant date”, means, in relation to a unit trust scheme, the day after the end of the last distribution period of the scheme which commences before 1st April 1994.
- (7) On and after the relevant date, the amendments made by subsections (1) to (3) above shall have effect in relation to a scheme—
  - (a) to which subsection (5) above applies, and



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- (b) which immediately before the relevant date falls within the definition of an umbrella scheme contained in those amendments,  
subject to subsections (8) to (10) below.
- (8) The amendments made by subsections (1) to (3) above shall not prevent the trustees of the scheme on and after the relevant date—
- (a) making a claim under section 239(3) of the Taxes Act 1988 (carry back of surplus advance corporation tax) in respect of accounting periods of the scheme ending before the relevant date; or
- (b) continuing anything which immediately before that date was in the process of being done for the purposes of tax in relation to such accounting periods.
- (9) Where immediately before the relevant date the trustees of the scheme are entitled to carry forward an excess under—
- (a) section 75(3) of the Taxes Act 1988 (carry forward of management expenses and sums treated as management expenses), or
- (b) section 241 of that Act (carry forward of franked investment income),
- then, on the relevant date, that right shall be translated into a right in each successor company to carry forward a proportionate part of that excess.
- (10) Where immediately before the relevant date the trustees of the scheme have an amount of surplus advance corporation tax which—
- (a) has not been dealt with under subsection (3) of section 239 of the Taxes Act 1988, and
- (b) is due to be treated under subsection (4) of that section as if it were advance corporation tax paid by them in their next accounting period,
- then, on and after the relevant date, a proportionate part of that amount shall be treated as paid under subsection (4) of that section by each successor company in its first accounting period.
- (11) In subsections (9) and (10) above “successor company” means, in relation to a scheme, each part of the scheme which on the relevant date becomes an authorised unit trust.

#### *Exchange gains and losses*

### **114 Assets and liabilities.**

- (1) In section 154 of the <sup>M42</sup>Finance Act 1993 (definitions connected with assets) the following subsections shall be inserted after subsection (5)—
- “(5A) The question whether a company becomes unconditionally entitled at a particular time to an asset falling within section 153(1)(a) above shall be determined without reference to the fact that there is or is not a later time when, or before which, the whole or any part of the debt is required to be paid.
- (5B) Where an asset falling within section 153(1)(a) above consists of a right to interest—
- (a) a company becomes unconditionally entitled to the asset at the time when or (as the case may be) before which the interest is required to be paid to the company, and
- (b) subsection (5A) above shall not apply.”

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(2) In that section the following subsections shall be inserted after subsection (13)—

“(13A) In a case where—

- (a) a company would (apart from this subsection) become entitled to an asset at a particular time (the earlier time) by virtue of subsections (1) to (11) above,
- (b) the asset falls within section 153(1)(a) above and the debt concerned is a debt on a security, or the asset is a share,
- (c) the time at which the company, in drawing up its accounts, regards itself as becoming entitled to the asset is a time (the later time) later than the earlier time, and
- (d) the accounts are drawn up in accordance with normal accountancy practice,

the company shall be taken to become entitled to the asset at the later time and not at the earlier time.

(13B) In a case where—

- (a) a company would (apart from this subsection) cease to be entitled to an asset at a particular time (the earlier time) by virtue of subsections (1) to (11) above,
- (b) the asset falls within section 153(1)(a) above and the debt concerned is a debt on a security, or the asset is a share,
- (c) the time at which the company, in drawing up its accounts, regards itself as ceasing to be entitled to the asset is a time (the later time) later than the earlier time, and
- (d) the accounts are drawn up in accordance with normal accountancy practice,

the company shall be taken to cease to be entitled to the asset at the later time and not at the earlier time.”

(3) In section 155 of that Act (definitions connected with liabilities) the following subsections shall be inserted after subsection (4)—

“(4A) The question whether a company becomes unconditionally subject at a particular time to a liability falling within section 153(2)(a) above shall be determined without reference to the fact that there is or is not a later time when, or before which, the whole or any part of the debt is required to be paid.

(4B) Where a liability falling within section 153(2)(a) above consists of a duty to pay interest—

- (a) a company becomes unconditionally subject to the liability at the time when or (as the case may be) before which the company is required to pay the interest, and
- (b) subsection (4A) above shall not apply.”

#### Marginal Citations

M42 1993 c. 34.

*Status: Point in time view as at 11/05/2001. This version of this Act contains provisions that are not valid for this point in time.*

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## 115 Currency contracts: net payments.

- (1) In section 126 of the <sup>M43</sup>Finance Act 1993 (accrual on currency contracts) the following subsection shall be inserted after subsection (1)—

“(1A) In deciding whether a contract falls within subsection (1) above it is immaterial that the rights and duties there mentioned may be exercised and discharged by a payment made to or, as the case may require, by the qualifying company of an amount (in whatever currency) designed to represent any difference in value at the specified time between the two payments referred to in that subsection.”

- (2) In section 146 of that Act (early termination of currency contract) the following subsection shall be inserted after subsection (1)—

“(1A) This section also applies where—

- (a) a qualifying company ceases to be entitled to rights and subject to duties under a currency contract, and
- (b) it so ceases by virtue of the making of a payment to or by the company of an amount (in whatever currency) designed to represent any difference in value at the specified time between the two payments referred to in section 126(1) above.”

- (3) In section 164(2) of that Act (definition of currency contract for purposes of the Chapter) after “(1)” there shall be inserted “ and (1A) ”.

### Marginal Citations

M43 1993 c. 34.

## 116 Currency contracts: matching.

- (1) Schedule 15 to the <sup>M44</sup>Finance Act 1993 (alternative calculation) shall be amended as follows.

- (2) The following shall be inserted after paragraph 4—

### “4A Currency contracts: matching

- (1) Regulations may provide that where—

- (a) as regards a contract an initial exchange gain or initial exchange loss accrues to a company for an accrual period under section 126(5) of this Act or would so accrue apart from regulations under this Schedule,
- (b) the relevant duty is eligible to be matched on any day in the accrual period with an asset held by the company, and such other conditions as may be prescribed are fulfilled, and
- (c) an election is made in accordance with the regulations to match the duty with the asset on any such day and the election has effect by virtue of the regulations,

the amount of the gain or loss shall be found in accordance with the alternative method of calculation.

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- (2) Regulations may also provide that as regards any day in respect of which an election has effect the accrued amount shall be ascertained in accordance with prescribed rules.
- (3) The reference in sub-paragraph (1) above to the relevant duty is to the duty to which, under the contract, the company becomes subject as regards the second currency (within the meaning given by section 126 of this Act).
- (4) Where regulations are made under this paragraph, sub-paragraphs (3) to (12) of paragraph 4 above shall apply as they apply where regulations are made under that paragraph; but in the application of those sub-paragraphs by virtue of this sub-paragraph—
  - (a) the references to a liability in sub-paragraphs (3), (4), (9) and (11) shall be construed as references to a duty,
  - (b) the references to liabilities in sub-paragraphs (3) and (4) shall be construed as references to duties, and
  - (c) the reference in sub-paragraph (11)(a) to sub-paragraph (1) of paragraph 4 shall be construed as a reference to sub-paragraph (1) above.”
- (3) The following paragraph shall be inserted after paragraph 5—
  - “5A
    - (1) This paragraph applies where regulations under both paragraph 2 and paragraph 4A above apply—
      - (a) as regards the same contract, and
      - (b) for the same accrual period.
    - (2) Regulations may provide that, as regards any day falling within the period and identified in accordance with prescribed rules, the accrued amount shall be ascertained in accordance with rules prescribed under this paragraph (rather than provisions made under either of those paragraphs).”
  - (4) In paragraph 6—
    - (a) for “paragraphs 2 to 5 above” there shall be substituted “ the relevant paragraphs ”;
    - (b) at the end there shall be inserted “ ; and the relevant paragraphs are paragraphs 2, 3, 4 and 5 above. ”
  - (5) In paragraph 7 for “5” there shall be substituted “ 5A ”.

**Marginal Citations**  
M44 1993 c. 34.

*Capital allowances*

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### Textual Amendments

**F137** S. 117 repealed (22.3.2001 with effect as mentioned in s. 579(1) of the repealing Act) by 2001 c. 2, s. 580, Sch. 4

## 118 Expenditure on machinery or plant: notification.

**F138**(1) . . . . .

**F138**(2) . . . . .

**F138**(3) . . . . .

**F138**(3A) . . . . .

**F138**(4) . . . . .

**F138**(5) . . . . .

(6) For the purposes of—

**F139F140**(a) . . . . .

(b) section 44(4) of the Finance Act 1971 (provision corresponding to section 25(1) applicable to earlier chargeable periods),]

expenditure which has not formed part of a person's qualifying expenditure for a previous chargeable period may not form part of his qualifying expenditure for a subsequent chargeable period unless the machinery or plant on which the expenditure was incurred belongs to that person at some time in that subsequent period <sup>F141</sup> . . .

**F138**(7) . . . . .

**F138**(8) . . . . .

**F138**(9) . . . . .

### Textual Amendments

**F138** S. 118(1)-(5)(7)-(9) repealed (28.7.2000 with effect as mentioned in s. 73(2) of the repealing Act) by 2000 c. 17, ss. 73(1)(a), 156, Sch. 40 Pt. II(8), Note 3

**F139** S. 118(6)(a)(b) substituted for words in s. 118(6) (28.7.2000 with effect as mentioned in s. 73(2) of the amending Act) by 2000 c. 17, s. 73(1)(b)

**F140** S. 118(6)(a) repealed (22.3.2001 with effect as mentioned in s. 579(1) of the repealing Act) by 2001 c. 2, s. 580, Sch. 4

**F141** Words in s. 118(6) repealed (3.5.1994 with effect as mentioned in ss. 211(2), 218(1)(b) of the amending Act) by 1994 c. 9, s. 258, Sch. 26 Pt. V(24), Note 5

## 119 Transactions between connected persons.

**F142**(1) . . . . .

(2) Paragraph 4(2) of Schedule 7 to the <sup>M45</sup>Capital Allowances Act 1968 (provision corresponding to section 158(2)) shall be assumed always to have had effect subject to amendments corresponding to those made to section 158(2) of the 1990 Act by section 117(2) and (3) of the Finance Act 1993.

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**Textual Amendments**  
**F142** S. 119(1) repealed (22.3.2001 with effect as mentioned in s. 579(1) of the repealing Act) by 2001 c. 2, s. 580, **Sch. 4**

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**Marginal Citations**  
**M45** 1968 c. 3.

**F143** **120** .....

**Textual Amendments**  
**F143** S. 120 repealed (22.3.2001 with effect as mentioned in s. 579(1) of the repealing Act) by 2001 c. 2, s. 580, **Sch. 4**

**F144** **121** .....

**Textual Amendments**  
**F144** S. 121 repealed (22.3.2001 with effect as mentioned in s. 579(1) of the repealing Act) by 2001 c. 2, s. 580, **Sch. 4**

*Securities*

**122 Sale and repurchase of securities: deemed manufactured payments.**

After section 737 of the Taxes Act 1988 there shall be inserted the following sections—

**“737A Sale and repurchase of securities: deemed manufactured payments.**

- (1) This section applies where on or after the appointed day a person (the transferor) agrees to sell any securities, and under the same or any related agreement the transferor or another person connected with him—
  - (a) is required to buy back the securities, or
  - (b) acquires an option, which he subsequently exercises, to buy back the securities;
 but this section does not apply unless the conditions set out in subsection (2) below are fulfilled.
- (2) The conditions are that—
  - (a) as a result of the transaction, a dividend which becomes payable in respect of the securities is receivable otherwise than by the transferor,
  - (b) the dividend is not, by virtue of any other provision of the Tax Acts, treated as income of the transferor,

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- (c) there is no requirement under any agreement mentioned in subsection (1) above for a person to pay to the transferor on or before the relevant date an amount representative of the dividend, and
  - (d) it is reasonable to assume that, in arriving at the repurchase price of the securities, account was taken of the fact that the dividend is receivable otherwise than by the transferor.
- (3) For the purposes of subsection (2) above the relevant date is the date when the repurchase price of the securities becomes due.
- (4) Where it is a person connected with the transferor who is required to buy back the securities, or who acquires the option to buy them back, references in the following provisions of this section to the transferor shall be construed as references to the connected person.
- (5) Where this section applies, section 737 and Schedule 23A and dividend manufacturing regulations shall apply as if—
- (a) the relevant person were required, under the arrangements for the transfer of the securities, to pay to the transferor an amount representative of the dividend mentioned in subsection (2)(a) above,
  - (b) a payment were made by that person to the transferor in discharge of that requirement, and
  - (c) the payment were made on the date when the repurchase price of the securities becomes due.
- (6) In subsection (5) above “the relevant person” means—
- (a) where subsection (1)(a) above applies, the person from whom the transferor is required to buy back the securities;
  - (b) where subsection (1)(b) above applies, the person from whom the transferor has the right to buy back the securities;
- and in that subsection “dividend manufacturing regulations” means regulations under Schedule 23A (whenever made).

### **737B Interpretation of section 737A.**

- (1) In section 737A and this section “securities” means United Kingdom equities, United Kingdom securities or overseas securities; and—
- (a) where the securities mentioned in section 737A(1) are United Kingdom securities, references in section 737A to a dividend shall be construed as references to a periodical payment of interest;
  - (b) where the securities mentioned in section 737A(1) are overseas securities, references in section 737A to a dividend shall be construed as references to an overseas dividend.
- (2) In this section “United Kingdom equities”, “United Kingdom securities”, “overseas securities” and “overseas dividend” have the meanings given by paragraph 1(1) of Schedule 23A.
- (3) For the purposes of section 737A agreements are related if each is entered into in pursuance of the same arrangement (regardless of the date on which either agreement is entered into).
- (4) In section 737A “the repurchase price of the securities” means—

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- (a) where subsection (1)(a) of that section applies, the amount which, under any agreement mentioned in section 737A(1), the transferor or connected person is required to pay for the securities bought back, or
  - (b) where subsection (1)(b) of that section applies, the amount which under any such agreement the transferor or connected person is required, if he exercises the option, to pay for the securities bought back.
- (5) In section 737A and subsection (4) above references to buying back securities include references to buying similar securities.
- (6) For the purposes of subsection (5) above securities are similar if they entitle their holders to the same rights against the same persons as to capital and interest and the same remedies for the enforcement of those rights, notwithstanding any difference in the total nominal amounts of the respective securities or in the form in which they are held or the manner in which they can be transferred; and “interest” here includes dividends.
- (7) For the purposes of section 737A and subsection (4) above—
- (a) a person who is connected with the transferor and is required to buy securities sold by the transferor shall be treated as being required to buy the securities back notwithstanding that it was not he who sold them, and
  - (b) a person who is connected with the transferor and acquires an option to buy securities sold by the transferor shall be treated as acquiring an option to buy the securities back notwithstanding that it was not he who sold them.
- (8) Section 839 shall apply for the purposes of section 737A and this section.
- (9) In section 737A “the appointed day” means such day as the Treasury may by order appoint, and different days may be appointed in relation to—
- (a) United Kingdom equities,
  - (b) United Kingdom securities, and
  - (c) overseas securities.

### **737C Deemed manufactured payments: further provisions.**

- (1) This section applies where section 737A applies.
- (2) Subsection (3) below applies where—
- (a) the dividend mentioned in section 737A(2)(a) is a dividend on United Kingdom equities, and
  - (b) by virtue of section 737A(5), section 737 and paragraph 2 of Schedule 23A apply, or paragraph 2 of Schedule 23A applies, in relation to the payment which is treated under section 737A(5) as having been made;
- and in subsection (3) below “the deemed manufactured dividend” means that payment.
- (3) Where this subsection applies—
- (a) the amount of the deemed manufactured dividend shall be taken to be an amount equal to the amount of the dividend mentioned in section 737A(2)(a);



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- (b) the repurchase price of the securities shall be treated, for the purposes of the Tax Acts other than section 737A and of the 1992 Act, as increased by an amount equal to the gross amount of the deemed manufactured dividend.
- (4) In subsection (3) above the reference to the gross amount of the deemed manufactured dividend is to the aggregate of—
  - (a) the amount of the deemed manufactured dividend, and
  - (b) the amount of the tax credit that would have been issued in respect of the deemed manufactured dividend had the deemed manufactured dividend in fact been a dividend on the United Kingdom equities.
- (5) Subsection (6) below applies where—
  - (a) the dividend mentioned in section 737A(2)(a) is a periodical payment of interest on United Kingdom securities, and
  - (b) by virtue of section 737A(5), section 737 applies in relation to the payment which is treated under section 737A(5) as having been made;and in subsection (6) below “the deemed manufactured interest” means the payment referred to in paragraph (b) above.
- (6) Where this subsection applies, the amount of the deemed manufactured interest shall be taken to be an amount equal to the gross amount of the periodical payment referred to in subsection (5)(a) above reduced by an amount equal to income tax thereon at the basic rate for the year of assessment in which that periodical payment is made.
- (7) Subsection (8) below applies where—
  - (a) the dividend mentioned in section 737A(2)(a) is a periodical payment of interest on United Kingdom securities, and
  - (b) by virtue of section 737A(5), paragraph 3 of Schedule 23A applies in relation to the payment which is treated under section 737A(5) as having been made (whether or not section 737 also applies in relation to that payment);and in subsection (8) below “the deemed manufactured interest” means the payment referred to in paragraph (b) above.
- (8) Where this subsection applies—
  - (a) the gross amount of the deemed manufactured interest shall be taken to be the amount found under paragraph 3(4) of Schedule 23A;
  - (b) any deduction which, by v 3 of Schedule 23A, is required to be made out of the gross amount of the deemed manufactured interest shall be deemed to have been made.
- (9) Where subsections (6) and (8) above apply, or where subsection (8) above applies, the repurchase price of the securities shall be treated, for the purposes of the Tax Acts other than section 737A and of the 1992 Act, as increased by the gross amount of the deemed manufactured interest.
- (10) Subsection (11) below applies where—
  - (a) the dividend mentioned in section 737A(2)(a) is an overseas dividend, and

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- (b) by virtue of section 737A(5), paragraph 4 of Schedule 23A applies in relation to the payment which is treated under section 737A(5) as having been made;

and in subsection (11) below “the deemed manufactured overseas dividend” means that payment.

(11) Where this subsection applies—

- (a) the gross amount of the deemed manufactured overseas dividend shall be taken to be the amount found under paragraph 4(5)(b) and (c) of Schedule 23A;
- (b) any deduction which, by virtue of paragraph 4 of Schedule 23A, is required to be made out of the gross amount of the deemed manufactured overseas dividend shall be deemed to have been made;
- (c) the repurchase price of the securities shall be treated, for the purposes of the Tax Acts other than section 737A and of the 1992 Act, as increased by the gross amount of the deemed manufactured overseas dividend.

(12) In this section—

- (a) “United Kingdom equities”, “United Kingdom securities” and “overseas dividend” have the meanings given by paragraph 1(1) of Schedule 23A;
- (b) “the repurchase price of the securities” shall be construed in accordance with section 737B(4).”

**123 Manufactured payments.**

(1) In section 715 of the Taxes Act 1988 (exceptions from provisions about deemed sums and reliefs under the accrued income scheme) in subsection (6) (exceptions in certain cases where section 737 has effect) after “section 737” there shall be inserted “ or paragraph 3 or 4 of Schedule 23A ”.

F145(2) .....

F145(3) .....

F145(4) .....

F145(5) .....

(6) Subsection (1) above shall apply where any of the contracts mentioned in section 715(6) of the Taxes Act 1988 is made on or after 30th November 1993.

F145(7) .....

**Textual Amendments**

**F145** S. 123(2)-(5)(7) repealed (19.3.1997 with effect as mentioned in Sch. 10 para. 7(1), Sch. 18 Pt. VI(10), Note 1 of the repealing Act) by 1997 c. 16, s. 113, Sch. 18 Pt. VI(10); S.I. 1997/991, art. 2

F146 124 .....

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### Textual Amendments

**F146** S. 124 repealed (29.4.1996) by 1996 c. 8, s. 205, **Sch. 41 Pt. V(21)** Note 2

## PAYE

### 125 Payment by intermediary.

After section 203A of the Taxes Act 1988 there shall be inserted—

#### “203B PAYE: payment by intermediary.

- (1) Subject to subsection (2) below, where any payment of, or on account of, assessable income of an employee is made by an intermediary of the employer, the employer shall be treated, for the purposes of PAYE regulations, as making a payment of that income of an amount equal to the amount determined in accordance with subsection (3) below.
- (2) Subsection (1) above does not apply if the intermediary (whether or not he is a person to whom section 203 and PAYE regulations apply) deducts income tax from the payment he makes and accounts for it in accordance with PAYE regulations.
- (3) The amount referred to is—
  - (a) if the amount of the payment made by the intermediary is an amount to which the recipient is entitled after deduction of any income tax, the aggregate of the amount of that payment and the amount of any income tax due; and
  - (b) in any other case, the amount of the payment made by the intermediary.
- (4) For the purposes of this section, a payment of, or on account of, assessable income of an employee is made by an intermediary of the employer if it is made—
  - (a) by a person acting on behalf of the employer and at the expense of the employer or a person connected with him; or
  - (b) by trustees holding property for any persons who include or class of persons which includes the employee.
- (5) Section 839 applies for the purposes of subsection (4) above.”

### 126 Employees working for persons other than their employers, etc.

- (1) After section 203B of the Taxes Act 1988 (which is inserted by section 125 above) there shall be inserted—

#### “203C PAYE: employee of non-UK employer.

- (1) This subsection applies where—
  - (a) an employee during any period works for a person (“the relevant person”) who is not his employer;

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- (b) any payment of, or on account of, assessable income of the employee in respect of work done in that period is made by a person who is the employer or an intermediary of the employer;
  - (c) PAYE regulations do not apply to the person making the payment or, if he makes the payment as an intermediary of the employer, the employer; and
  - (d) income tax is not deducted or accounted for in accordance with the regulations by the person making the payment or, if he makes the payment as an intermediary of the employer, the employer.
- (2) Where subsection (1) above applies, the relevant person shall be treated, for the purposes of PAYE regulations, as making a payment of the assessable income of the employee of an amount equal to the amount determined in accordance with subsection (3) below.
- (3) The amount referred to is—
- (a) if the amount of the payment actually made is an amount to which the recipient is entitled after deduction of any income tax, the aggregate of the amount of that payment and the amount of any income tax due; and
  - (b) in any other case, the amount of the payment actually made.
- (4) In this section and sections 203D and 203E “work”, in relation to an employee, means the performance of any duties of the office or employment of the employee and any reference to his working shall be construed accordingly.
- (5) Subsections (4) and (5) of section 203B apply for the purposes of this section as they apply for the purposes of that section.

### **203D PAYE: employee non-resident, etc.**

- (1) This section applies in relation to an employee in a year of assessment only if—
- (a) he is not resident or, if resident, not ordinarily resident in the United Kingdom; and
  - (b) he works or will work in the United Kingdom and also works or is likely to work outside the United Kingdom.
- (2) Where in relation to any year of assessment it appears to an officer of the Board that—
- (a) some of the income of an employee to whom this section applies is assessable to income tax under Case II of Schedule E, but
  - (b) an as yet unascertainable proportion of the income may prove not to be assessable,
- the officer may, on an application made by the appropriate person, give a direction for determining a proportion of any payment made in that year of, or on account of, income of the employee which shall be treated for the purposes of PAYE regulations as a payment of assessable income of the employee.
- (3) In this section “the appropriate person” means—
- (a) the person designated by the employer for the purposes of this section; or
  - (b) if no person is so designated, the employer.

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- (4) An application for a direction under subsection (2) above shall provide such information as is available and is relevant to the giving of the direction.
- (5) A direction under subsection (2) above—
  - (a) shall specify the employee to whom and the year of assessment to which it relates;
  - (b) shall be given by notice to the appropriate person; and
  - (c) may be withdrawn by notice to the appropriate person from a date specified in the notice.
- (6) The date so specified may not be earlier than thirty days from the date on which the notice of the withdrawal is given.
- (7) Where—
  - (a) a direction under subsection (2) above has effect in relation to an employee to whom this section applies, and
  - (b) a payment of, or on account of, the income of the employee is made in the year of assessment to which the direction relates,the proportion of the payment determined in accordance with the direction shall be treated for the purposes of PAYE regulations as a payment of assessable income of the employee.
- (8) Where in any year of assessment—
  - (a) no direction under subsection (2) above has effect in relation to an employee to whom this section applies, and
  - (b) any payment is made of, or on account of, the income of the employee, the entire payment shall be treated for the purposes of PAYE regulations as a payment of assessable income of the employee.
- (9) Subsections (7) and (8) above are without prejudice to—
  - (a) any assessment in respect of the income of the employee in question; and
  - (b) any right to repayment of income tax overpaid and any obligation to pay income tax underpaid.

### **203E PAYE: mobile UK workforce.**

- (1) This subsection applies where it appears to the Board that—
  - (a) a person (“the relevant person”) has entered into or is likely to enter into an agreement that employees of another person (“the contractor”) shall in any period work for, but not as employees of, the relevant person;
  - (b) payments of, or on account of, assessable income of the employees in respect of work done in that period are likely to be made by or on behalf of the contractor; and
  - (c) PAYE regulations would apply on the making of such payments but it is likely that income tax will not be deducted or accounted for in accordance with the regulations.
- (2) Where subsection (1) above applies, the Board may give a direction that, if—

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- (a) any employees of the contractor work in any period for, but not as employees of, the relevant person, and
- (b) any payment is made by the relevant person in respect of work done by the employees in that period,

income tax shall be deducted in accordance with the provisions of this section by the relevant person on making that payment.

- (3) A direction under subsection (2) above—
  - (a) shall specify the relevant person and the contractor to whom it relates;
  - (b) shall be given by notice to the relevant person; and
  - (c) may at any time be withdrawn by notice to the relevant person.
- (4) The Board shall take such steps as are reasonably practicable to ensure that the contractor is supplied with a copy of any notice given under subsection (3) above which relates to him.
- (5) Where—
  - (a) a direction under subsection (2) above has effect, and
  - (b) any employees of the contractor specified in the direction work for, but not as employees of, the relevant person so specified,
 income tax shall, subject to and in accordance with PAYE regulations, be deducted by the relevant person on making any payment in respect of that work as if so much of the payment as is attributable to work done by each employee were a payment of assessable income of that employee.”

## 127 Tradeable assets.

After section 203E of the Taxes Act 1988 (which is inserted by section 126 above) there shall be inserted—

### “203F PAYE: tradeable assets.

- (1) Where any assessable income of an employee is provided in the form of a tradeable asset, the employer shall be treated, for the purposes of PAYE regulations, as making a payment of that income of an amount equal to the amount specified in subsection (3) below.
- (2) For the purposes of subsection (1) above “tradeable asset” means—
  - (a) any asset capable of being sold or otherwise realised on a recognised investment exchange (within the meaning of the Financial Services Act 1986) or the London Bullion Market;
  - (b) any asset capable of being sold or otherwise realised on any market for the time being specified in PAYE regulations; and
  - (c) any other asset for which, at the time when the asset is provided, trading arrangements exist.
- (3) The amount referred to is—
  - (a) in the case of an asset falling within subsection (2)(a) or (b) above, the amount for which it is capable of being sold or the amount for which it can be realised on the exchange or market in question; and

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- (b) in the case of an asset for which trading arrangements exist at the time when the asset is provided, the amount which is obtained under those arrangements.
- (4) For the purposes of subsection (2) above, “asset” does not include—
  - (a) any payment actually made of, or on account of, assessable income;
  - (b) any non-cash voucher, credit-token or cash voucher (as defined in sections 141 to 143); or
  - (c) any description of property for the time being excluded from the scope of this section by PAYE regulations.
- (5) Subject to subsection (4) above, for the purposes of subsection (2) above “asset” includes any property and in particular any right or interest falling within any paragraph in Part I of Schedule 1 to the Financial Services Act 1986.”

## 128 Non-cash vouchers.

After section 203F of the Taxes Act 1988 (which is inserted by section 127 above) there shall be inserted—

### “203G PAYE: non-cash vouchers.

- (1) Where a non-cash voucher to which this section applies is received by an employee, the employer shall be treated, for the purposes of PAYE regulations, as making a payment of assessable income of the employee of an amount equal to the amount ascertained in accordance with section 141(1)(a).
- (2) This section applies to a non-cash voucher to which section 141(1) applies if—
  - (a) either of the two conditions set out below is fulfilled with respect to the voucher; and
  - (b) the voucher is not of a description for the time being excluded from the scope of this section by PAYE regulations.
- (3) The first condition is fulfilled with respect to a voucher if it is capable of being exchanged for goods—
  - (a) which, at the time when the voucher is provided, are capable of being sold or otherwise realised on an exchange or market falling within section 203F(2)(a) or (b); or
  - (b) for which, at the time when the voucher is provided, trading arrangements exist.
- (4) The second condition is fulfilled with respect to a voucher if, at the time when the voucher is provided, the voucher itself—
  - (a) is capable of being sold or otherwise realised on an exchange or market falling within section 203F(2)(a) or (b); or
  - (b) is a voucher for which trading arrangements exist.”

## 129 Credit-tokens.

After section 203G of the Taxes Act 1988 (which is inserted by section 128 above) there shall be inserted—

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**“203H PAYE: credit-tokens.**

- (1) Subject to subsection (3) below, on each occasion on which an employee uses a credit-token provided to him by reason of his employment to obtain—
  - (a) money, or
  - (b) goods falling within subsection (2) below,
 the employer shall be treated, for the purposes of PAYE regulations, as making a payment of assessable income of the employee of an amount equal to the amount ascertained in accordance with section 142(1)(a).
- (2) Goods fall within this subsection if, at the time when they are obtained, they are goods—
  - (a) which are capable of being sold or otherwise realised on an exchange or market falling within section 203F(2)(a) or (b); or
  - (b) for which trading arrangements exist.
- (3) PAYE regulations may make provision for excluding from the scope of this section any description of use of a credit-token.
- (4) In this section “credit-token” has the same meaning as in section 142.”

**130 Cash vouchers.**

After section 203H of the Taxes Act 1988 (which is inserted by section 129 above) there shall be inserted—

**“203I PAYE: cash vouchers.**

- (1) Subject to subsection (2) below, where a cash voucher to which section 143(1) applies is received by an employee, the employer shall be treated, for the purposes of PAYE regulations, as making a payment of assessable income of the employee of an amount equal to the amount ascertained in accordance with section 143(1)(a).
- (2) PAYE regulations may make provision for excluding from the scope of this section the provision of cash vouchers in such description of circumstances as may be specified in the regulations.”

**131 Supplementary.**

After section 203I of the Taxes Act 1988 (which is inserted by section 130 above) there shall be inserted—

**“203J S.203B to s.203I: accounting for tax.**

- (1) Where an employer makes a notional payment of assessable income of an employee, the obligation to deduct income tax shall have effect as an obligation on the employer to deduct income tax at such time as may be prescribed by PAYE regulations from any payment or payments he actually makes of, or on account of, such income of that employee.
- (2) For the purposes of this section—



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- (a) a notional payment is a payment treated as made by virtue of any of sections 203B, 203C and 203F to 203I, other than a payment whose amount is determined in accordance with section 203B(3)(a) or 203C(3)(a); and
  - (b) any reference to an employer includes a reference to a person who is treated as making a payment by virtue of section 203C(2).
- (3) Where, by reason of an insufficiency of payments actually made, the employer is unable to deduct the amount (or the full amount) of the income tax as required by virtue of subsection (1) above, the obligation to deduct income tax shall have effect as an obligation on the employer to account to the Board at such time as may be prescribed by PAYE regulations for an amount of income tax equal to the amount of income tax he is required, but is unable, to deduct.
- (4) PAYE regulations may make provision—
  - (a) with respect to the time when any notional payment (or description of notional payment) is made;
  - (b) applying (with or without modifications) any specified provisions of the regulations for the time being in force in relation to deductions from actual payments to amounts accounted for in respect of any notional payments;
  - (c) with respect to the collection and recovery of amounts accounted for in respect of notional payments.
- (5) Any amount which an employer deducts or for which he accounts as mentioned in subsections (1) and (3) above shall be treated as an amount paid by the employee in question in respect of his liability to income tax for such year of assessment as may be specified in PAYE regulations.

### **203K Trading arrangements.**

- (1) “Trading arrangements” in sections 203F to 203H shall be construed in accordance with this section.
- (2) Trading arrangements—
  - (a) for an asset, are arrangements for the purpose of enabling the person to whom the asset is provided to obtain an amount similar to the expense incurred in the provision of the asset;
  - (b) for goods for which a non-cash voucher is capable of being exchanged, are arrangements for the purpose of enabling the person to whom the voucher is provided to obtain an amount similar to the expense incurred in the provision of the goods;
  - (c) for a non-cash voucher, are arrangements for the purpose of enabling the person to whom the voucher is provided to obtain an amount similar to the expense incurred as mentioned in section 141(1)(a);
  - (d) for goods obtained by the use of a credit-token, are arrangements for the purpose of enabling the person to whom the credit-token is provided to obtain an amount similar to the expense incurred in the provision of the goods.
- (3) For the purposes of subsection (2) above—
  - (a) any reference to enabling a person to obtain an amount includes—

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- (i) a reference to enabling a class or description of persons which includes that person to obtain the amount; and
  - (ii) a reference to enabling an amount to be obtained by any means, including in particular by using an asset or goods as security for a loan or an advance; and
  - (b) an amount is similar to an expense incurred if it is greater than, equal to or not substantially less than that expense.
- (4) PAYE regulations may exclude any description of arrangements from being trading arrangements for the purposes of sections 203F to 203H.

**203L S.203B to s.203K: interpretation, etc.**

- (1) In sections 203B to 203J “employee” means a person holding an office or employment under or with any other person, and (subject to section 203J(2)(b)) any reference to the employer is a reference to that other person.
- (2) In sections 203B to 203J “assessable” means assessable to income tax under Schedule E.
- (3) In sections 203B to 203K and this section “PAYE regulations” means regulations under section 203.
- (4) PAYE regulations made by virtue of any of sections 203B to 203K may—
  - (a) make different provision for different classes of case;
  - (b) contain such incidental, consequential and supplementary provision as appears to the Board to be expedient.”

**132 Payments etc. received free of tax.**

After section 144 of the Taxes Act 1988 there shall be inserted—

**“144A Payments etc. received free of tax.**

- (1) In any case where—
  - (a) an employer is treated, by virtue of any of sections 203B to 203I, as having made a payment of income of an employee which is assessable to income tax under Schedule E,
  - (b) the employer is required, by virtue of section 203J(3), to account for an amount of income tax (“the due amount”) in respect of that payment, and
  - (c) the employee does not, before the end of the period of thirty days from the date on which the employer is treated as making that payment, make good the due amount to the employer,

the due amount shall be treated as income of the employee which arises on the date mentioned in paragraph (c) above and is assessable to income tax under Schedule E.
- (2) In this section any reference to an employer includes a reference to a person who is treated as making a payment by virtue of section 203C(2).”

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### 133 PAYE regulations: past cases.

- (1) Regulation 4 of the 1993 Regulations (intermediate employers) is hereby revoked; but in relation to any time before its revocation it shall be deemed to have been validly made.
- (2) Regulation 3 of the 1973 Regulations (intermediate employers) shall, in relation to any time before its revocation, be deemed to have been validly made.
- (3) Where, at any time before the passing of this Act—
  - (a) a payment has been made of, or on account of, any income of an employee not resident or, if resident, not ordinarily resident in the United Kingdom,
  - (b) at the time when the payment was made it appeared that some of the income would be assessable to income tax under Case II of Schedule E, but that some of the income might prove not to be assessable to income tax under that Schedule, and
  - (c) the payment or any proportion of it was treated for the purposes of the 1993 Regulations or the 1973 Regulations as a payment to which the regulations applied,then the treatment of that payment or that proportion of the payment as being a payment to which the regulations applied shall be deemed to have been lawful.
- (4) In this section—
  - (a) “employee” means a person holding an office or employment under or with any other person;
  - (b) “the 1993 Regulations” means the <sup>M46</sup>Income Tax (Employments) Regulations 1993; and
  - (c) “the 1973 Regulations” means the <sup>M47</sup>Income Tax (Employments) Regulations 1973.

#### Marginal Citations

M46 S.I. 1993/774.

M47 S.I. 1973/334.

### *Miscellaneous provisions about companies*

### 134 Controlled foreign companies.

- (1) In Schedule 25 to the Taxes Act 1988, Part I (acceptable distribution policy) shall be amended as follows.
- (2) In paragraph 2 (acceptable distribution policies for both trading and non-trading companies)—
  - (a) in sub-paragraph (1)—
    - (i) for “sub-paragraph (2)” there is substituted “ paragraph 2A ”,
    - (ii) in paragraph (a), “or for some other period which, in whole or in part, falls within that accounting period” is omitted,
    - (iii) in paragraph (b), for “the period for which it is paid” there is substituted “ that period ”,

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- (iv) in paragraph (d) for “proportion” there is substituted “ amount ” and for “represents at least” there is substituted “ is not less than ”, and
  - (v) the words following paragraph (d) are omitted,
  - (b) sub-paragraph (2) is omitted, and
  - (c) for sub-paragraph (3) there is substituted—
    - “(3) For the purposes of this paragraph and paragraph 2A below, a dividend which is not paid for the period or periods the profits of which are, in relation to the dividend, the relevant profits for the purposes of section 799 shall be treated (subject to sub-paragraph (3A) below) as so paid.
    - (3A) For the purposes of this paragraph and paragraph 2A below—
      - (a) where a dividend is paid for a period which is not an accounting period but falls wholly within an accounting period, it shall be treated as paid for that accounting period, and
      - (b) where a dividend (“the actual dividend”) is paid for a period which falls within two or more accounting periods—
        - (i) it shall be treated as if it were a number of separate dividends each of which is paid for so much of the period as falls wholly within an accounting period, and
        - (ii) the necessary contract as regards apportionment of the amount of the actual dividend shall be made to determine the amount of the separate dividends.”
- (3) After that paragraph there is inserted—
- “2A
- (1) Paragraph 2 above shall have effect in accordance with this paragraph to determine whether a controlled foreign company which is not a trading company pursues an acceptable distribution policy in respect of a particular accounting period (“the relevant accounting period”).
  - (2) Subject to sub-paragraph (4) below, where the distribution condition is satisfied in relation to the relevant accounting period, then, in addition to any dividend which falls within paragraph 2(1)(a) above apart from this paragraph—
    - (a) any dividend which is paid for the accounting period (“the preceding period”) which immediately precedes the relevant accounting period and is not an excluded period shall be treated as falling within that paragraph, and
    - (b) if the distribution condition is satisfied in relation to the preceding period, any dividend which is paid for the accounting period which immediately precedes the preceding period and is not an excluded period shall be treated as falling within that paragraph,
 and so on; and in this sub-paragraph “dividend” means a dividend not paid out of specified profits.
  - (3) For the purposes of this paragraph, the distribution condition is satisfied in relation to any accounting period if—

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- (a) a dividend or dividends are paid for the period to persons resident in the United Kingdom,
  - (b) the amount or, as the case may be, aggregate amount of any dividends falling within paragraph (a) above is not less than—
    - (i) the relevant profits for that period, or
    - (ii) where paragraph 2(4) or (5) above applies (with the modifications of paragraph 2 made by sub-paragraph (5) below), the appropriate portion of those profits, and
  - (c) any dividends falling within that paragraph are paid not later than the time by which any dividend paid for the relevant accounting period is required by paragraph 2(1)(b) above to be paid;

or if there are no relevant profits for the period.
- (4) Where, by reason only of the fact that a company pursued an acceptable distribution policy in respect of any accounting period (“the earlier period”) earlier than the relevant accounting period, no direction could be given in respect of the earlier period under section 747(1), sub-paragraph (2) above shall apply to any dividend required to be taken into account for the purpose of showing that the company pursued an acceptable distribution policy in respect of the earlier period only to the extent (if any) to which that dividend was not required to be taken into account for that purpose.
- (5) The modifications of paragraph 2 above referred to in sub-paragraph (3)(b) above are that—
  - (a) the references in sub-paragraphs (4) and (5) to the accounting period in question are to be read as references to the accounting period for which the dividend or dividends are paid,
  - (b) the references in those sub-paragraphs to sub-paragraph (1)(d) are to be read as references to sub-paragraph (3)(b) above, and
  - (c) the reference in the definition of “X” in sub-paragraph (6) to available profits is to be read as a reference to relevant profits.
- (6) Paragraph 2(1)(d) above shall have effect as if for “50 per cent. of the company’s available profits” there were substituted “90 per cent. of the company’s net chargeable profits”.
- (7) In paragraph 2(6) above, the definition of “X” shall have effect as if the reference to available profits were a reference to net chargeable profits.
- (8) For the purposes of this paragraph—
  - (a) a period is an excluded period if it is an accounting period in respect of which a direction is given under section 747(1), and
  - (b) relevant profits for any accounting period are the profits which would be the relevant profits of that period for the purposes of section 799 if a dividend were actually paid for that period.”
- (4) In paragraph 3 of that Schedule (available profits)—
  - (a) after sub-paragraph (4) there is inserted—

“(4A) Subject to sub-paragraph (5) below, for the purposes of this Part of this Schedule, the net chargeable profits of a controlled foreign company for any accounting period are—

    - (a) its chargeable profits for that period, less

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- (b) the amount (if any) which, if a direction were given under section 747(1) in respect of the period, would be the company's unrestricted creditable tax for that period; and for the purposes of this sub-paragraph "unrestricted creditable tax" in relation to a company's accounting period means the amount which would be its creditable tax for that period if the reference in section 751(6)(a) to Part XVIII did not include section 797", and
  - (b) in sub-paragraph (5), after "available profits" there is inserted " or, where the company is not a trading company, the chargeable profits "
- (5) This section shall apply to determine whether a controlled foreign company pursues an acceptable distribution policy in respect of accounting periods ending on or after 30th November 1993.

### **135 Prevention of avoidance of corporation tax.**

- (1) In the Taxes Act 1988, immediately before section 768 there shall be inserted—

**"767A Change in company ownership: corporation tax.**

- (1) Where it appears to the Board that—
  - (a) there has been a change in the ownership of a company ("the tax-payer company"),
  - (b) any corporation tax assessed on the tax-payer company for an accounting period beginning before the change remains unpaid at any time after the relevant date, and
  - (c) any of the three conditions mentioned below is fulfilled,
 any person mentioned in subsection (2) below may be assessed by the Board and charged (in the name of the tax-payer company) to an amount of corporation tax in accordance with this section.
- (2) The persons are—
  - (a) any person who at any time during the relevant period before the change in the ownership of the tax-payer company had control of it;
  - (b) any company of which the person mentioned in paragraph (a) above has at any time had control within the period of three years before that change.
- (3) In subsection (2) above, "the relevant period" means—
  - (a) the period of three years before the change in the ownership of the tax-payer company; or
  - (b) if during the period of three years before that change ("the later change") there was a change in the ownership of the tax-payer company ("the earlier change"), the period elapsing between the earlier change and the later change.
- (4) The first condition is that—
  - (a) at any time during the period of three years before the change in the ownership of the tax-payer company the activities of a trade or business of that company cease or the scale of those activities become small or negligible; and

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- (b) there is no significant revival of those activities before that change occurs.
- (5) The second condition is that at any time after the change in the ownership of the tax-payer company, but under arrangements made before that change, the activities of a trade or business of that company cease or the scale of those activities become small or negligible.
- (6) The third condition is that—
  - (a) at any time during the period of six years beginning three years before the change in the ownership of the tax-payer company there is a major change in the nature or conduct of a trade or business of that company;
  - (b) there is a transfer or there are transfers of assets of the tax-payer company to a person mentioned in subsection (7) below or to any person under arrangements which enable any of those assets or any assets representing those assets to be transferred to a person mentioned in subsection (7) below;
  - (c) that transfer occurs or those transfers occur during the period of three years before the change in the ownership of the tax-payer company or after that change but under arrangements made before that change; and
  - (d) the major change mentioned in paragraph (a) above is attributable to that transfer or those transfers.
- (7) The persons are—
  - (a) any person mentioned in subsection (2)(a) above; and
  - (b) any person connected with him.
- (8) The amount of tax charged in an assessment made under this section must not exceed the amount of the tax which, at the time of that assessment, remains unpaid by the tax-payer company.
- (9) For the purposes of this section the relevant date is the date six months from the date on which the corporation tax is assessed as mentioned in subsection (1)(b) above.
- (10) Any assessment made under this section shall not be out of time if made within three years from the date on which the liability of the tax-payer company to corporation tax for the accounting period mentioned in subsection (1)(b) above is finally determined.

#### **767B Change of company ownership: supplementary.**

- (1) In relation to corporation tax assessed under section 767A—
  - (a) section 86 of the Management Act (interest on overdue tax), in so far as it has effect in relation to accounting periods ending on or before 30th September 1993, and
  - (b) section 87A of that Act (corresponding provision for corporation tax due for accounting periods ending after that date),shall have effect as if the references in section 86 to the reckonable date and in section 87A to the date when the tax becomes due and payable were, respectively, references to the date which is the reckonable date in relation to

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the tax-payer company and the date when the tax became due and payable by the tax-payer company.

- (2) A payment in pursuance of an assessment under section 767A shall not be allowed as a deduction in computing any income, profits or losses for any tax purposes; but any person making such a payment shall be entitled to recover an amount equal to the payment from the tax-payer company.
  - (3) In subsection (2) above the reference to a payment in pursuance of an assessment includes a reference to a payment of interest under section 86 or 87A of the Management Act (as they have effect by virtue of subsection (1) above).
  - (4) For the purposes of section 767A, “control”, in relation to a company, shall be construed in accordance with section 416 as modified by subsections (5) and (6) below.
  - (5) In subsection (2)(a) for “the greater part of” there shall be substituted “50 per cent. of”.
  - (6) For subsection (3) there shall be substituted—
  - (”) Where two or more persons together satisfy any of the conditions in subsection (2) above and do so by reason of having acted together to put themselves in a position where they will in fact satisfy the condition in question, each of those persons shall be treated as having control of the company.”
  - (7) In section 767A(6) “a major change in the nature or conduct of a trade or business” includes any change mentioned in any of paragraphs (a) to (d) of section 245(4); and also includes a change falling within any of those paragraphs which is achieved gradually as the result of a series of transfers.
  - (8) In section 767A(6) “transfer”, in relation to an asset, includes any disposal, letting or hiring of it, and any grant or transfer of any right, interest or licence in or over it, or the giving of any business facilities with respect to it.
  - (9) Section 839 shall apply for the purposes of section 767A(7).
  - (10) Subsection (9) of section 768 shall apply for the purposes of section 767A as it applies for the purposes of section 768.”
- (2) Section 769 (rules for ascertaining change of ownership of company) shall be amended as follows.
  - (3) In subsections (1), (2) and (5) for the words “sections 768”, in each place where they occur, there shall be substituted “ sections 767A, 768 ”.
  - (4) After subsection (2) there shall be inserted—
    - “(2A) Where—
      - (a) persons, whether company members or not, possess extraordinary rights or powers under the articles of association or under any other document regulating the company, and
      - (b) because of that fact ownership of the ordinary share capital may not be an appropriate test of whether there has been a change in the ownership of the company,



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then, in considering whether there has been a change in the ownership of the company for the purposes of section 767A, holdings of all kinds of share capital, including preference shares, or of any particular category of share capital, or voting power or any other kind of special power may be taken into account instead of ordinary share capital.”

(5) After subsection (8) there shall be inserted—

“(9) Subsection (8) above shall not apply in relation to section 767A.”

(6) The amendments made by this section shall have effect in relation to any change in ownership occurring on or after 30th November 1993 other than a change occurring in pursuance of a contract entered into before that day.

### **136 Parts of trades: computations in different currencies.**

(1) The following section shall be inserted after section 94 of the <sup>M48</sup>Finance Act 1993 (computations in different currencies for different parts of trades)—

#### **“94A Parts of trades: petroleum extraction companies.**

(1) If a trade carried on by a petroleum extraction company is a ring fence trade—

- (a) subsection (1) of section 94 above shall not apply as regards the trade, but
- (b) regulations may make provision under that section as regards a case where in an accounting period the company carries on the trade and the condition mentioned in subsection (2) below is fulfilled.

(2) The condition is that—

- (a) part of the trade consists of activities which relate to oil and are carried on under the authority of a petroleum licence in the United Kingdom or a designated area, and
- (b) part of the trade consists of activities which relate to gas and are carried on under the authority of a petroleum licence in the United Kingdom or a designated area.

(3) For the purposes of this section—

- (a) a petroleum licence is a licence granted under the Petroleum (Production) Act 1934 or the Petroleum (Production) Act (Northern Ireland) 1964;
- (b) a petroleum extraction company is a company which carries on activities under the authority of such a licence;
- (c) a designated area is an area designated by Order in Council under section 1(7) of the Continental Shelf Act 1964.

(4) For the purposes of this section “ring fence trade” means activities which—

- (a) fall within any of paragraphs (a) to (c) of subsection (1) of section 492 of the Taxes Act 1988 (oil extraction etc.), and
- (b) constitute a separate trade (whether by virtue of that subsection or otherwise).

(5) For the purposes of this section—

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- (a) “oil” means such substance as falls within the meaning of oil contained in section 502(1) of the Taxes Act 1988 and is not gas;
  - (b) “gas” means such substance as falls within the meaning of oil contained in section 502(1) of the Taxes Act 1988 and is gas of which the largest component by volume, measured at a temperature of 15 degrees centigrade and a pressure of one atmosphere, is methane or ethane or a combination of those gases.”
- (2) In section 95(6) of the <sup>M49</sup>Finance Act 1993 (commencement of provisions about currency to be used for computations) for “94” there shall be substituted “ 94A ”.

#### Marginal Citations

M48 1993 c.34.

M49 1993 c. 34.

### Miscellaneous

#### 137 Enterprise investment scheme.

- (1) Schedule 15 to this Act shall have effect to revive Chapter III of Part VII of the Taxes Act 1988 (relief for investment in corporate trades) in relation to shares issued on or after 1st January 1994.
- (2) That Chapter shall have effect in relation to such shares with the amendments made by that Schedule; and, in relation to such shares, that Chapter as so amended shall apply for the year 1993-94 and subsequent years of assessment.
- (3) The <sup>M50</sup>Taxation of Chargeable Gains Act 1992 shall have effect with the amendments made by that Schedule.

#### Marginal Citations

M50 1992 c. 12.

#### 138 Foreign income dividends.

Schedule 16 to this Act (which contains provisions about foreign income dividends) shall have effect.

#### 139 Taxation of incapacity benefit.

- (1) For the year 1995-96 and subsequent years of assessment incapacity benefit, except—
  - (a) benefit payable for an initial period of incapacity, and
  - (b) so much of any benefit as is attributable in any case to an increase in respect of a child,
 shall be treated as income for the purposes of the Income Tax Acts and charged to income tax under Schedule E.
- (2) Subsection (1) above shall not apply to incapacity benefit to which a person is entitled for any day of incapacity for work falling in a period of incapacity for work which is

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treated for the purposes of that benefit as having begun before 13th April 1995 if the part of that period which is treated as having fallen before that date includes a day for which that person was entitled to invalidity benefit.

- (3) Incapacity benefit shall for the purposes of this section be a benefit in relation to which section 41 of the <sup>M51</sup>Finance Act 1989 (year of assessment in which benefit to be charged) applies.
- (4) Enactments relating to the payment of incapacity benefit shall have effect subject to such provision as may be contained for the purposes of this section in regulations under section 203 of the Taxes Act 1988 (PAYE regulations).
- (5) In this section—

“incapacity benefit” means any benefit which by virtue of provisions contained in the Social Security (Incapacity for Work) Act 1994 or any corresponding provisions made for Northern Ireland is to be known as incapacity benefit;

[<sup>F147</sup>“initial period of incapacity”, in relation to incapacity benefit, means any period for which short-term incapacity benefit is payable otherwise than at the higher rate; and]

“invalidity benefit” means invalidity benefit under Part II of the <sup>M52</sup>Social Security Contributions and Benefits Act 1992 or under Part II of the <sup>M53</sup>Social Security Contributions and Benefits (Northern Ireland) Act 1992.

- [<sup>F148</sup>(6) The reference in subsection (5) above to short-term incapacity benefit payable at the higher rate shall be construed in accordance with sections 30B(5), 40(8) and 41(7) of the <sup>M54</sup>Social Security Contributions and Benefits Act 1992 and the corresponding provisions of the <sup>M55</sup>Social Security Contributions and Benefits (Northern Ireland) Act 1992.]

#### Textual Amendments

**F147** S. 139(5): Definition of “initial period of incapacity” substituted (*retrospectively*) by 1995 c. 4, s. 141(2)

**F148** S. 139(6) inserted (*retrospectively*) by 1995 c. 4, s. 141(3)

#### Marginal Citations

**M51** 1989 c. 26.

**M52** 1992 c. 4.

**M53** 1992 c. 7.

**M54** 1992 c. 4.

**M55** 1992 c. 7.

## 140 Restriction on deduction from income.

- (1) Section 808 of the Taxes Act 1988 (restriction on deduction of interest or dividends from trading income) shall be amended as follows—
  - (a) for “a banking business, an insurance business or a business consisting wholly or partly in dealing in securities” there shall be substituted “ a business ”;
  - (b) for “or dividend” there shall be substituted “ , dividend or royalties ”;
  - (c) the words “In this section “securities” includes stocks and shares” shall be omitted.

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- (2) This section shall apply where it is sought to exclude receipts from income or profits of an accounting period beginning on or after 30th November 1993.

#### **141 Expenditure involving crime.**

- (1) Section 577A of the Taxes Act 1988 (certain expenditure involving crime not to be deducted and not to be included in expenses of management) shall be amended as follows.

- (2) After subsection (1) there shall be inserted—

“(1A) In computing profits or gains chargeable to tax under Schedule A or Schedule D, no deduction shall be made for any expenditure incurred in making a payment induced by a demand constituting—

- (a) the commission in England or Wales of the offence of blackmail under section 21 of the Theft Act 1968,
- (b) the commission in Northern Ireland of the offence of blackmail under section 20 of the Theft Act (Northern Ireland) 1969, or
- (c) the commission in Scotland of the offence of extortion.”

- (3) In subsection (2) for “Such expenditure” there shall be substituted “ Any expenditure mentioned in subsection (1) or (1A) above ”.

- (4) This section shall apply in relation to expenditure incurred on or after 30th November 1993.

#### **142 Mortgage interest payable under deduction of tax: qualifying lenders.**

- (1) In section 376 of the Taxes Act 1988 (qualifying lenders)—

- (a) in subsection (4)(p), for “prescribed under subsection (5) below” there shall be substituted “ for the time being registered under section 376A below ” and for “Treasury” there shall be substituted “ Board ”; and
- (b) subsection (5) shall be omitted.

- (2) The following section shall be inserted in the Taxes Act 1988 after section 376—

##### **“376A The register of qualifying lenders.**

- (1) The Board shall maintain, and publish in such manner as they consider appropriate, a register for the purposes of section 376(4).

- (2) If the Board are satisfied that an applicant for registration is entitled to be registered, they may register the applicant generally or in relation to any description of loan specified in the register, with effect from such date as may be so specified; and a body which is so registered shall become a qualifying lender in accordance with the terms of its registration.

- (3) The registration of any body may be varied by the Board—

- (a) where it is general, by providing for it to be in relation to a specified description of loan, or
- (b) where it is in relation to a specified description of loan, by removing or varying the reference to that description of loan,

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and where they do so, they shall give the body written notice of the variation and of the date from which it is to have effect.

- (4) If it appears to the Board at any time that a body which is registered under this section would not be entitled to be registered if it applied for registration at that time, the Board may by written notice given to the body cancel its registration with effect from such date as may be specified in the notice.
- (5) The date specified in a notice under subsection (3) or (4) above shall not be earlier than the end of the period of 30 days beginning with the date on which the notice is served.
- (6) Any body which is aggrieved by the failure of the Board to register it under this section, or by the variation or cancellation of its registration, may, by notice given to the Board before the end of the period of 30 days beginning with the date on which the body is notified of the Board’s decision, require the matter to be determined by the Special Commissioners; and the Special Commissioners shall thereupon hear and determine the matter in like manner as an appeal.”
- (3) Any body which is, immediately before the date on which this Act is passed, a prescribed body for the purposes of section 376 of the Taxes Act 1988 (by virtue of an order made under subsection (5) of that section) shall be entitled to be entered in the register maintained under section 376A of that Act as a qualifying lender except that if it was, immediately before that date, a qualifying lender only in relation to such description of loan as was specified in the order, it shall be entitled to be entered in the register as a qualifying lender only in relation to that description of loan.
- (4) Until such time as the Board enter any such body in the register, that body shall be deemed to have been registered in accordance with its entitlement.

<sup>F149</sup>143 .....

#### Textual Amendments

**F149** S. 143 repealed (1.5.1995 with effect as mentioned in Sch. 8 para. 57 of the repealing Act) by 1995 c. 4, s. 162, **Sch. 29 Pt. VIII(5)**, Note 2 (with Sch. 8 paras. 55(2), 57(1))

#### 144 Debts released in voluntary arrangement: relief from tax.

- (1) In the Taxes Act 1988, in section 74 (general rules as to deductions not allowable), for paragraph (j) (debts not allowable except in certain circumstances) there shall be substituted—
- “(j) any debts except—
- (i) a bad debt proved to be such;
  - (ii) a debt or part of a debt released by the creditor wholly and exclusively for the purposes of his trade, profession or vocation as part of a relevant arrangement or compromise; and
  - (iii) a doubtful debt to the extent estimated to be bad, meaning, in the case of the bankruptcy or insolvency of the debtor, the

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debt except to the extent that any amount may reasonably be expected to be received on the debt;”.

- (2) The provisions of that section shall become subsection (1) of that section and after that subsection there shall be inserted—

“(2) In paragraph (j) of subsection (1) above “relevant arrangement or compromise” means—

- (a) a voluntary arrangement which has taken effect under or by virtue of the Insolvency Act 1986 or the Insolvency (Northern Ireland) Order 1989; or
- (b) a compromise or arrangement which has taken effect under section 425 of the Companies Act 1985 or Article 418 of the Companies (Northern Ireland) Order 1986.”

- (3) In the Taxes Act 1988—

- (a) in section 94 (debts deducted and subsequently released) after the word “released” where it first occurs, and
- (b) in section 103(4)(b) (debts deducted before, but released after, discontinuance of trade, etc.) after the word “released”,

there shall be inserted “ otherwise than as part of a relevant arrangement or compromise ”.

- (4) The provisions of section 94 of the Taxes Act 1988 shall become subsection (1) of that section and after that subsection there shall be inserted—

“(2) In subsection (1) above “relevant arrangement or compromise” has the same meaning as in section 74.”

- (5) After section 103(4) of the Taxes Act 1988 there shall be inserted—

“(4A) In subsection (4)(b) above “relevant arrangement or compromise” has the same meaning as in section 74.”

- (6) Subsection (1) above shall have effect, for the purposes of determining (in computing the amount of profits or gains to be charged under Case I or Case II of Schedule D) whether any sum should be deducted in respect of any debt, in relation to debts—

- (a) proved to be bad,
- (b) released as part of—
  - (i) a voluntary arrangement which has taken effect under or by virtue of the <sup>M56</sup>Insolvency Act 1986 or the <sup>M57</sup>Insolvency (Northern Ireland) Order 1989, or,
  - (ii) a compromise or arrangement which has taken effect under section 425 of the <sup>M58</sup>Companies Act 1985 or Article 418 of the <sup>M59</sup>Companies (Northern Ireland) Order 1986, and

- (c) estimated to be bad,

if the proof, release or estimation occurs on or after 30th November 1993.

- (7) Subsection (3) above shall have effect in relation to the release on or after 30th November 1993 of the whole or any part of any debt.

#### Marginal Citations

M56 1986 c. 45.

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**M57** S.I. 1989/2405 (N.I. 19).

**M58** 1985 c. 6.

**M59** S.I. 1986/1032 (N.I. 6).

## 145 Relief for business donations.

<sup>F150</sup>(1) . . . . .

(2) Section 79A of that Act shall be amended as follows.

(3) In subsection (1), after “training and enterprise council” there shall be inserted “business link organisation” and in subsection (3) after “council” there shall be inserted “organisation”.

(4) In subsection (5), before paragraph (a) there shall be inserted—

“(aa) “business link organisation” means any person authorised by or on behalf of the Secretary of State to use a service mark (within the meaning of the Trade Marks (Amendment) Act 1984) designated by the Secretary of State for the purposes of this paragraph”.

(5) In subsection (7), after “1st April 1990” there shall be inserted “ or, in the case of a contribution to a business link organisation, 30th November 1993 ”.

### Textual Amendments

**F150** S. 145(1) repealed (28.7.2000) by 2000 c. 17, s. 156, Sch. 40 Pt. II(9)

## 146 Minor corrections.

Schedule 17 to this Act (which corrects various mistakes made in or introduced into the Taxes Act 1988) shall have effect.

## CHAPTER II

### INTEREST RATE AND CURRENCY CONTRACTS

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

**C18** Pt. IV Chapter II (ss. 147-177) restricted (31.7.1998) by 1988 c. 1, Sch. 28AA para. 8(1)(b) (as inserted (31.7.1998) by 1998 c. 36, s. 108, Sch. 16)

**C19** Pt. IV Chapter II (ss. 147-177) applied (29.4.1996 with effect as mentioned in s. 105(1) of the applying Act) by 1996 c. 8, s. 105, Sch. 15 para. 25(4) (with savings etc. in Pt. IV Chapter II (ss. 80-105))

**C20** Pt. IV Chapter II (ss. 147-177) modified (29.4.1996 with effect as mentioned in s. 105(1) of the modifying Act) by 1996 c. 8, s. 105, Sch. 15 para. 25(2) (with savings etc. in Pt. IV Chapter II (ss. 80-105))

**C21** Pt. IV Chapter II (ss. 147-177) excluded (29.4.1996 with effect as mentioned in s. 105(1) of the excluding Act) by 1996 c. 8, s. 101(1) (with savings etc. in Pt. IV Chapter II (ss. 80-105))

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### *Qualifying contracts*

#### **147 Qualifying contracts.**

- (1) For the purposes of this Chapter—
  - (a) an interest rate contract or option, or
  - (b) a currency contract or option,
 is a qualifying contract as regards a qualifying company if the company becomes entitled to rights or subject to duties under the contract or option on or after its commencement day.
- (2) Where both immediately before and at the beginning of its commencement day—
  - (a) a company to which this paragraph applies is entitled to rights or subject to duties under an interest rate contract or option, or
  - (b) a qualifying company is entitled to rights or subject to duties under a currency contract or option,
 for the purposes of this Chapter the company shall be treated as becoming entitled or subject to them at the beginning of that day.
- (3) A qualifying company is a company to which paragraph (a) of subsection (2) above applies if its commencement day falls outside the period of twelve months beginning with the appointed day.
- (4) For the purposes of this Chapter—
  - (a) a company's commencement day is the first day of its first accounting period to begin after the day preceding the appointed day; and
  - (b) the appointed day is such day as the Treasury may by order appoint.

#### **Subordinate Legislation Made**

**P4** S. 147(4)(b) power exercised: 23.3.1995 appointed by S.I. 1994/3225, art. 2

#### **[<sup>F151</sup>147A Debt contracts and options to be qualifying contracts.**

- (1) For the purposes of this Chapter a debt contract or option is a qualifying contract as regards a qualifying company if the company becomes entitled to rights, or subject to duties, under the contract or option at any time on or after 1st April 1996.
- (2) For the purposes of this Chapter a qualifying company which is entitled to rights, or subject to duties, under a debt contract or option both immediately before and on 1st April 1996 shall be deemed to have become entitled or subject to those rights or duties on that date.
- (3) This section has effect subject to paragraph 25 of Schedule 15 to the Finance Act 1996 (transitional provisions).]

#### **Textual Amendments**

**F151** S. 147A inserted (29.4.1996 with effect as mentioned in s. 105(1) of the inserting Act) by 1996 c. 8, s. 101(2) (with savings etc. in Pt. IV Chapter II (ss. 80-105))



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## 148 Contracts which may become qualifying contracts.

- (1) A qualifying company is a company to which this section applies if its commencement day falls within the period of twelve months beginning with the appointed day.
- (2) Subject to subsection (3) below, all quasi-qualifying contracts which, at the end of the period of six years beginning with its commencement day, are held by a company to which this section applies shall be treated for the purposes of this Chapter as if the company became entitled to rights or subject to duties under them on the first day of its first accounting period beginning after the end of the period of six years.
- (3) Subject to subsection (5) below, if a company to which this section applies so elects, all quasi-qualifying contracts held by the company on its commencement day shall be treated for the purposes of this Chapter as if the company became entitled to rights or subject to duties under them on that day.
- (4) An election by a company under subsection (3) above shall be irrevocable and shall be made by notice served on the inspector before the end of the period of three months beginning with its commencement day.
- (5) A company may not make an election under subsection (3) above at a time when it is a member but not the principal company of a group unless the company did not become a member of the group until after the relevant day.
- (6) An election under subsection (3) above by a company which is the principal company of a group shall have effect also as an election by any other company to which this section applies and which on the relevant day is a member of the group.
- (7) Subsection (6) above shall apply in relation to a company notwithstanding that the company ceases to be a member of the group at any time after the relevant day except where—
  - (a) the company is an outgoing company in relation to the group, and
  - (b) the election relating to the group is made after the company ceases to be a member of the group.
- (8) In this section—

“outgoing company”, in relation to a group of companies, means a company which ceases to be a member of the group before the end of the period during which an election under subsection (3) above could be made in relation to it and at a time when no such election has been made;

“quasi-qualifying contract”, in relation to a qualifying company, means an interest rate contract or option which would be a qualifying contract if the company became entitled to rights or subject to duties under it on or after the company’s commencement day;

“the relevant day” means the principal company’s commencement day.
- (9) Section 170 of the <sup>M60</sup>Taxation of Chargeable Gains Act 1992 (groups of companies) shall have effect for the purposes of this section as for those of sections 171 to 181 of that Act.

### Marginal Citations

M60 1992 c.12.

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### *Interest rate and currency contracts and options*

#### **149 Interest rate contracts and options.**

- (1) A contract is an interest rate contract for the purposes of this Chapter if—
  - (a) the condition mentioned below is fulfilled, and
  - (b) the only transfers of money or money's worth for which the contract provides are payments falling within subsection (2), (3) or (4) or section 151 below.
- (2) The condition is that under the contract, whether unconditionally or subject to conditions being fulfilled, a qualifying company becomes entitled to a right to receive, or becomes subject to a duty to make, at a time specified in the contract a variable rate payment.
- (3) An interest rate contract may include provision under which, as the consideration or part of the consideration for a payment falling within subsection (2) above, the qualifying company becomes subject to a duty to make, or (as the case may be) becomes entitled to a right to receive, at a time specified in the contract a fixed or fixed rate payment.
- (4) In so far as the rights and duties mentioned in subsections (2) and (3) above relate to two payments—
  - (a) which fall to be made at the same time, and
  - (b) of which one falls to be made to and the other by the qualifying company,
 it is immaterial for the purposes of this section that those rights and duties may be exercised and discharged by a payment made to or, as the case may require, by the company of an amount equal to the difference between the amounts of those payments.
- (5) Each of the following, namely—
  - (a) an option to enter into an interest rate contract, and
  - (b) an option to enter into such an option,
 is an interest rate option for the purposes of this Chapter if the only transfers of money or money's worth for which it provides are payments falling within section 151 below.
- (6) In this section—
 

“fixed payment” means a payment of a fixed amount specified in the contract;

“fixed rate payment” means a payment the amount of which falls to be determined (wholly or mainly) by applying to a notional principal amount specified in the contract, for a period so specified, a rate the value of which at all times is the same as that of a fixed rate of interest so specified;

“variable rate payment” means a payment the amount of which falls to be determined (wholly or mainly) by applying to a notional principal amount specified in the contract, for a period so specified, a rate the value of which at any time is the same as that of a variable rate of interest so specified.

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

**C22** S. 149(2) modified (1.1.1999) by S.I. 1998/3177, reg. 8(a)

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## 150 Currency contracts and options.

- (1) A contract is a currency contract for the purposes of this Chapter if—
  - (a) the condition mentioned below is fulfilled, and
  - (b) the only transfers of money or money's worth for which the contract provides are payments falling within subsection (2), (3), (4) or (9) or section 151 below.
- (2) The condition is that under the contract a qualifying company—
  - (a) becomes entitled to a right and subject to a duty to receive payment at a specified time of a specified amount of one currency (the first currency), and
  - (b) becomes entitled to a right and subject to a duty to pay in exchange and at the same time a specified amount of another currency (the second currency).
- (3) A currency contract may include provision under which the qualifying company—
  - (a) becomes entitled to a right to receive at a time specified in the contract a payment the amount of which falls to be determined (wholly or mainly) by applying a specified rate of interest to a specified amount of the first currency, and
  - (b) becomes subject to a duty to make at a time so specified a payment the amount of which falls to be determined (wholly or mainly) by applying a specified rate of interest to a specified amount of the second currency.
- (4) A currency contract may also include provision under which the qualifying company—
  - (a) becomes entitled to a right and subject to a duty to receive payment at a specified time of a specified amount of the second currency, and
  - (b) becomes entitled to a right and subject to a duty to pay in exchange and at the same time a specified amount of the first currency.
- (5) In subsections (3) and (4) above—
  - (a) any reference to a time is a reference to a time earlier than that specified in the contract for the purposes of subsection (2) above, and
  - (b) any reference to a specified rate of interest is a reference to a rate the value of which at any time is the same as that of the specified rate of interest.
- (6) Each of the following, namely—
  - (a) an option to enter into a currency contract, and
  - (b) an option to enter into such an option,is a currency option for the purposes of this Chapter if the only transfers of money or money's worth for which it provides are payments falling within section 151 below.
- (7) An option the exercise of which at any time would result in a qualifying company—
  - (a) becoming entitled to a right and subject to a duty to receive payment at that time of a specified amount of one currency, and
  - (b) becoming entitled to a right and subject to a duty to pay in exchange and at that time a specified amount of another currency,is a currency option for the purposes of this Chapter if the only transfers of money or money's worth for which it provides are payments falling within this subsection and section 151 below.
- (8) Where, in the case of a contract which is subject to a condition precedent, the fulfilment of the condition at any time would result in a qualifying company becoming entitled

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and subject as mentioned in paragraphs (a) and (b) of subsection (7) above, that subsection and the following provisions of this Chapter shall have effect as if—

- (a) the contract before the fulfilment of the condition were such an option as is mentioned in that subsection,
  - (b) the fulfilment of the condition were the exercise of the option, and
  - (c) the contract after the fulfilment of the condition were the contract resulting from the exercise of the option.
- (9) It is immaterial for the purposes of this section that the rights and duties mentioned in subsection (2), (4) or (7) above may be exercised and discharged by a payment made to or, as the case may require, by the qualifying company of an amount (in whatever currency) which, at the specified time or the time when the option is exercised, is equivalent in value to the difference between—
- (a) the local currency equivalent at that time of one of the payments there mentioned, and
  - (b) the local currency equivalent at that time of the other of those payments.
- (10) Subsection (9) above shall be read as applying equally to such of the rights and duties mentioned in subsection (3) above as fall to be exercised and discharged at the same time, and for that purpose shall have effect with such modifications as may be requisite.
- [<sup>F152</sup>(11) Subsection (12) below applies where—
- (a) under a contract or as a result of the exercise of an option, a qualifying company becomes entitled to a right and subject to a duty to receive or make a payment at a specified time or at the time when the option is exercised, and
  - (b) the amount of the payment (in whatever currency) is computed in such a way as to be equal to the amount of the payment referred to in subsection (9) above which would have fallen to be computed if—
    - (i) the qualifying company had been entitled and subject as mentioned in subsection (2) or (7) above, and
    - (ii) a payment such as is referred to in subsection (9) were to be made to or by the qualifying company.
- (12) For the purposes of this Chapter—
- (a) the qualifying company shall be deemed to have become entitled and subject as mentioned in subsection (2) above under the contract referred to in subsection (11) above or, as the case may be, shall be deemed to have become entitled and subject as mentioned in subsection (7) above as a result of the exercise of the option referred to in subsection (11);
  - (b) the payment made under the contract or as a result of the exercise of the option shall be treated as if it were a payment falling within subsection (9) above in the exercise and discharge of the rights and duties to which the qualifying company is deemed to have become entitled and subject by virtue of paragraph (a) above.]

#### Textual Amendments

**F152** S. 150(11)(12) inserted (23.3.1995) by S.I. 1994/3233, art. 2

*Status: Point in time view as at 11/05/2001. This version of this Act contains provisions that are not valid for this point in time.*

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

**C23** S. 150(3) modified (1.1.1999) by S.I. 1998/3177, reg. 9(a)

[<sup>F153</sup>150A] **Debt contracts and options.**

- (1) A contract is a debt contract for the purposes of this Chapter if, not being an interest rate contract or option or a currency contract or option—
  - (a) it is a contract under which, whether unconditionally or subject to conditions being fulfilled, a qualifying company has any entitlement, or is subject to any duty, to become a party to a loan relationship; and
  - (b) the only transfers of money or money's worth for which the contract provides (apart from those that will be made under the loan relationship) are payments falling within subsection (5) below and payments falling within section 151 below.
- (2) A contract is also a debt contract for the purposes of this Chapter if, not being a debt contract by virtue of subsection (1) above or an interest rate contract or option or a currency contract or option—
  - (a) it is a contract under which, whether unconditionally or subject to conditions being fulfilled, a qualifying company has any entitlement, or is subject to any duty, to become treated as a person with rights and liabilities corresponding to those of a party to a loan relationship; and
  - (b) the only transfers of money or money's worth for which the contract provides are payments falling within subsection (6) below and payments falling within section 151 below.
- (3) In this section references to an entitlement to become a party to a loan relationship, or to a duty to become such a party, shall be taken to include references, in relation to a specified loan relationship, to either of the following, namely—
  - (a) an entitlement or, as the case may be, a duty to become a party to an equivalent relationship; and
  - (b) an entitlement or, as the case may be, a duty relating to the making of any one or more such payments as fall within subsection (5) below.
- (4) Subsection (3) above shall apply in relation to references in this section to an entitlement or a duty to become treated as a person with rights and liabilities corresponding to those of a party to a loan relationship as it applies to references to an entitlement or, as the case may be, a duty to become such a party.
- (5) The payments falling within this subsection are—
  - (a) a payment of an amount representing the price for becoming a party to the relationship;
  - (b) a payment of an amount determined by reference to the value at any time of the money debt by reference to which the relationship subsists;
  - (c) a settlement payment of an amount determined by reference to the difference at specified times between—
    - (i) the price for becoming a party to the relationship; and
    - (ii) the value of the money debt by reference to which the relationship subsists, or (if the relationship were in existence) would subsist.

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- (6) A payment falls within this subsection if it is a settlement payment of an amount determined by reference to the difference at specified times between—
- (a) the price for becoming treated as a person with rights and liabilities corresponding to those of a party to a relationship; and
  - (b) the value of the money debt by reference to which the relationship subsists or (if the relationship existed) would subsist.
- (7) Each of the following, namely—
- (a) an option to enter into a contract which would be a debt contract, and
  - (b) an option to enter into such an option,
- is a debt option for the purposes of this Chapter if the only transfers of money or money's worth for which the option provides are payments falling within section 151 below.
- (8) For the purposes of this Chapter where any contract contains both—
- (a) provisions under which, whether unconditionally or subject to conditions being fulfilled, a qualifying company has any entitlement, or is subject to any duty, to become a party to a loan relationship, and
  - (b) any provisions that have effect otherwise than for the purposes of or in relation to the provisions conferring that entitlement or imposing that duty,
- the provisions mentioned in paragraph (a) above, together with the other contents of that contract so far as they are attributable on a just and reasonable basis to the provisions mentioned in that paragraph, shall be treated as a separate contract.
- (9) For the purposes of this Chapter where—
- (a) any attribution of the contents of a contract falls to be made between provisions falling within paragraph (a) of subsection (8) above and provisions falling within paragraph (b) of that subsection, and
  - (b) that contract provides for the making of any payment constituting a transfer of money or money's worth which cannot be attributed to the provisions falling within only one of those paragraphs,
- that payment shall be treated as apportioned between the provisions falling within each of those paragraphs in such manner as may be just and reasonable.
- (10) Expressions used in this section and in Chapter II of Part IV of the Finance Act 1996 have the same meanings in this section as in that Chapter; but references in this section to a loan relationship do not include—
- (a) any loan relationship represented by an asset to which section 92 of that Act (convertible securities) applies; or
  - (b) any loan relationship to which section 93 of that Act (securities indexed to chargeable assets) applies.
- (11) For the purposes of this section and, so far as it relates to a debt contract or option, of section 151 below the transfer of money's worth having a value of any amount shall be treated as the payment of that amount.]

#### Textual Amendments

**F153** S. 150A inserted (29.4.1996 with effect as mentioned in s. 105(1) of the inserting Act) by 1996 c. 8, s. 101(3), **Sch. 12** (with savings etc. in Pt. IV Chapter II (ss. 80-105))

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

C24 S. 150A modified (1.1.1999) by S.I. 1998/3177, reg. 11(1)

### 151 Provisions which may be included.

- (1) An interest rate contract or option, [<sup>F154</sup>a currency contract or option or a debt contract or option], may include provision under which the qualifying company—
  - (a) becomes entitled to a right to receive a payment in consideration of its entering into the contract or option, or
  - (b) becomes subject to a duty to make a payment in consideration of another person's entering into the contract or option.
- (2) An interest rate contract or option, [<sup>F154</sup>a currency contract or option or a debt contract or option], may also include provision for all or any of the following—
  - (a) a payment of a reasonable fee for arranging the contract or option;
  - (b) a payment of reasonable costs incurred in respect of the contract or option;
  - (c) a payment for securing, or made in consequence of, the variation or termination of the contract or option; and
  - (d) a payment by way of compensation for, or made in consequence of, a failure to comply with the contract or option.

#### Textual Amendments

**F154** Words in s. 151(1)(2) substituted (29.4.1996 with effect as mentioned in s. 105(1) of the amending Act) by 1996 c. 8, s. 101(4) (with savings etc. in Pt. IV Chapter II (ss. 80-105))

### 152 Provisions which may be disregarded.

- (1) Where—
  - (a) but for the inclusion in a contract or option of provisions for one or more transfers of money or money's worth, the contract or option would be a qualifying contract; and
  - (b) as regards the qualifying company and the relevant time, the present value of the transfer, or the aggregate of the present values of the transfers, is small when compared with the aggregate of the present values of all relevant payments,the contract or option shall be treated for the purposes of section 149 or, as the case may be, section 150 [<sup>F155</sup>or 150A] above as if those provisions were not included in it.
- (2) For the purposes of subsection (1) above—
  - (a) any present value of a relevant payment which is a negative value shall be treated as if it were the equivalent positive value; and
  - (b) any relevant payment the amount of which represents the difference between two other amounts shall be treated as if it were a payment of an amount equal to the aggregate of those amounts.
- (3) In this section—

“relevant payments” means—

  - (a) in relation to a contract, qualifying payments under the contract;



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- (b) in relation to an option, qualifying payments under the option and payments which, if it were exercised, would be qualifying payments under the contract arising by virtue of its exercise;

“the relevant time” means the time when the contract or option was entered into or, if later, the time when the provisions were included in the contract or option.

#### Textual Amendments

**F155** Words in s. 152(1) inserted (29.4.1996 with effect as mentioned in s. 105(1) of the amending Act) by 1996 c. 8, s. 101(5) (with savings etc. in Pt. IV Chapter II (ss. 80-105))

#### Other basic definitions

### 153 Qualifying payments.

- (1) Subject to subsections (2) to (5) below, in this Chapter “qualifying payment” means—
- (a) in relation to a qualifying contract which is an interest rate contract, a payment falling within section 149(2), (3) or (4) above;
  - (b) in relation to a qualifying contract which is a currency contract, a payment falling within subsection (3) or (9) of section 150 above;
  - (c) in relation to a qualifying contract which is a currency option, a payment falling within subsection (9) of that section;
  - [<sup>F156</sup>(ca) in relation to a qualifying contract which is a debt contract, a payment falling within section 150A(5) or (6) above; and]
  - (d) in relation to any qualifying contract, a payment falling within section 151 above.
- (2) In this Chapter “qualifying payment” includes, in relation to a qualifying contract—
- (a) a payment which, if it were a payment under the contract, would be a payment falling within section 151 above; and
  - (b) a payment for securing the acquisition or disposal of the contract.
- (3) Where a qualifying company closes out a qualifying contract which is an interest rate or currency contract by entering into another contract with obligations which are reciprocal to those of the qualifying contract—
- (a) any payment received by the company in consideration of its entering into the reciprocal contract, or paid by the company in consideration of another person’s entering into that contract, is for the purposes of this Chapter a qualifying payment in relation to the qualifying contract; and
  - (b) all other payments under the reciprocal contract, and all subsequent payments under the qualifying contract, shall be ignored for all purposes of the Tax Acts.
- (4) Subsection (5) below applies where, in the case of a qualifying contract which is a currency contract, there is a difference between—
- (a) the local currency equivalent, at the time immediately after the qualifying company becomes entitled to rights and subject to duties under the contract, of the amount of the first currency (the first currency equivalent), and
  - (b) the local currency equivalent, at that time, of the amount of the second currency (the second currency equivalent).



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- (5) The amount of the difference shall be treated for the purposes of this Chapter—
- (a) where the first currency equivalent exceeds the second currency equivalent, as a qualifying payment received by the qualifying company at the time specified in the contract for the purposes of section 150(2) above, and
  - (b) where the first currency equivalent is less than the second currency equivalent, as a qualifying payment made by the qualifying company at that time.

#### Textual Amendments

**F156** S. 153(1)(ca) and the word “and” immediately following it substituted for the word “and” at the end of para. (c) (29.4.1996 with effect as mentioned in s. 105(1) of the amending Act) by 1996 c. 8, s. 101(6) (with savings etc. in Pt. IV Chapter II (ss. 80-105))

### 154 Qualifying companies.

- (1) Subject to subsections (2) and (3) below, any company is a qualifying company for the purposes of this Chapter.
- (2) Where a unit trust scheme is an authorised unit trust as respects an accounting period the trustees (who are deemed to be a company for certain purposes by section 468(1) of the Taxes Act 1988) are not, as regards that period, a qualifying company for the purposes of this Chapter.
- (3) A company which is approved for the purposes of section 842 of the Taxes Act 1988 (investment trusts) for an accounting period is not, as regards that period, a qualifying company for the purposes of this Chapter so far as it relates to currency contracts and options.
- (4) In this section—
  - “authorised unit trust” has the same meaning as in section 468 of the Taxes Act 1988;
  - “unit trust scheme” has the same meaning as in section 469 of that Act.

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

**C25** S. 154 modified (28.4.1997) by S.I. 1997/1154, reg. 18

### *Accrual of profits and losses*

### 155 Accrual of profits and losses.

- (1) Where, as regards a qualifying contract held by a qualifying company and an accounting period, amount A exceeds amount B, a profit on the contract of an amount equal to the excess accrues to the company for the period.
- (2) Where, as regards a qualifying contract held by a qualifying company and an accounting period, amount B exceeds amount A, a loss on the contract of an amount equal to the excess accrues to the company for the period.
- (3) Subsections (4) and (5) below have effect for the purposes of this section, sections 158 and 161 to 167 below and paragraph 2 of Schedule 18 to this Act; and any reference in

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any of those sections or that paragraph to amount A or amount B is a reference to that amount after the making of any adjustments under such of those sections as precede that section or paragraph.

- (4) Where as regards a qualifying contract a qualifying company's profit or loss for an accounting period falls to be computed on a mark to market basis incorporating a particular method of valuation—
- (a) amount A is the aggregate of—
    - (i) the amount or aggregate amount of the qualifying payment or payments becoming due and payable to the company in the period, and
    - (ii) any increase for the period, or the part of the period for which the contract is held by the company, in the value of the contract as determined by that method, and
  - (b) amount B is the aggregate of—
    - (i) the amount or aggregate amount of the qualifying payment or payments becoming due and payable by the company in the period, and
    - (ii) any reduction for the period, or the part of the period for which the contract is held by the company, in the value of the contract as so determined.
- (5) Where as regards a qualifying contract a qualifying company's profit or loss for an accounting period falls to be computed on a particular accruals basis—
- (a) amount A is so much of the qualifying payment or payments received or falling to be received by the company as is allocated to the period on that basis, and
  - (b) amount B is so much of the qualifying payment or payments made or falling to be made by the company as is so allocated.
- (6) Where a qualifying contract is such a contract by reason of being treated, by virtue of section 152 above, as if any provisions for one or more transfers of money or money's worth were not included in it—
- (a) so much of any qualifying payment as relates to the transfer or transfers shall be ignored for the purposes of subsections (4) and (5) above, and
  - (b) so much of any such increase or reduction as is mentioned in paragraph (a) or (b) of subsection (4) above as so relates shall be ignored for the purposes of that subsection.
- (7) Subject to subsection (8) below, where a qualifying contract—
- (a) becomes held by a qualifying company at any time in an accounting period, or
  - (b) ceases to be so held at any such time,
- it shall be assumed for the purposes of subsection (4) above that its value is nil immediately after it becomes so held or, as the case may be, immediately before it ceases to be so held.
- (8) Subsection (7)(b) above does not apply where a qualifying contract is discharged by the making of payments none of which is a qualifying payment for the purposes of this Chapter.

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## **156 Basis of accounting: general.**

- (1) Where, for the purposes of a qualifying company's accounts, profits and losses for an accounting period on a qualifying contract held by the company are computed on—
  - (a) a mark to market basis of accounting which satisfies the requirements of this section, or
  - (b) an accruals basis of accounting which satisfies those requirements,profits and losses for the period on the contract shall be computed on that basis for the purposes of this Chapter.
- (2) Where subsection (1) above does not apply in the case of a qualifying contract held by a qualifying company and an accounting period, profits and losses for the period on the contract shall be computed for the purposes of this Chapter on a mark to market or accruals basis of accounting which—
  - (a) satisfies the requirements of this section, and
  - (b) is specified in an agreement between the company and the inspector or, in default of such an agreement, in a notice served on the company by the inspector.
- (3) A mark to market basis of accounting satisfies the requirements of this section as regards a qualifying contract if—
  - (a) computing the profits or losses on the contract on that basis is in accordance with normal accountancy practice;
  - (b) all relevant payments under the contract are allocated to the accounting periods in which they become due and payable; and
  - (c) the method of valuation adopted is such as to secure the contract is brought into account at a fair value.
- (4) An accruals basis of accounting satisfies the requirements of this section as regards a qualifying contract if—
  - (a) computing the profits or losses on the contract on that basis is in accordance with normal accountancy practice;
  - (b) all relevant payments under the contract are allocated to the accounting periods to which they relate, without regard to the accounting periods in which they are made or received, or become due and payable; and
  - (c) where such payments relate to two or more such periods, they are apportioned between those periods on a just and reasonable basis.
- (5) In determining whether, as regards a qualifying contract, a relevant payment is dealt with as mentioned in subsection (4) above—
  - (a) regard shall be had to the accounting period or periods to which any reciprocal payment or payments are allocated, and to the basis on which any such payment or payments are apportioned between two or more such periods, but
  - (b) no regard shall be had to the accounting period or periods to which any other payment or payments are allocated, or to the basis on which any such payment or payments are so apportioned.
- (6) References in this section to a qualifying company's accounts shall be construed as follows—
  - (a) in the case of a company formed and registered under the <sup>M61</sup>Companies Act 1985, as references to its accounts drawn up in accordance with the requirements of that Act;

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- (b) in the case of a company formed and registered under the <sup>M62</sup>Companies (Northern Ireland) Order 1986, as references to its accounts drawn up in accordance with the requirements of that Order;
- (c) in any other case, as references to the accounts which it is required to keep under the law of its home State or, if it is not so required to keep accounts, such of its accounts as most closely correspond to the accounts mentioned in paragraph (a) above;

and for the purposes of paragraph (c) above the home State of a company is the country or territory under whose law the company is incorporated.

(7) In this section—

“fair value”, in relation to a qualifying contract, means the amount which, if the qualifying company disposed of the contract to a knowledgeable and willing party dealing at arm’s length, it would be able to obtain or, as the case may be, would have to pay;

“reciprocal payment”, in relation to a relevant payment, means another such payment which is the consideration or part of the consideration for that payment;

“relevant payment” means a qualifying payment made or received, or falling to be made or received, by the company.

- (8) In the above definition of “reciprocal payment”, the second reference to a relevant payment includes a reference to any payment which—
  - (a) is subject to a condition precedent, and
  - (b) would be a relevant payment if the condition were fulfilled.

#### Marginal Citations

**M61** 1985 c. 6.

**M62** S.I. 1986/1032 (N.I.6).

### 157 Basis of accounting for linked currency options.

- (1) As regards a qualifying contract which is a linked currency option, a qualifying company’s profit or loss for an accounting period shall be computed on a mark to market basis of accounting.
- (2) Accordingly if, as regards such an option, a qualifying company’s profit or loss for an accounting period would, apart from subsection (1) above, fall to be computed on an accruals basis of accounting, that profit or loss shall be computed for the purposes of this Chapter on a mark to market basis of accounting which—
  - (a) satisfies the requirements of section 156 above, or would satisfy those requirements if paragraph (a) of subsection (3) of that section were omitted, and
  - (b) is specified in an agreement between the company and the inspector or, in default of such an agreement, in a notice served on the company by the inspector.
- (3) A currency option is a linked currency option for the purposes of this section if each of the conditions mentioned below is fulfilled.
- (4) The first condition is that—

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- (a) in the case of an option exercisable by the qualifying company against the other party, another currency option is exercisable by that party against the company; or
  - (b) in the case of an option exercisable by the other party against the qualifying company, another currency option is exercisable by the company against that party.
- (5) For the purposes of subsection (4) above, another currency option which is exercisable by or against an associated company of the qualifying company, or by or against an associated company of the other party to the currency option in question, shall be treated as exercisable by or against the qualifying company or that party.
- (6) The second condition is that the terms of the two options are such that—
- (a) they must be exercised (if at all) at the same, or substantially the same, time, and
  - (b) the rights and duties under the contract which would arise if the one option were exercised are the same, or substantially the same, as those under the contract which would arise if the other option were exercised.
- (7) Where the currency option in question is such an option by virtue of section 150(8) above, subsections (4) and (5) above shall be construed as if—
- (a) any reference to an option being exercisable by any person were a reference to a contract subject to a condition precedent the fulfilment of which would result in a transfer of value to that person, and
  - (b) any reference to an option being exercisable against any person were a reference to a contract subject to a condition precedent the fulfilment of which would result in a transfer of value by that person.
- (8) For the purposes of subsection (7) above there is a transfer of value to or by any person if, immediately after the fulfilment of the condition, the value of that person's net assets is more or, as the case may be, less than it would have been but for the fulfilment of the condition.
- (9) Any reference in subsection (8) above to the value of a person's net assets being more or less than it would have been but for the fulfilment of the condition includes a reference to the value of that person's net liabilities being less or, as the case may be, more than it would have been but for the fulfilment of the condition.
- (10) In this section "associated company" shall be construed in accordance with section 416 of the Taxes Act 1988 and any reference to a currency option is a reference to one which is a qualifying contract.

## **158 Adjustments for changes in basis of accounting.**

- (1) Subsections (2) to (5) below apply where, as regards a qualifying contract and an accounting period, a qualifying company's profit or loss is computed on a basis of accounting (the new basis) other than that adopted for the immediately preceding accounting period.
- (2) There shall be added to amount A an amount equal to any amount, or the aggregate of any amounts—
  - (a) which have not been included in amount A for a preceding accounting period, and

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- (b) which would have been so included if the new basis had been adopted for that period.
- (3) There shall be deducted from amount A or, as the case may require, added to amount B an amount equal to any amount, or the aggregate of any amounts—
  - (a) which have been included in amount A for a preceding accounting period, and
  - (b) which would not have been so included if the new basis had been adopted for that period.
- (4) There shall be added to amount B an amount equal to any amount, or the aggregate of any amounts—
  - (a) which have not been included in amount B for a preceding accounting period, and
  - (b) which would have been so included if the new basis had been adopted for that period.
- (5) There shall be deducted from amount B or, as the case may require, added to amount A an amount equal to any amount, or the aggregate of any amounts—
  - (a) which have been included in amount B for a preceding accounting period, and
  - (b) which would not have been so included if the new basis had been adopted for that period.
- (6) Subject to subsection (7) below, subsections (2) to (5) above also apply where a contract or option becomes a qualifying contract by virtue of section 147(2) or 148(2) or (3) above at the beginning of the first day of an accounting period of a qualifying company.
- (7) Where subsections (2) to (5) above apply by virtue of subsection (6) above, they shall have effect as if—
  - (a) any reference to the new basis were a reference to the basis of accounting on which, as regards the qualifying contract, the company's profit or loss for the accounting period is calculated,
  - (b) any reference to being or not being included in amount A for a preceding accounting period were a reference to being or not being taken into account as receipts or increases in value in computing the company's profits or losses for such a period, and
  - (c) any reference to being or not being included in amount B for a preceding accounting period were a reference to being or not being taken into account as deductions or reductions in value in computing the company's profits or losses for such a period.

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

**C26** S. 158(2)-(5) modified (29.4.1996 with effect as mentioned in s. 105(1) of the modifying Act) by 1996 c. 8, s. 105, **Sch. 15 para. 25(3)** (with savings etc. in Pt. IV Chapter II (ss. 80-105))

*Treatment of profits and losses*

**159 Trading profits and losses.**

- (1) Subsections (2) and (3) below apply where—

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- (a) as regards a qualifying contract a profit or loss accrues to a qualifying company for an accounting period, and
  - (b) the qualifying contract was at any time in the period held by the company for the purposes of a trade or part of a trade carried on by it.
- (2) If throughout the accounting period the qualifying contract was held by the company solely for the purposes of the trade or part, the whole of the profit or loss shall be treated for the purposes of the Tax Acts as a profit or loss of the trade or part for the period.
- (3) In any other case the profit or loss shall be apportioned on a just and reasonable basis and so much as is attributable to the trade or part shall be treated for the purposes of the Tax Acts as a profit or loss of the trade or part for the period.
- (4) The preceding provisions of this section apply notwithstanding anything in section 74 of the Taxes Act 1988 (general rules as to deductions not allowable).

#### **160 Non-trading profits and losses.**

- (1) In a case where—
- (a) as regards a qualifying contract a profit or loss accrues to a qualifying company for an accounting period, and
  - (b) the whole or part of the profit or loss does not fall to be treated for the purposes of the Tax Acts as a profit or loss of a trade or part of a trade for the period,
- the whole or part (as the case may be) shall be treated for the purposes of this section as a non-trading profit or loss of the company for the period.
- [<sup>F157</sup>(2) Any amount which for the purposes of this section is treated as a non-trading profit of a company for any accounting period shall be brought into account for that accounting period as if it were a non-trading credit falling to be brought into account for the purposes of Chapter II of Part IV of the Finance Act 1996 in respect of a loan relationship of the company.
- (2A) Any amount which for the purposes of this section is treated as a non-trading loss of a company for any accounting period shall be brought into account for that accounting period as if it were a non-trading debit falling to be brought into account for the purposes of Chapter II of Part IV of the Finance Act 1996 in respect.]

#### **Textual Amendments**

**F157** S. 160(2)(2A) substituted for s. 160(2)-(4) (29.4.1996 with effect as mentioned in s. 105(1) of the amending Act) by 1996 c. 8, s. 104, Sch. 14 para. 75 (with savings etc. Pt. IV Chapter II (ss. 80-105))

#### *Special cases*

#### **161 Termination etc. of qualifying contracts.**

- (1) This section applies where at any time (the relevant time) in an accounting period of a qualifying company—
- (a) a qualifying contract held by the company is terminated,
  - (b) such a contract is disposed of by the company, or

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- (c) a contract held by the company is so varied as to cease to be such a contract.
- (2) If, as regards the contract and the period, amounts A and B fall to be determined under section 155(5) above—
  - (a) there shall be deducted from amount A or, as the case may require, added to amount B so much of any qualifying payment as has not become due and payable to the company before the relevant time but has been included in amount A for the period or any previous accounting period, and
  - (b) there shall be deducted from amount B or, as the case may require, added to amount A so much of any qualifying payment as has not become due and payable by the company before the relevant time but has been included in amount B for the period or any previous accounting period.

## 162 Exchange gains and losses on currency contracts.

Where, as regards a currency contract held by a qualifying company and an accounting period, amounts A and B fall to be determined under section 155(4) above—

- (a) the amount of any exchange gain which as regards the contract accrues to the company for the period shall be deducted from amount A or, as the case may require, added to amount B; and
- (b) the amount of any exchange loss which as regards the contract accrues to the company for the period shall be deducted from amount B or, as the case may require, added to amount A.

## 163 Irrecoverable payments.

- (1) Subsections (2) and (3) below apply in any case [<sup>F158</sup>where a qualifying company—
  - (a) is entitled to a right to receive a qualifying payment, and
  - (b) makes a claim] within two years after the end of an accounting period of the company, that the whole or any part of the payment outstanding immediately before the end of that period could at that time reasonably have been regarded as having become irrecoverable in that period.
- (2) If, as regards the contract and the period, amounts A and B fall to be determined under section 155(4) above, an amount equal to so much of the payment as—
  - (a) [<sup>F159</sup>may reasonably be regarded as having] become irrecoverable in the period, and
  - (b) became due and payable in the period or any previous accounting period, shall be deducted from amount A, or as the case may require, added to amount B.
- (3) If, as regards the contract and the period, amounts A and B fall to be determined under section 155(5) above, an amount equal to so much of the payment as—
  - (a) [<sup>F159</sup>may reasonably be regarded as having] become irrecoverable in the period, and
  - (b) was allocated to the period or any previous accounting period, shall be deducted from amount A, or as the case may require, added to amount B.
- (4) In any case where—
  - (a) as regards a qualifying contract and an accounting period of a qualifying company, an amount has been deducted or added as mentioned in subsection (2) or (3) above, and



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- (b) the whole or any part of so much of the qualifying payment as [F160 fell within paragraphs (a) and (b) of that subsection] is recovered in a later accounting period of the company,

an amount equal to so much of the payment as is so recovered shall, as regards the qualifying contract and the later accounting period, be deducted from amount B, or as the case may require, added to amount A.

#### Textual Amendments

**F158** Words in s. 163(1) substituted (29.4.1996 with effect as mentioned in s. 134(2) of the amending Act) by 1996 c. 8, s. 134, **Sch. 20 para. 71(2)**

**F159** Words in s. 163(2)(a)(3)(a) substituted (29.4.1996 with effect as mentioned in s. 134(2) of the amending Act) by 1996 c. 8, s. 134, **Sch. 20 para. 71(3)**

**F160** Words in s. 163(4)(b) substituted (29.4.1996 with effect as mentioned in s. 134(2) of the amending Act) by 1996 c. 8, s. 134, **Sch. 20 para. 71(4)**

### 164 Released payments.

- (1) Subsections (2) and (3) below apply in any case where—
- (a) a qualifying company is subject to a duty to make a qualifying payment, and
  - (b) at any time in an accounting period of the company, the whole or any part of the payment then outstanding is released by the person to whom the duty is owed.
- (2) If, as regards the contract and the period, amounts A and B fall to be determined under section 155(4) above, an amount equal to so much of the payment as—
- (a) is released in the period, and
  - (b) became due and payable in the period or any previous accounting period,
- shall be deducted from amount B, or as the case may require, added to amount A.
- (3) If, as regards the contract and the period, amounts A and B fall to be determined under section 155(5) above, an amount equal to so much of the payment as—
- (a) is released in the period, and
  - (b) was allocated to the period or any previous accounting period,
- shall be deducted from amount B, or as the case may require, added to amount A.

#### *Anti-avoidance and related provisions*

### 165 Transfers of value by qualifying companies.

- (1) Subsection (2) below applies where, as a result of—
- (a) a qualifying company entering into a relevant transaction on or after its commencement day, or
  - (b) the expiry on or after a qualifying company's commencement day of an option held by the company which, until its expiry, was a qualifying contract,
- there is a transfer of value by the qualifying company to an associated company or an associated third party.
- (2) For the accounting period of the qualifying company in which the transaction was entered into or the option expired, there shall be deducted from amount B or, as the

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case may require, added to amount A an amount equal to the value transferred by that company.

(3) For the purposes of subsection (1) above there is a transfer of value by the qualifying company to an associated company or an associated third party if, immediately after the transaction or expiry—

- (a) the value of the qualifying company's net assets is less, and
- (b) the value of the associated company's or associated third party's net assets is more,

than it would have been but for the transaction or expiry; and the amount by which the value mentioned in paragraph (a) above is less is the value transferred by the qualifying company for the purposes of subsection (2) above.

(4) Any reference in subsection (3) above to the value of a person's net assets being less or more than it would have been but for the transaction or expiry includes a reference to the value of that person's net liabilities being more or, as the case may be, less than it would have been but for the transaction or expiry.

(5) In applying subsection (3) above, no account shall be taken of any such payment as is mentioned in section 151(2)(a) or (b) above.

(6) A third party, that is to say, a person who is not an associated company, is an associated third party for the purposes of this section at the time when the relevant transaction is entered or the option expires if, at that time, each of the two conditions mentioned below is fulfilled.

(7) The first condition is that the relevant transaction is entered into or the option is allowed to expire in pursuance of arrangements made with the third party.

(8) The second condition is that, in pursuance of those arrangements, a transfer of value has been or will be made to an associated company (directly or indirectly) by the third party or by a company which was at the time when the arrangements were made an associated company of that party.

(9) Where it appears to the inspector that there is a transfer of value by the qualifying company to a third party, he may by notice in writing require the company, within such time (which shall not be less than 30 days) as may be specified in the notice, to furnish to the inspector such information—

- (a) as is in its possession or power, and
- (b) as the inspector reasonably requires for the purpose of determining whether the third party is an associated third party for the purposes of this section.

(10) Subsection (3) above shall (with the necessary modifications) apply for the purposes of subsections (7) to (9) above as it applies for the purposes of subsection (1) above.

(11) In this section—

“associated company” shall be construed in accordance with section 416 of the Taxes Act 1988;

“relevant transaction” means a transaction as a result of which—

- (a) a qualifying company becomes party to a qualifying contract, or
- (b) the terms of a qualifying contract to which a qualifying company is party are varied;

and any reference to an associated company is, unless the contrary intention appears, a reference to an associated company of the qualifying company.

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## **166 Transfers of value to associated companies.**

- (1) Subsection (2) below applies where subsection (2) of section 165 above applies and either—
  - (a) the transfer of value by the qualifying company is to an associated company which is itself a qualifying company; or
  - (b) the transfer of value by the qualifying company is to an associated third party, and the transfer of value mentioned in subsection (8) of that section—
    - (i) is to an associated company which is itself a qualifying company, and
    - (ii) results from that company entering into a relevant transaction.
- (2) For the corresponding accounting period or periods of the associated company, there shall be deducted from amount A or, as the case may require, added to amount B an amount equal to the value transferred to the associated company.
- (3) Subsection (3) of section 165 above shall (with the necessary modifications) apply for the purposes of subsection (2) above as it applies for the purposes of subsection (2) of that section.
- (4) In subsection (2) above “corresponding accounting period or periods”, in relation to the associated company, means the accounting period or periods of that company comprising or together comprising the accounting period of the qualifying company in which the transaction was entered into or the option expired, and any necessary apportionment shall be made between corresponding accounting periods if more than one.
- (5) In this section any expressions which are also used in section 165 above shall be construed in accordance with the provisions of that section.

## **167 Transactions not at arm’s length.**

- (1) A transaction entered into on or after a qualifying company’s commencement day is a relevant transaction for the purposes of this section if as a result of the transaction—
  - (a) the qualifying company becomes party to a qualifying contract, or
  - (b) the terms of a qualifying contract to which the qualifying company is party are varied.
- (2) Subsections (3) to (5) below apply where—
  - (a) if the parties to a relevant transaction had been dealing at arm’s length, the transaction—
    - (i) would not have been entered into at all, or
    - (ii) would have been entered into on different terms, <sup>F161</sup> . . .
  - <sup>F161</sup>(b) . . . . .but subject, in a case falling within paragraph (a)(ii) above, to the modifications made by subsection (7) below.
- (3) For each relevant accounting period for the whole of which the other party is a qualifying company, the following deductions shall be made—
  - (a) from amount B, a deduction of such amount as may be necessary to reduce amount B to nil, and
  - (b) from amount A, a deduction of such amount as may be necessary to reduce amount A to nil.

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- (4) For each relevant accounting period for any part of which the other party is not a qualifying company, the following deductions shall be made—
- (a) from amount B, a deduction of such amount as may be necessary to reduce amount B to nil, and
  - (b) from amount A, a deduction of the same amount or (where that amount exceeds amount A) a deduction of so much of that amount as may be necessary to reduce amount A to nil.
- (5) For each relevant accounting period (except the first) for any part of which the other party is not a qualifying company, there shall also be deducted from amount A or, as the case may require, added to amount B such amount as may be necessary to secure that amount C does not exceed amount D where—
- (a) amount C is any amount by which the aggregate of adjusted amounts A exceeds the aggregate of adjusted amounts B, and
  - (b) amount D is any amount by which the aggregate of unadjusted amounts A exceeds the aggregate of unadjusted amounts B.
- (6) In subsection (5) above—
- “adjusted” means adjusted under subsections (4) and (5) above and “unadjusted” shall be construed accordingly;
- “the aggregate of adjusted amounts A”, in relation to a relevant accounting period, means the aggregate of—
- (a) adjusted amount A for that period, and
  - (b) adjusted amount A for each preceding relevant accounting period,
- and similar expressions shall be construed accordingly.
- (7) In a case falling within subsection (2)(a)(ii) above—
- (a) subsections (3) to (5) above shall have effect as if any reference to amount A or amount B were a reference to the relevant proportion of that amount; and
  - (b) the definitions in subsection (6) above of “the aggregate of adjusted amounts A” and similar expressions shall have effect as if any reference to adjusted amount A were a reference to the adjusted relevant proportion of amount A;
- and in this subsection “the relevant proportion” means such proportion as may be just and reasonable having regard to the differences between the terms mentioned in subsection (2)(a)(ii) above and the terms on which the relevant transaction was actually entered into.
- (8) In applying subsections (2) and (7) above—
- (a) no account shall be taken of any transfer of value in respect of which an adjustment is made under section 165 or 166 above, but
  - (b) subject to that, all factors shall be taken into account.
- (9) The factors which may be so taken into account include—
- (a) in a case where the qualifying contract is an interest rate contract or option, any notional principal amounts and rates of interest that would have been involved;
  - (b) in a case where the qualifying contract is a currency contract or option, any currencies and amounts that would have been involved;
  - <sup>[F162]</sup>(ba) in a case where the qualifying contract is a debt contract or option, the amount of the debt by reference to which any loan relationship that would have been

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- involved would have subsisted, and any terms as to repayment, redemption or interest that, in the case of that debt or any asset representing it, would have been involved; and]
- (c) in [<sup>F163</sup>any such] case, any transactions which are related to the relevant transaction.
- (10) In this section “relevant accounting period”, in relation to a relevant transaction, means—
- (a) the accounting period of the qualifying company in which the transaction was entered into, and
- (b) each subsequent accounting period of that company for the whole or part of which it is party to the contract.

#### Textual Amendments

- F161** S. 167(2)(b) and the preceding word “and” repealed (31.7.1998 with effect as mentioned in s. 109(4) of the repealing Act) by 1998 c. 36, s. 165, Sch. 27 Pt. III(26), Note
- F162** S. 167(9)(ba) inserted (29.4.1996 with effect as mentioned in s. 105(1) of the amending Act) by 1996 c. 8, s. 104, Sch. 14 para. 76(1) (with savings etc. in Pt. IV Chapter II (ss. 80-105))
- F163** Words in s. 167(9)(c) substituted (29.4.1996 with effect as mentioned in s. 105(1) of the amending Act) by 1996 c. 8, s. 104, Sch. 14 para. 76(2) (with savings etc. in Pt. IV Chapter II (ss. 80-105))

### 168 Qualifying contracts with non-residents.

- (1) Subject to subsections (3) to (5) below, subsections (4) and (5) of section 167 above (“the relevant subsections”) also apply where, as a result of any transaction entered into on or after a qualifying company’s commencement day—
- (a) the qualifying company and a non-resident, that is, a person who is not resident in the United Kingdom, both become party to a qualifying contract;
- (b) the qualifying company becomes party to a qualifying contract to which a non-resident is party; or
- (c) a non-resident becomes party to a qualifying contract to which the qualifying company is party.
- (2) For the purposes of the relevant subsections as so applied, the definition of “relevant accounting period” in subsection (10) of that section shall have effect as if—
- (a) any reference to a relevant transaction were a reference to the transaction mentioned in subsection (1) above; and
- (b) in paragraph (b), for the words “it is” there were substituted the words “both it and the non-resident are”.
- (3) The relevant subsections shall not apply where the qualifying company is a bank, building society or financial trader and—
- (a) it holds the qualifying contract solely for the purposes of a trade or part of a trade carried on by it in the United Kingdom, and
- (b) it is party to the contract otherwise than as agent or nominee of another person.
- (4) The relevant subsections shall not apply where—
- (a) the non-resident holds the qualifying contract solely for the purposes of a trade or part of a trade carried on by him in the United Kingdom through a branch or agency, and

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- (b) he is party to the contract otherwise than as agent or nominee of another person.
- (5) The relevant subsections shall not apply where arrangements made with the government of the territory in which the non-resident is resident—
  - (a) have effect by virtue of section 788 of the Taxes Act 1988, and
  - (b) make provision, whether for relief or otherwise, in relation to interest (as defined in the arrangements).
- (6) Where the non-resident is party to the contract as agent or nominee of another person, subsection (5) above shall have effect as if the reference to the territory in which the non-resident is resident were a reference to the territory in which that other person is resident.

VALID FROM 24/07/2002

#### <sup>F164</sup>168A Qualifying contracts for unallowable purposes

- (1) Where in any accounting period a qualifying contract to which a company is party has an unallowable purpose, any amounts which for that period fall, in the case of the company, to be brought into account for the purposes of section 155 above as part of amount B shall (subject to subsection (2) below) not include so much of the amounts given by the accounting method used as respects the contract as, on a just and reasonable apportionment, is referable to the unallowable purpose.
- (2) The total of any amounts which by virtue of subsection (1) above are not to be brought into account in the accounting period as part of amount B may not exceed the maximum amount.
- (3) For the purposes of subsection (2) above, the maximum amount, in relation to the accounting period, is—
  - (a) if in the accounting period amount B exceeds amount A, the amount by which amount B exceeds amount A; and
  - (b) if in the accounting period amount A exceeds or equals amount B, nil.
- (4) For the purposes of subsection (3) above, amount A and amount B shall be determined in relation to the qualifying contract in accordance with section 155 above and, in so determining amount B, so much of any amount as is referable to the unallowable purpose of the contract shall (notwithstanding subsection (1) above) be brought into account.
- (5) For the purposes of this section a qualifying contract to which a company is party shall be taken to have an unallowable purpose in an accounting period where the purposes for which, at times during that period, the company is party to the contract include a purpose (“the unallowable purpose”) which is not amongst the business or other commercial purposes of the company.
- (6) For the purposes of this section the business and other commercial purposes of a company do not include the purposes of any part of its activities in respect of which it is not within the charge to corporation tax.
- (7) For the purposes of this section, where one of the purposes for which a company is party to a qualifying contract at any time is a tax avoidance purpose, that purpose

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shall be taken to be a business or other commercial purpose of the company only where it is not the main purpose, or one of the main purposes, for which the company is party to the contract at that time.

- (8) The reference in subsection (7) above to a tax avoidance purpose is a reference to any purpose that consists in securing a tax advantage (whether for the company or any other person).
- (9) In this section “tax advantage” has the same meaning as in Chapter 1 of Part 17 of the Taxes Act 1988 (tax avoidance).]

#### Textual Amendments

**F164** S.168A inserted (with effect as mentioned in s. 69(2)4) of the amending Act) by [Finance Act 2002 \(c. 23\), s. 69\(1\)](#)

### Miscellaneous

#### 169 Insurance and mutual trading companies.

- (1) Subject to the provisions of Schedule 18 to this Act and subsection (2) below, this Chapter shall apply in relation to insurance companies and mutual trading companies as it applies in relation to other qualifying companies.
- (2) The Treasury may by regulations provide that this Chapter shall have effect in relation to currency contracts held by insurance companies with such modifications as may be specified in the regulations.
- (3) Regulations under subsection (2) above may make different provision as respects contracts held for different purposes or in different circumstances.

#### 170 Investment trusts.

- (1) For the purpose of determining whether a qualifying company may be approved for the purposes of section 842 of the Taxes Act 1988 (investment trusts) for any accounting period, any non-trading profits which the company is treated for the purposes of section 160 above as having for that period shall be treated as income derived from shares or securities.
- (2) In this section “shares” has the same meaning as in section 842 of the Taxes Act 1988.

<sup>F165</sup>171 .....

#### Textual Amendments

**F165** S. 171 repealed (29.4.1996 with effect as mentioned in s. 105(1) of the repealing Act) by [1996 c. 8, s. 205, Sch. 41 Pt. V\(3\)](#), Note (with savings etc. in Pt. IV Chapter II (ss. 80-105))

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## **172 Partnerships involving qualifying companies.**

- (1) Subject to the provisions of this section, this Chapter shall have effect as if qualifying partnerships were qualifying companies.
- (2) A partnership is a qualifying partnership for the purposes of this section if one or more of the partners are qualifying companies.
- (3) Subsections (4) to (6) below apply where—
  - (a) one or more of the members of a qualifying partnership are not qualifying companies, and
  - (b) as regards one or more qualifying contracts, one or more profits or losses accrue to the partnership for an accounting period.
- (4) Two computations of the profits and losses for the period shall be made under subsection (1) of section 114 of the Taxes Act 1988 (partnerships involving companies: special rules for computing profits and losses)—
  - (a) one (the first computation) on the basis that the partnership is a qualifying partnership, and
  - (b) the other (the second computation) on the basis that the partnership is not such a partnership.
- (5) The first computation shall be used for the purpose of determining, under subsection (2) of that section, the share or shares of such of the partners as are qualifying companies.
- (6) The second computation shall be used for the purpose of determining, under that subsection, the share or shares of such of the partners as are not qualifying companies.

### *Supplemental*

## **173 Prevention of double charging etc.**

- (1) Subsection (2) below applies to any amount—
  - (a) which under or by virtue of this Chapter is chargeable to corporation tax as profits of a qualifying company, or
  - (b) which falls to be taken into account as a receipt in computing for the purposes of this Chapter the profits or losses of such a company.
- (2) An amount to which this subsection applies—
  - (a) shall not otherwise than under or by virtue of this Chapter be chargeable to corporation tax as profits of the company,
  - (b) shall not be taken into account as a receipt in computing for other purposes of the Tax Acts the profits or losses of the company, and
  - (c) for the purposes of the <sup>M63</sup>Taxation of Chargeable Gains Act 1992, shall be excluded from the consideration for a disposal of assets taken into account in the computation of the gain.
- (3) Subsection (4) below applies to any amount—
  - (a) which is allowable as a deduction in computing for the purposes of this Chapter the profits or losses of a qualifying company, or



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- (b) which under or by virtue of this Chapter is allowable as a deduction in computing any other income or profits or gains or losses of such a company for the purposes of the Tax Acts, or
  - (c) which, although not so allowable as a deduction in computing any losses, would be so allowable but for an insufficiency of income or profits or gains;
- and that subsection applies to any such amount irrespective of whether effect is or would be given to the deduction in computing the amount of tax chargeable or by discharge or repayment of tax or in any other way.
- (4) An amount to which this subsection applies—
- (a) shall not be allowable as a deduction in computing for other purposes of the Tax Acts the profits or losses of the company,
  - (b) shall not otherwise than under or by virtue of this Chapter be allowable as a deduction in computing any other income or profits or gains or losses of the company for the purposes of the Tax Acts,
  - (c) shall not be treated as a charge on income for the purposes of corporation tax, and
  - (d) shall be excluded from the sums allowable under section 38 of the <sup>M64</sup>Taxation of Chargeable Gains Act 1992 as a deduction in the computation of the gain.
- (5) In this section—
- (a) references to the purposes of this Chapter include references to the purposes of [<sup>F166</sup>Chapter II of Part IV of the Finance Act 1996 (loan relationships), so far as that Chapter is applied by virtue of section 160(2) or (2A) above,] and
  - (b) references to other purposes of the Tax Acts are references to the purposes of those Acts other than those of this Chapter.

#### Textual Amendments

**F166** Words in s. 173(5)(a) substituted (29.4.1996 with effect as mentioned in s. 105(1) of the amending Act) by 1996 c. 8, s. 104, **Sch. 14 para. 77** (with savings etc. in Pt. IV Chapter II (ss. 80-105))

#### Marginal Citations

**M63** 1992 c.12.

**M64** 1992 c.12.

### 174 Prevention of deduction of tax.

Notwithstanding anything in section 349 of the Taxes Act 1988 or any other provision of the Tax Acts, a qualifying company shall not be required, on making a qualifying payment, to deduct out of it any sum representing an amount of income tax on it.

### 175 Transitional provisions.

- (1) In a case where—
- (a) at any time, a currency contract held by a qualifying company becomes a qualifying contract by virtue of section 147(2) above, and
  - (b) at that time, it is held for the purposes of a trade or part of a trade carried on by the company, [<sup>F167</sup>and

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- (c) the circumstances are such that if any profit or loss accrues (or were to accrue) to the company as regards the contract for an accounting period beginning before that time it falls (or would fall) to be taken into account as a profit or loss of the trade or part,]

subsection (4) of section 153 above shall have effect in relation to the contract and the company as if section 147(2) above applied for the purposes of this Chapter except those of that subsection.

[<sup>F168</sup>(2) In a case where—

- (a) at any time, a currency contract held by a qualifying company becomes a qualifying contract by virtue of section 147(2) above, and  
(b) the circumstances are such that if any profit or loss accrues (or were to accrue) to the company as regards the contract for the accounting period beginning with that time it does not fall (or would not fall) to be taken into account as a profit or loss of a trade or part of a trade carried on by the company,

in applying section 158(2) and (4) above in relation to the contract and the period section 153(4) and (5) above shall be treated as omitted.]

#### Textual Amendments

**F167** S. 175(1)(c) and the word “and” immediately preceding it inserted (*retrospectively*) by 1995 c. 4, s. 132(1)(2)

**F168** S. 175(2) substituted (*retrospectively*) by 1995 c. 4, s. 132(1)(3)

### 176 Minor and consequential amendments.

<sup>F169</sup>(1) . . . . .

- (2) In Schedule 27 to that Act (distributing funds) in paragraph 5 (United Kingdom equivalent profits) the following sub-paragraph shall be substituted for sub-paragraph (2A)—

“(2A) In applying sub-paragraph (1) above the effect of the following shall be ignored, namely—

- (a) sections 125 to 133 of the Finance Act 1993 (exchange gains and losses), and  
(b) sections 159 and 160 of, and paragraph 1 of Schedule 18 to, the Finance Act 1994 (treatment of profits and losses on interest rate and currency contracts).”

#### Textual Amendments

**F169** S. 176(1) repealed (1.5.1995 with effect as mentioned in Sch. 8 para. 57 of the repealing Act) by 1995 c. 4, s. 162, Sch. 29 Pt. VIII(5), Note 2 (with Sch. 8 paras. 55(2), 57(1))

### 177 Interpretation of Chapter II.

(1) In this Chapter—

“appointed day” has the meaning given by section 147(4) above;

“bank” means any of the following—

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- (a) the Bank of England;
  - (b) any institution authorised under the <sup>M65</sup>Banking Act 1987; and
  - (c) a European authorised institution which has lawfully established a branch in the United Kingdom for the purpose of accepting deposits;
- “commencement day” has the meaning given by section 147(4) above
- [<sup>F170</sup>—
- (a) for the purposes of this Chapter as it has effect in relation to any debt contract or option, means (subject to paragraph 25 of Schedule 15 to the Finance Act 1996) 1st April 1996; and
  - (b) for all other purposes] has the meaning given by section 147(4) above;
- “currency contract” and “currency option” shall be construed in accordance with section 150 above;
- [<sup>F171</sup>“debt contract” and “debt option” shall be construed in accordance with section 150A above;]
- “deposit” has the same meaning as in the <sup>M66</sup>Banking Act 1987;
- “European authorised institution” has the same meaning as in the <sup>M67</sup>Banking Coordination (Second Council Directive) Regulations 1992;
- “financial trader” means any of the following—
- (a) an authorised person under Chapter III of Part I of the <sup>M68</sup>Financial Services Act 1986;
  - (b) an exempted person under section 43 of that Act;
  - (c) a European authorised institution which has lawfully established a branch in the United Kingdom for the purpose of carrying on investment business; and
  - (d) any person not falling within paragraphs (a) to (c) above who is approved by the Board for the purposes of this paragraph;
- “inspector” includes any officer of the Board;
- “insurance company” means a company [<sup>F172</sup>which carries on any insurance business (within the meaning of the <sup>M69</sup>Insurance Companies Act 1982);]
- “interest rate contract” and “interest rate option” shall be construed in accordance with section 149 above;
- “investment business” has the same meaning as in the <sup>M70</sup>Financial Services Act 1986;
- “mutual trading company” means a company carrying on any business of mutual trading or mutual insurance or other mutual business;
- “qualifying company” has the meaning given by section 154 above;
- “qualifying contract” has the meaning given by section 147(1) above;
- “qualifying payment” shall be construed in accordance with section 153 above.
- (2) For the purposes of this Chapter—
- (a) a company becomes entitled to rights or subject to duties under an interest rate contract or option, [<sup>F173</sup>a currency contract or option or a debt contract or option] when it becomes party to the contract or option; and
  - (b) a company holds such a contract or option at a particular time if it is then entitled to rights or subject to duties under it;
- and it is immaterial for the purposes of paragraph (b) above when the rights or duties fall to be exercised or performed.

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- (3) Any provision of this Chapter other than section 167 above which requires any amount (the relevant amount) to be deducted from amount A or, as the case may require, added to amount B shall be construed as requiring the following deductions or additions to be made—
- (a) where amount A is not less than the relevant amount, a deduction from amount A of an amount equal to the relevant amount;
  - (b) where amount A is less than the relevant amount but is more than nil—
    - (i) a deduction from amount A of an amount equal to so much of the relevant amount as may be necessary to reduce amount A to nil, and
    - (ii) an addition to amount B of an amount equal to the remainder of the relevant amount;
  - (c) where amount A is nil, an addition to amount B of an amount equal to the relevant amount.
- (4) Subsection (3) above shall be read as applying equally to any such provision which requires any amount to be deducted from amount B or, as the case may be, added to amount A, and for that purpose shall have effect with such modifications as may be requisite.
- (5) In this Chapter expressions which are not defined or otherwise explained but are used in Chapter II of Part II of the <sup>M71</sup>Finance Act 1993 (exchange gains and losses) have the same meanings as in that Chapter.
- (6) The Treasury may by order amend any of sections 149 to 153 above; and any such order may—
- (a) make corresponding amendments to section 126 of the <sup>M72</sup>Finance Act 1993;
  - (b) make consequential amendments to such of the provisions of this Chapter or Chapter II of Part II of that Act as relate to currency contracts; and
  - (c) contain such other consequential provisions, and such supplementary, incidental or transitional provisions, as appear to the Treasury to be necessary or expedient.

#### Textual Amendments

- F170** S. 177(1): Words in the definition of “commencement day” inserted (29.4.1996 with effect as mentioned in s. 105(2) of the amending Act) by 1996 c. 8, s. 104, **Sch. 14 para. 78(1)(a)** (with savings etc. in Pt. IV Chapter II (ss. 80-105))
- F171** S. 177(1): Definitions of “debt contract” and “debt option” inserted (29.4.1996 with effect as mentioned in s. 105(2) of the amending Act) by 1996 c. 8, s. 104, **Sch. 14 para. 78(1)(b)** (with savings etc. in Pt. IV Chapter II (ss. 80-105))
- F172** S. 177(1): Words in the definition of “insurance company” substituted (1.5.1995 with effect as mentioned in s. 52(5) of the amending Act) by 1995 c. 4, **s. 52(3)**
- F173** Words in s. 177(2)(a) substituted (29.4.1996 with effect as mentioned in s. 105(2) of the amending Act) by 1996 c. 8, s. 104, **Sch. 14 para. 78(2)** (with savings etc. in Pt. IV Chapter II (ss. 80-105))

#### Marginal Citations

- M65** 1987 c. 22.  
**M66** 1987 c. 22.  
**M67** S.I. 1992/3218.  
**M68** 1986 c. 60.  
**M69** 1982 c. 50

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**M70** 1986 c. 60.

**M71** 1993 c.34.

**M72** 1993 c.34.

## CHAPTER III

### MANAGEMENT: SELF-ASSESSMENT ETC.

#### *Income tax and capital gains tax*

#### **178 Personal and trustee's returns.**

(1) For subsection (1) of section 8 of the Management Act (personal return) there shall be substituted the following subsections—

“(1) For the purpose of establishing the amounts in which a person is chargeable to income tax and capital gains tax for a year of assessment, he may be required by a notice given to him by an officer of the Board—

- (a) to make and deliver to the officer, on or before the day mentioned in subsection (1A) below, a return containing such information as may reasonably be required in pursuance of the notice, and
- (b) to deliver with the return such accounts, statements and documents, relating to information contained in the return, as may reasonably be so required.

(1A) The day referred to in subsection (1) above is—

- (a) the 31st January next following the year of assessment, or
- (b) where the notice under this section is given after the 31st October next following the year, the last day of the period of three months beginning with the day on which the notice is given.

(1B) In the case of a person who carries on a trade, profession, or business in partnership with one or more other persons, a return under this section shall include each amount which, in any relevant statement, is stated to be equal to his share of any income, loss or charge for the period in respect of which the statement is made.

(1C) In subsection (1B) above “relevant statement” means a statement which, as respects the partnership, falls to be made under section 12AB of this Act for a period which includes, or includes any part of, the year of assessment or its basis period.”

(2) For subsection (1) of section 8A of the Management Act (trustee's return) there shall be substituted the following subsections—

“(1) For the purpose of establishing the amounts in which a trustee of a settlement, and the settlors and beneficiaries, are chargeable to income tax and capital gains tax for a year of assessment, an officer of the Board may by a notice given to the trustee require the trustee—

- (a) to make and deliver to the officer, on or before the day mentioned in subsection (1A) below, a return containing such information as may reasonably be required in pursuance of the notice, and

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- (b) to deliver with the return such accounts, statements and documents, relating to information contained in the return, as may reasonably be so required;

and a notice may be given to any one trustee or separate notices may be given to each trustee or to such trustees as the officer thinks fit.

(1A) The day referred to in subsection (1) above is—

- (a) the 31st January next following the year of assessment, or
- (b) where the notice under this section is given after the 31st October next following the year, the last day of the period of three months beginning with the day on which the notice is given.”

## 179 Returns to include self-assessment.

For section 9 of the Management Act there shall be substituted the following section—

### “9 Returns to include self-assessment.

- (1) Subject to subsection (2) below, every return under section 8 or 8A of this Act shall include an assessment (a self-assessment) of the amounts in which, on the basis of the information contained in the return, the person making the return is chargeable to income tax and capital gains tax for the year of assessment.
- (2) A person shall not be required to comply with subsection (1) above if he makes and delivers his return for a year of assessment—
  - (a) on or before the 30th September next following the year, or
  - (b) where the notice under section 8 or 8A of this Act is given after the 31st July next following the year, within the period of two months beginning with the day on which the notice is given.
- (3) Where, in making and delivering a return, a person does not comply with subsection (1) above, an officer of the Board shall if subsection (2) above applies, and may in any other case—
  - (a) make the assessment on his behalf on the basis of the information contained in the return, and
  - (b) send him a copy of the assessment so made;
 and references in the following provisions of this Act to a person’s self-assessment include references to an assessment made on a person’s behalf under this subsection.
- (4) Subject to subsection (5) below—
  - (a) at any time before the end of the period of nine months beginning with the day on which a person’s return is delivered, an officer of the Board may by notice to that person so amend that person’s self-assessment as to correct any obvious errors or mistakes in the return (whether errors of principle, arithmetical mistakes or otherwise); and
  - (b) at any time before the end of the period of twelve months beginning with the filing date, a person may by notice to an officer of the Board so amend his self-assessment as to give effect to any amendments to his return which he has notified to such an officer.

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- (5) No amendment of a self-assessment may be made under subsection (4) above at any time during the period—
- (a) beginning with the day on which an officer of the Board gives notice of his intention to enquire into the return, and
  - (b) ending with the day on which the officer’s enquiries into the return are completed.
- (6) In this section and section 9A of this Act “the filing date” means the day mentioned in section 8(1A) or, as the case may be, section 8A(1A) of this Act.”

<sup>F174</sup>**180** .....

**Textual Amendments**

**F174** S. 180 repealed (11.5.2001 with effect as mentioned in s. 88, Sch. 29 of the repealing Act) by 2001 c. 9, s. 110, **Sch. 33 Pt. II(13)**, Note

*Corporation tax*

<sup>F175</sup>**181** .....

**Textual Amendments**

**F175** S. 181 repealed (31.7.1998 with effect as mentioned in the Note to Sch. 27 Pt. III(28) of the repealing Act) by 1998 c. 36, s. 165, **Sch. 27 Pt. III(28)**

<sup>F176</sup>**182** .....

**Textual Amendments**

**F176** S. 182 repealed (31.7.1998 with effect as mentioned in the Note to Sch. 27 Pt. III(28) of the repealing Act) by 1998 c. 36, s. 165, **Sch. 27 Pt. III(28)**

<sup>F177</sup>**183** .....

**Textual Amendments**

**F177** S. 183 repealed (31.7.1998 with effect as mentioned in the Note to Sch. 27 Pt. III(28) of the repealing Act) by 1998 c. 36, s. 165, **Sch. 27 Pt. III(28)**

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## *Partnerships*

### **184 Partnership return.**

After section 12 of the Management Act there shall be inserted the following section—

#### *“ Partnerships*

##### **12AA Partnership return.**

- (1) Where a trade, profession or business is carried on by two or more persons in partnership, for the purpose of facilitating—
  - (a) the assessment to income tax for a year of assessment, and
  - (b) the assessment to corporation tax for any period,
 of each partner who is liable to be so assessed, an officer of the Board may act under subsection (2) or (3) below (or both).
- (2) An officer of the Board may by a notice given to the partners require such person as is identified in accordance with rules given with the notice—
  - (a) to make and deliver to the officer in respect of such period as may be specified in the notice, on or before such day as may be so specified, a return containing such information as may reasonably be required in pursuance of the notice, and
  - (b) to deliver with the return such accounts and statements as may reasonably be so required.
- (3) An officer of the Board may by notice given to any partner require the partner—
  - (a) to make and deliver to the officer in respect of such period as may be specified in the notice, on or before such day as may be so specified, a return containing such information as may reasonably be required in pursuance of the notice, and
  - (b) to deliver with the return such accounts and statements as may reasonably be so required;
 and a notice may be given to any one partner or separate notices may be given to each partner or to such partners as the officer thinks fit.
- (4) In the case of a partnership which includes one or more individuals, the day specified in a notice under subsection (2) or (3) above shall not be earlier than—
  - (a) the 31st January next following the year of assessment concerned, or
  - (b) where the notice under this section is given after the 31st October next following the year, the last day of the period of three months beginning with the day on which the notice is given.
- (5) In the case of a partnership which includes one or more companies, the day specified in a notice under subsection (2) or (3) above shall not be earlier than—
  - (a) the first anniversary of the end of the relevant period, or
  - (b) where the notice under this section is given more than nine months after the end of the relevant period, the last day of the period of three months beginning with the day on which the notice is given;
 and the relevant period for the purposes of this subsection and subsection (6) below is the period in respect of which the return is required.



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- (6) Every return under this section shall include—
- (a) a declaration of the name, residence and tax reference of each of the persons who have been partners—
    - (i) for the whole of the relevant period, or
    - (ii) for any part of that period,and, in the case of a person falling within sub-paragraph (ii) above, of the part concerned; and
  - (b) a declaration by the person making the return to the effect that it is to the best of his knowledge correct and complete.
- (7) Every return under this section shall also include, if the notice under subsection (2) or (3) above so requires—
- (a) with respect to any disposal of partnership property during a period to which any part of the return relates, the like particulars as if the partnership were liable to tax on any chargeable gain accruing on the disposal, and
  - (b) with respect to any acquisition of partnership property, the particulars required under section 12(2) of this Act.
- (8) A notice under this section may require different information, accounts and statements for different periods or in relation to different descriptions of source of income.
- (9) Notices under this section may require different information, accounts and statements in relation to different descriptions of partnership.
- (10) In this section “residence”, in relation to a company, means its registered office.”

## **185 Partnership return to include partnership statement.**

After section 12AA of the Management Act there shall be inserted the following section—

### **“12AB Partnership return to include partnership statement.**

- (1) Every return under section 12AA of this Act shall include a statement (a partnership statement) of the following amounts, namely—
- (a) in the case of each period of account ending within the period in respect of which the return is made—
    - (i) the amount of income or loss from each source which, on the basis of the information contained in the return, has accrued to or has been sustained by the partnership for that period, and
    - (ii) the amount of each charge which, on that basis, was a charge on the income of the partnership for that period; and
  - (b) in the case of each such period and each of the partners, the amount which, on that basis, is equal to his share of that income, loss or charge.
- (2) Subject to subsection (3) below—
- (a) at any time before the end of the period of nine months beginning with the day on which a person’s return is delivered, an officer of the

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- Board may by notice to that person so amend that person's partnership statement as to correct any obvious errors or mistakes in the return (whether errors of principle, arithmetical mistakes or otherwise); and
- (b) at any time before the end of the period of twelve months beginning with the filing date, a person may by notice to an officer of the Board so amend his partnership statement as to give effect to any amendments to his return which he has notified to such an officer.
- (3) No amendment of a partnership statement may be made under subsection (2) above at any time during the period—
- (a) beginning with the day on which an officer of the Board gives notice of his intention to enquire into the return, and
- (b) ending with the day on which the officer's enquiries into the return are completed.
- (4) Where a partnership statement is amended under subsection (2) above, the officer shall by notice to the partners so amend their self-assessments under section 9 or 11AA of this Act as to give effect to the amendments of the partnership statement.
- (5) In this section—
- “filing date” means the day specified in the notice under subsection (2) or, as the case may be, subsection (3) of section 12AA of this Act;
- “period of account”, in relation to a partnership, means any period for which accounts are drawn up.”

<sup>F178</sup>186 .....

#### Textual Amendments

**F178** S. 186 repealed (11.5.2001 with effect as mentioned in s. 88, Sch. 29 of the repealing Act) by 2001 c. 9, s. 110, **Sch. 33 Pt. II(13)**, Note

#### *Enquiries: procedure*

### **187 Power to call for documents.**

Immediately before section 20 of the Management Act there shall be inserted the following section—

#### **“19A Power to call for documents for purposes of certain enquiries.**

- (1) This section applies where an officer of the Board gives notice under section 9A(1), 11AB(1) or 12AC(1) of this Act to any person (the taxpayer) of his intention to enquire into—
- (a) the return on the basis of which the taxpayer's self-assessment or partnership statement was made, or
- (b) any amendment of that return on the basis of which that assessment or statement has been amended by the taxpayer.

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- (2) For the purpose of enquiring into the return or amendment, the officer may at the same or any subsequent time by notice in writing require the taxpayer, within such time (which shall not be less than 30 days) as may be specified in the notice—
  - (a) to produce to the officer such documents as are in the taxpayer's possession or power and as the officer may reasonably require for the purpose of determining whether and, if so, the extent to which the return is incorrect or incomplete or the amendment is incorrect, and
  - (b) to furnish the officer with such accounts or particulars as he may reasonably require for that purpose.
- (3) To comply with a notice under subsection (2) above, copies of documents may be produced instead of originals; but—
  - (a) the copies must be photographic or otherwise by way of facsimile; and
  - (b) if so required by a notice in writing given by the officer, in the case of any document specified in the notice, the original must be produced for inspection by him within such time (which shall not be less than 30 days) as may be specified in the notice.
- (4) The officer may take copies of, or make extracts from, any document produced to him under subsection (2) or (3) above.
- (5) A notice under subsection (2) above does not oblige the taxpayer to produce documents or furnish accounts or particulars relating to the conduct of any pending appeal by him.
- (6) An appeal may be brought against any requirement imposed by a notice under subsection (2) above to produce any document or to furnish any accounts or particulars.
- (7) An appeal under subsection (6) above must be brought within the period of 30 days beginning with the date on which the notice under subsection (2) above is given.
- (8) Subject to subsection (9) below, the provisions of this Act relating to appeals shall have effect in relation to an appeal under subsection (6) above as they have effect in relation to an appeal against an assessment to tax.
- (9) On an appeal under subsection (6) above section 50(6) to (8) of this Act shall not apply but the Commissioners may—
  - (a) if it appears to them that the production of the document or the furnishing of the accounts or particulars was reasonably required by the officer of the Board for the purpose mentioned in subsection (2) above, confirm the notice under that subsection so far as relating to the requirement; or
  - (b) if it does not so appear to them, set aside that notice so far as so relating.
- (10) Where, on an appeal under subsection (6) above, the Commissioners confirm the notice under subsection (2) above so far as relating to any requirement, the notice shall have effect in relation to that requirement as if it had specified 30 days beginning with the determination of the appeal.

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- (11) Neither the taxpayer nor the officer of the Board shall be entitled to require a case to be stated under section 56 of this Act following the determination of an appeal under subsection (6) above.
- (12) Where this section applies by virtue of a notice given under section 12AC(1) of this Act, any reference in this section to the taxpayer includes a reference to any predecessor or successor of his.”

F179 **188** .....

**Textual Amendments**  
**F179** S. 188 repealed (11.5.2001 with effect as mentioned in s. 88, Sch. 29 of the repealing Act) by 2001 c. 9, s. 110, **Sch. 33 Pt. II(13)**, Note

F180 **189** .....

**Textual Amendments**  
**F180** S. 189 repealed (11.5.2001 with effect as mentioned in s. 88, Sch. 29 of the repealing Act) by 2001 c. 9, s. 110, **Sch. 33 Pt. II(13)**, Note

*Determinations and assessments to protect revenue*

**190 Determination of tax where no return delivered.**

After section 28B of the Management Act there shall be inserted the following section—

**“28C Determination of tax where no return delivered.**

- (1) Where—
  - (a) a notice has been given to any person under section 8, 8A or 11 of this Act (the relevant section), and
  - (b) the required return is not delivered on or before the filing date,
 an officer of the Board may make a determination of the amounts in which, to the best of his information and belief, the person who should have made the return is chargeable to income tax and capital gains tax for the year of assessment or (as the case may be) is chargeable to corporation tax for the accounting period.
- (2) Notice of any determination under this section shall be served on the person in respect of whom it is made and shall state the date on which it is issued.
- (3) Until such time (if any) as it is superseded by a self-assessment made under section 9 or 11AA of this Act (whether by the taxpayer or an officer of the Board) on the basis of information contained in a return under the relevant

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section, a determination under this section shall have effect for the purposes of Parts VA, VI, IX and XI of this Act as if it were such a self-assessment.

(4) Where—

- (a) an officer of the Board has commenced any proceedings for the recovery of any tax charged by a determination under this section; and
- (b) before those proceedings are concluded, the determination is superseded by such a self-assessment as is mentioned in subsection (3) above,

those proceedings may be continued as if they were proceedings for the recovery of so much of the tax charged by the self-assessment as is due and payable and has not been paid.

(5) No determination under this section, and no self-assessment superseding such a determination, shall be made otherwise than—

- (a) before the end of the period of five years beginning with the filing date; or
- (b) in the case of such a self-assessment, before the end of the period of twelve months beginning with the date of the determination.

(6) In this section “the filing date” means the day mentioned in section 8(1A), section 8A(1A) or, as the case may be, section 11(4) of this Act.”

## **191 Assessment where loss of tax discovered.**

(1) For section 29 of the Management Act there shall be substituted the following section—

### **“29 Assessment where loss of tax discovered.**

(1) If an officer of the Board or the Board discover, as regards any person (the taxpayer) and a chargeable period—

- (a) that any profits which ought to have been assessed to tax have not been assessed, or
- (b) that an assessment to tax is or has become insufficient, or
- (c) that any relief which has been given is or has become excessive,

the officer or, as the case may be, the Board may, subject to subsections (2) and (3) below, make an assessment in the amount, or the further amount, which ought in his or their opinion to be charged in order to make good to the Crown the loss of tax.

(2) Where—

- (a) the taxpayer has made and delivered a return under section 8, 8A or 11 of this Act in respect of the relevant chargeable period, and
- (b) the situation mentioned in subsection (1) above is attributable to an error or mistake in the return as to the basis on which his liability ought to have been computed,

the taxpayer shall not be assessed under that subsection in respect of the chargeable period there mentioned if the return was in fact made on the basis or in accordance with the practice generally prevailing at the time when it was made.

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- (3) Where the taxpayer has made and delivered a return under section 8, 8A or 11 of this Act in respect of the relevant chargeable period, he shall not be assessed under subsection (1) above—
- (a) in respect of the chargeable period mentioned in that subsection; and
  - (b) in the case of a return under section 8 or 8A, in the same capacity as that in which he made and delivered the return,
- unless one of the two conditions mentioned below is fulfilled.
- (4) The first condition is that the situation mentioned in subsection (1) above is attributable to fraudulent or negligent conduct on the part of the taxpayer or a person acting on his behalf.
- (5) The second condition is that at the time when an officer of the Board—
- (a) ceased to be entitled to give notice of his intention to enquire into the taxpayer's return under section 8, 8A or 11 of this Act in respect of the relevant chargeable period; or
  - (b) informed the taxpayer that he had completed his enquiries into that return,
- the officer could not have been reasonably expected, on the basis of the information made available to him before that time, to be aware of the situation mentioned in subsection (1) above.
- (6) For the purposes of subsection (5) above, information is made available to an officer of the Board if—
- (a) it is contained in the taxpayer's return under section 8, 8A or 11 of this Act in respect of the relevant chargeable period (the return), or in any accounts, statements or documents accompanying the return;
  - (b) it is contained in any claim made as regards the relevant chargeable period by the taxpayer acting in the same capacity as that in which he made the return, or in any accounts, statements or documents accompanying any such claim;
  - (c) it is contained in any documents, accounts or particulars which, for the purposes of any enquiries into the return or any such claim by an officer of the Board, are produced or furnished by the taxpayer to the officer, whether in pursuance of a notice under section 19A of this Act or otherwise; or
  - (d) it is information the existence of which, and the relevance of which as regards the situation mentioned in subsection (1) above—
    - (i) could reasonably be expected to be inferred by an officer of the Board from information falling within paragraphs (a) to (c) above; or
    - (ii) are notified in writing by the taxpayer to an officer of the Board.
- (7) In subsection (6) above—
- (a) any reference to the taxpayer's return under section 8, 8A or 11 of this Act in respect of the relevant chargeable period includes—
    - (i) a reference to any return of his under that section for either of the two immediately preceding chargeable periods; and
    - (ii) where the return is under section 8 and the taxpayer carries on a trade, profession or business in partnership, a reference to

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- any return with respect to the partnership under section 12AA of this Act for the relevant chargeable period or either of those periods; and
- (b) any reference in paragraphs (b) to (d) to the taxpayer includes a reference to a person acting on his behalf.
- (8) An objection to the making of an assessment under this section on the ground that neither of the two conditions mentioned above is fulfilled shall not be made otherwise than on an appeal against the assessment.
- (9) Any reference in this section to the relevant chargeable period is a reference to—
- (a) in the case of the situation mentioned in paragraph (a) or (b) of subsection (1) above, the chargeable period mentioned in that subsection; and
- (b) in the case of the situation mentioned in paragraph (c) of that subsection, the chargeable period in respect of which the claim was made.
- (10) In this section “profits”—
- (a) in relation to income tax, means income,
- (b) in relation to capital gains tax, means chargeable gains, and
- (c) in relation to corporation tax, means profits as computed for the purposes of that tax.”
- (2) This section, so far as it relates to partnerships whose trades, professions or businesses are set up and commenced before 6th April 1994, has effect as respects the year 1997-98 and subsequent years of assessment.

### *Payment of tax*

## **192 Payments on account of income tax.**

After Part V of the Management Act there shall be inserted the following section—

### **“PART VA**

#### **PAYMENT OF TAX**

##### **59A Payments on account of income tax.**

- (1) This section applies to any person (the taxpayer) as regards a year of assessment if as regards the immediately preceding year—
- (a) he has been assessed to income tax under section 9 of this Act in any amount, and
- (b) that amount (the assessed amount) exceeds the amount of any income tax which has been deducted at source, and
- (c) the amount of the excess (the relevant amount) is not less than such amount as may be prescribed by regulations made by the Board, and
- (d) the proportion which the relevant amount bears to the assessed amount is not less than such proportion as may be so prescribed.

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- (2) Subject to subsection (3) below, the taxpayer shall make two payments on account of his liability to income tax for the year of assessment—
- (a) the first on or before the 31st January in that year, and
  - (b) the second on or before the next following 31st July;
- and, subject to subsection (4) below, each of those payments on account shall be of an amount equal to 50 per cent. of the relevant amount.
- (3) If, at any time before the 31st January next following the year of assessment, the taxpayer makes a claim under this subsection stating—
- (a) his belief that he will not be assessed to income tax for that year, or that the amount in which he will be so assessed will not exceed the amount of income tax deducted at source, and
  - (b) his grounds for that belief,
- each of the payments on account shall not be, and shall be deemed never to have been, required to be made.
- (4) If, at any time before the 31st January next following the year of assessment, the taxpayer makes a claim under this subsection stating—
- (a) his belief that the amount in which he will be assessed to income tax for that year will exceed the amount of income tax deducted at source by a stated amount which is less than the relevant amount, and
  - (b) his grounds for that belief,
- the amount of each of the payments on account required to be made shall be, and shall be deemed always to have been, equal to 50 per cent. of the stated amount.
- (5) Where the taxpayer makes a claim under subsection (3) or (4) above, there shall be made all such adjustments, whether by the repayment of amounts paid on account or otherwise, as may be required to give effect to the provisions of that subsection.
- (6) Where the taxpayer fraudulently or negligently makes any incorrect statement in connection with a claim under subsection (3) or (4) above, he shall be liable to a penalty not exceeding the difference between—
- (a) the amount which would have been payable on account if he had made a correct statement, and
  - (b) the amount of the payment on account (if any) made by him.
- (7) The provisions of the Income Tax Acts as to the recovery of income tax shall apply to an amount falling to be paid on account of tax in the same manner as they apply to an amount of tax.
- (8) In this section any reference to income tax deducted at source is a reference to—
- (a) income tax deducted or treated as deducted from any income or treated as paid on any income, or
  - (b) any amount which, in respect of the year of assessment, is to be deducted at source under section 203 of the principal Act in a subsequent year, or is a tax credit to which section 231 of that Act applies.”



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### 193 Payment of income tax and capital gains tax.

After section 59A of the Management Act there shall be inserted the following section—

#### “59B Payment of income tax and capital gains tax.

- (1) Subject to subsection (2) below, the difference between—
  - (a) the amount of income tax and capital gains tax contained in a person’s self-assessment under section 9 of this Act for any year of assessment, and
  - (b) the aggregate of any payments on account made by him in respect of that year (whether under section 59A of this Act or otherwise) and any income tax which in respect of that year has been deducted at source,shall be payable by him or (as the case may be) repayable to him as mentioned in subsection (3) or (4) below.
- (2) The following, namely—
  - (a) any amount which, in the year of assessment, is deducted at source under section 203 of the principal Act in respect of a previous year, and
  - (b) any amount which, in respect of the year of assessment, is to be deducted at source under that section in a subsequent year, or is a tax credit to which section 231 of that Act applies,shall be respectively deducted from and added to the aggregate mentioned in subsection (1)(b) above.
- (3) In a case where the person—
  - (a) gave the notice required by section 7 of this Act within six months from the end of the year of assessment, but
  - (b) was not given notice under section 8 or 8A of this Act until after the 31st October next following that year,the difference shall be payable or repayable at the end of the period of three months beginning with the day on which the notice under section 8 or 8A was given.
- (4) In any other case, the difference shall be payable or repayable on or before the 31st January next following the year of assessment.
- (5) Where a person’s self-assessment under section 9 of this Act is amended under section 9(4), section 28A(2), (3) or (4) or section 30B(2) of this Act, any amount of tax which is payable or repayable by virtue of the amendment shall, subject to section 55(6) and (9) of this Act, be payable or (as the case may be) repayable—
  - (a) in a case where notice of the amendment is given after, or less than 30 days before, the day given by subsection (3) or (4) above, on or before the day following the end of the period of 30 days beginning with the day on which notice is given; and
  - (b) in any other case, on or before the day given by subsection (3) or (4) above.
- (6) Any amount of income tax or capital gains tax which is payable by virtue of an assessment made under section 29 of this Act shall be payable on the day following the end of the period of 30 days beginning with the day on which the notice of assessment is given.

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- (7) In this section any reference to income tax deducted at source is a reference to income tax deducted or treated as deducted from any income or treated as paid on any income.”

## 194 **Surcharges on unpaid income tax and capital gains tax.**

After section 59B of the Management Act there shall be inserted the following section—

### “59C **Surcharges on unpaid income tax and capital gains tax.**

- (1) This section applies in relation to any income tax or capital gains tax which has become payable by a person (the taxpayer) in accordance with section 55 or 59B of this Act.
- (2) Where any of the tax remains unpaid on the day following the expiry of 28 days from the due date, the taxpayer shall be liable to a surcharge equal to 5 per cent. of the unpaid tax.
- (3) Where any of the tax remains unpaid on the day following the expiry of 6 months from the due date, the taxpayer shall be liable to a further surcharge equal to 5 per cent. of the unpaid tax.
- (4) Where the taxpayer has incurred a penalty under section 7, 93(5) or 95 of this Act, no part of the tax by reference to which that penalty was determined shall be regarded as unpaid for the purposes of subsection (2) or (3) above.
- (5) An officer of the Board may impose a surcharge under subsection (2) or (3) above; and notice of the imposition of such a surcharge—
  - (a) shall be served on the taxpayer, and
  - (b) shall state the day on which it is issued and the time within which an appeal against the imposition of the surcharge may be brought.
- (6) A surcharge imposed under subsection (2) or (3) above shall carry interest at the rate applicable under section 178 of the Finance Act 1989 from the end of the period of 30 days beginning with the day on which the surcharge is imposed until payment.
- (7) An appeal may be brought against the imposition of a surcharge under subsection (2) or (3) above within the period of 30 days beginning with the date on which the surcharge is imposed.
- (8) Subject to subsection (9) below, the provisions of this Act relating to appeals shall have effect in relation to an appeal under subsection (7) above as they have effect in relation to an appeal against an assessment to tax.
- (9) On an appeal under subsection (7) above section 50(6) to (8) of this Act shall not apply but the Commissioners may—
  - (a) if it appears to them that, throughout the period of default, the taxpayer had a reasonable excuse for not paying the tax, set aside the imposition of the surcharge; or
  - (b) if it does not so appear to them, confirm the imposition of the surcharge.

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- (10) Inability to pay the tax shall not be regarded as a reasonable excuse for the purposes of subsection (9) above.
- (11) The Board may in their discretion—
- (a) mitigate any surcharge under subsection (2) or (3) above, or
  - (b) stay or compound any proceedings for the recovery of any such surcharge,
- and may also, after judgment, further mitigate or entirely remit the surcharge.
- (12) In this section—
- “the due date”, in relation to any tax, means the date on which the tax becomes due and payable;
  - “the period of default”, in relation to any tax which remained unpaid after the due date, means the period beginning with that date and ending with the day before that on which the tax was paid.”

**F181** 195 .....

**Textual Amendments**

**F181** S. 195 repealed (31.7.1998 with effect as mentioned in the Note to Sch. 27 Pt. III(28) of the repealing Act) by 1998 c. 36, s. 165, **Sch. 27 Pt. III(28)**

*Miscellaneous and supplemental*

**196 Management: other amendments.**

Schedule 19 to this Act (which makes other amendments relating to the management of tax) shall have effect.

**F182** 197 .....

**Textual Amendments**

**F182** S. 197 repealed (31.7.1998 with effect as mentioned in the Note to Sch. 27 Pt. III(28) of the repealing Act) by 1998 c. 36, s. 165, **Sch. 27 Pt. III(28)**

**F183** 198 .....

**Textual Amendments**

**F183** S. 198 repealed and superseded (1.5.1995) by 1995 c. 4, ss. 116, 162, Sch. 21, **Sch. 29 Pt. VIII(14)**

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## 199 Interpretation and commencement of Chapter III.

- (1) In this Chapter “the Management Act” means the <sup>M73</sup>Taxes Management Act 1970.
- (2) Unless the contrary intention appears, this Chapter—
  - (a) so far as it relates to income tax and capital gains tax, has effect as respects the year 1996-97 and subsequent years of assessment, and
  - (b) so far as it relates to corporation tax, has effect as respects accounting periods ending on or after the appointed day.
- (3) For the purposes of this Chapter the appointed day is such day, not earlier than 1st April 1996, as the Treasury may by order appoint.

### Subordinate Legislation Made

**P5** S. 199(3) power exercised: 1.7.1999 appointed by S.I. 1998/3173, **art. 2**

### Marginal Citations

**M73** 1970 c.9.

## CHAPTER IV

### CHANGES FOR FACILITATING SELF-ASSESSMENT

#### *Assessment under Cases I and II of Schedule D*

## 200 Assessment on current year basis.

For section 60 of the Taxes Act 1988 there shall be substituted the following section—

### “60 Assessment on current year basis.

- (1) Subject to subsection (2) below and section 63A, income tax shall be charged under Cases I and II of Schedule D on the full amount of the profits or gains of the year of assessment.
- (2) Where, in the case of a trade, profession or vocation, a basis period for the year of assessment is given by subsection (3) below or sections 61 to 63, the profits or gains of that period shall be taken to be the profits or gains of the year.
- (3) Subject to sections 61 to 63, the basis period for a year of assessment is as follows—
  - (a) if the year is the first year of assessment in which there is an accounting date which falls not less than 12 months after the commencement date, the period of 12 months ending with that accounting date; and
  - (b) if there is a basis period for the immediately preceding year and that basis period is not given by section 61, the period of 12 months beginning immediately after the end of that basis period.

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- (4) In the case of a person who, if he had not died, would under the provisions of this section and sections 61 to 63A have become chargeable to income tax for any year, the tax which would have been so chargeable—
- (a) shall be assessed and charged on his personal representatives, and
  - (b) shall be a debt due from and payable out of his estate.
- (5) In this section and sections 61 to 63—
- “accounting date”, in relation to a year of assessment, means a date in the year to which accounts are made up or, where there are two or more such dates, the latest of those dates;
- “the commencement date” and “the commencement year” mean respectively the date on which and the year of assessment in which the trade, profession or vocation is set up and commenced.”

## 201 Basis of assessment at commencement.

For section 61 of the Taxes Act 1988 there shall be substituted the following section—

### “61 Basis of assessment at commencement.

- (1) Notwithstanding anything in section 60, where the year of assessment is the commencement year, the computation of the profits or gains chargeable to income tax under Case I or II of Schedule D shall be made on the profits or gains arising in the year.
- (2) Subject to section 63, where the year of assessment is the year next following the commencement year and—
- (a) there is an accounting date in the year and the period beginning with the commencement date and ending with the accounting date is a period of less than 12 months; or
  - (b) the basis period for the year would, apart from this subsection, be given by section 62(2) and the period beginning with the commencement date and ending with the new date in the year is a period of less than 12 months,
- the basis period for the year is the period of 12 months beginning with the commencement date.
- (3) In this section “the new date” has the same meaning as in section 62.”

## 202 Change of basis period.

For section 62 of the Taxes Act 1988 there shall be substituted the following section—

### “62 Change of basis period.

- (1) Subsection (2) below applies where, in the case of a trade, profession or vocation—
- (a) an accounting change, that is, a change from one accounting date (“the old date”) to another (“the new date”), is made or treated as made in a year of assessment; and

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- (b) either section 62A applies or the year of assessment is the year next following or next but one following the commencement year.
- (2) The basis period for the year of assessment is as follows—
  - (a) if the year is the year next following the commencement year or the relevant period is a period of less than 12 months, the period of 12 months ending with the new date in the year; and
  - (b) if the relevant period is a period of more than 12 months, that period; and in this subsection “the relevant period” means the period beginning immediately after the end of the basis period for the preceding year and ending with the new date in the year.
- (3) Where subsection (2) above does not apply as respects an accounting change made or treated as made in a year of assessment (“the first year”), this section and section 62A shall have effect in relation to the next following year (“the second year”) as if the change had not been made or treated as made.
- (4) As a consequence of subsection (3) above—
  - (a) an accounting change shall be treated as made in the second year if the date or, as the case may be, the latest date in that year to which accounts are made up is a date other than the date of the end of the basis period for the first year; and
  - (b) no such change shall be treated as made in the second year if that date is the date of the end of that period.
- (5) For the purposes of this section an accounting change is made in the first year of assessment in which accounts are not made up to the old date, or accounts are made up to the new date, or both.”

### **203 Conditions for such a change.**

After section 62 of the Taxes Act 1988 there shall be inserted the following section—

**“62A Conditions for such a change.**

- (1) This section applies in relation to an accounting change if the following are fulfilled, namely—
  - (a) the first and second conditions mentioned below, and
  - (b) either the third or the fourth condition so mentioned.
- (2) The first condition is that the first accounting period ending with the new date does not exceed 18 months.
- (3) The second condition is that notice of the accounting change is given to an officer of the Board on or before the 31st January next following the year of assessment.
- (4) The third condition is that no accounting change as respects which section 62(2) has applied has been made or treated as made in any of the five years immediately preceding the year of assessment.
- (5) The fourth condition is that—
  - (a) the notice required by the second condition sets out the reasons for which the change is made; and

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- (b) either the officer is satisfied that the change is made for bona fide commercial reasons or he does not, within 60 days of receiving the notice, give notice to the person carrying on the trade, profession or vocation that he is not so satisfied.
- (6) An appeal may be brought against the giving of a notice under subsection (5)(b) above within the period of 30 days beginning with the date on which the notice is given.
- (7) Subject to subsection (8) below, the provisions of the Management Act relating to appeals shall have effect in relation to an appeal under subsection (6) above as they have effect in relation to an appeal against an assessment to tax.
- (8) On an appeal under subsection (6) above section 50(6) to (8) of the Management Act shall not apply but the Commissioners may—
  - (a) if they are satisfied that the change is made for bona fide commercial reasons, set the notice under subsection (5)(b) above aside; or
  - (b) if they are not so satisfied, confirm that notice.
- (9) Obtaining a tax advantage shall not be regarded as a bona fide commercial reason for the purposes of subsections (5) and (8) above.
- (10) In this section—
  - (a) “accounting period” means a period for which accounts are made up, and
  - (b) expressions which are also used in section 62 have the same meanings as in that section.”

#### **204 Basis of assessment on discontinuance.**

For section 63 of the Taxes Act 1988 there shall be substituted the following section—

##### **“63 Basis of assessment on discontinuance.**

Where a trade, profession or vocation is permanently discontinued in a year of assessment other than the commencement year, the basis period for the year shall be the period beginning—

- (a) where the year is the year next following the commencement year, immediately after the end of the commencement year, and
- (b) in any other case, immediately after the end of the basis period for the preceding year of assessment,

and (in either case) ending with the date on which the trade, profession or vocation is permanently discontinued.”

#### **205 Overlap profits and overlap losses.**

After section 63 of the Taxes Act 1988 there shall be inserted the following section—

##### **“63A Overlap profits and overlap losses.**

- (1) Where, in the case of any trade, profession or vocation, the basis period for a year of assessment is given by section 62(2)(b), a deduction shall be made in

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computing the profits or gains of that year of an amount equal to that. given by the formula in subsection (2) below.

(2) The formula referred to in subsection (1) above is—

$$A \times \frac{B - C}{D}$$

where—

A = the aggregate of any overlap profits less the aggregate of any amounts previously deducted under subsection (1) above;

B = the number of days in the basis period;

C = the number of days in the year of assessment;

D = the aggregate of the overlap periods of any overlap profits less the aggregate number of days given by the variable “B — C” in any previous applications of this subsection.

(3) Where, in the case of any trade, profession or vocation, the basis period for a year of assessment is given by section 63, a deduction shall be made in computing the profits or gains of that year of an amount equal to—

- (a) the aggregate of any overlap profits, less
- (b) the aggregate of any amounts deducted under subsection (1) above.

(4) Where, in the case of any trade, profession or vocation, an amount of a loss would, apart from this subsection, fall to be included in the computations for two successive years of assessment, that amount shall not be included in the computation for the second of those years.

(5) In this section—

“overlap profit” means an amount of profits or gains which, by virtue of sections 60 to 62, is included in the computations for two successive years of assessment; and

“overlap period”, in relation to an overlap profit, means the number of days in the period in which the overlap profit arose.”

#### *Assessment under Cases III to VI of Schedule D*

### **206 Basis of assessment under Case III.**

For section 64 of the Taxes Act 1988 there shall be substituted the following section—

#### **“64 Case III assessments.**

Income tax under Case III of Schedule D shall be computed on the full amount of the income arising within the year of assessment, and shall be paid on the actual amount of that income, without any deduction.”



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## **207 Basis of assessment under Cases IV and V.**

- (1) In subsection (1) of section 65 of that Act (Case IV and V assessments: general), the words “and sections 66 and 67” and the words “the year preceding” shall cease to have effect.
- (2) In subsection (3) of that section—
  - (a) after the words “Cases I and II of Schedule D” there shall be inserted the words “(including sections 60 to 63A and 113)”; and
  - (b) the words from “Nothing in this subsection” to the end shall cease to have effect.
- (3) In subsection (5) of that section, the words “subject to sections 66 and 67” and the words “the year preceding”, in each place where they occur, shall cease to have effect.
- (4) Sections 66 and 67 of that Act (special rules for fresh income and special rules where source of income disposed of or yield ceases) shall cease to have effect.
- (5) In subsection (1) of section 68 of that Act (special rules where property etc. situated in Republic of Ireland), for the words “sections 65 or 66” there shall be substituted the words “section 65”.
- (6) In its application to trades, professions or vocations set up and commenced before 6th April 1994, subsection (2) above has effect as respects the year 1997-98 and subsequent years of assessment.

## **208 Basis of assessment under Case VI.**

For section 69 of the Taxes Act 1988 there shall be substituted the following section—

### **“69 Case VI assessments.**

Income tax under Case VI of Schedule D shall be computed on the full amount of the profits or gains arising in the year of assessment.”

### *Loss relief*

## **209 Loss relief: general.**

- (1) For subsections (1) and (2) of section 380 of the Taxes Act 1988 (set-off against general income) there shall be substituted the following subsections—
  - “(1) Where in any year of assessment any person sustains a loss in any trade, profession, vocation or employment carried on by him either solely or in partnership, he may, by notice given within twelve months from the 31st January next following that year, make a claim for relief from income tax on—
    - (a) so much of his income for that year as is equal to the amount of the loss or, where it is less than that amount, the whole of that income; or
    - (b) so much of his income for the last preceding year as is equal to that amount or, where it is less than that amount, the whole of that income;but relief shall not be given for the loss or the same part of the loss both under paragraph (a) and under paragraph (b) above.

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- (2) Any relief claimed under paragraph (a) of subsection (1) above in respect of any income shall be given in priority to any relief claimed in respect of that income under paragraph (b) of that subsection.”
- (2) In subsection (2) of section 381 of that Act (further relief for individuals for losses in early years of trade), for the words “an amount of the claimant’s income equal to the amount of the loss” there shall be substituted the words “ so much of the claimant’s income as is equal to the amount of the loss or, where it is less than that amount, the whole of that income ”.
- (3) For subsections (3) and (4) of section 382 of that Act (provisions supplementary to sections 380 and 381) there shall be substituted the following subsections—
- “(3) Subject to subsection (4) below, for the purposes of sections 380 and 381, the amount of a loss sustained in a trade, profession or vocation shall be computed in like manner and in respect of the same period as the profits or gains arising or accruing from the trade, profession or vocation are computed under the provisions of the Income Tax Acts applicable to Case I or II of Schedule D.
- (4) An amount of a loss which, apart from this subsection, would fall to be included in the computations for two successive years of assessment shall not be included in the computation for the second of those years.”
- (4) For subsection (1) of section 385 of that Act (carry-forward against subsequent profits) there shall be substituted the following subsection—
- “(1) Where a person has, in any trade, profession or vocation carried on by him either alone or in partnership, sustained a loss (to be computed as mentioned in subsections (3) and (4) of section 382) in respect of which relief has not been wholly given either under section 380 or any provision of the Income Tax Acts—
- (a) he may make a claim requiring that any part of the loss for which relief has not been so given shall be set off for the purposes of income tax against the income of the trade, profession or vocation for subsequent years of assessment; and
- (b) where he makes such a claim, the income from the trade, profession or vocation in any subsequent year of assessment shall be treated as reduced by that part of the loss, or by so much of that part as cannot, on that claim, be relieved against such income of an earlier year of assessment.”
- (5) Subsections (3) and (8) of that section shall cease to have effect.
- (6) In subsection (1) of section 388 of that Act (carry-back of terminal losses) for the words “the three years of assessment last preceding that in which the discontinuance occurs” there shall be substituted the words “ the year of assessment in which the discontinuance occurs and the three years last preceding it ”.
- (7) In their application to trades, professions or vocations set up and commenced before 6th April 1994, subsections (3) to (5) above have effect as respects the year 1997-98 and subsequent years of assessment.

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

C27 S. 209 amended (retrospectively) by 1995 c. 4, s. 118

**210 Relief for losses on unquoted shares.**

(1) For subsections (1) and (2) of section 574 of the Taxes Act 1988 (relief for individuals for losses on unquoted shares) there shall be substituted the following subsections—

“(1) Where an individual who has subscribed for shares in a qualifying trading company incurs an allowable loss (for capital gains tax purposes) on the disposal of the shares in any year of assessment, he may, by notice given within twelve months from the 31st January next following that year, make a claim for relief from income tax on—

- (a) so much of his income for that year as is equal to the amount of the loss or, where it is less than that amount, the whole of that income; or
- (b) so much of his income for the last preceding year as is equal to that amount or, where it is less than that amount, the whole of that income;

but relief shall not be given for the loss or the same part of the loss both under paragraph (a) and under paragraph (b) above.

Where such relief is given in respect of the loss or any part of it, no deduction shall be made in respect of the loss or (as the case may be) that part under the 1992 Act.

(2) Any relief claimed under paragraph (a) of subsection (1) above in respect of any income shall be given in priority to any relief claimed in respect of that income under paragraph (b) of that subsection; and any relief claimed under either paragraph in respect of any income shall be given in priority to any relief claimed in respect of that income under section 380 or 381.”

(2) This section has effect as respects the year 1994-95 and subsequent years of assessment.

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

C28 S. 210 amended (retrospectively) by 1995 c. 4, s. 119

*Capital allowances*

**211 Income tax allowances and charges in taxing a trade etc.**

<sup>F184</sup>(1) .....

(2) Subject to section 214(7) below, this section and sections 212 to 214 below, in their application to trades, professions or vocations set up and commenced before 6th April 1994 or employments or offices entered into before that date, have effect as respects the year 1997-98 and subsequent years of assessment.

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#### Textual Amendments

**F184** S. 211(1) repealed (22.3.2001 with effect as mentioned in s. 579(1) of the repealing Act) by 2001 c. 2, s. 580, Sch. 4

<sup>F185</sup>212 .....

#### Textual Amendments

**F185** S. 212 repealed (22.3.2001 with effect as mentioned in s. 579(1) of the repealing Act) by 2001 c. 2, s. 580, Sch. 4

<sup>F186</sup>213 .....

#### Textual Amendments

**F186** S. 213 repealed (22.3.2001 with effect as mentioned in s. 579(1) of the repealing Act) by 2001 c. 2, s. 580, Sch. 4

### 214 Amendments of other enactments.

- (1) In the Taxes Act 1988, the following provisions shall cease to have effect, namely—
  - (a) in section 96 (farming and market gardening: relief for fluctuating profits), in subsection (7), paragraph (b);
  - (b) section 383 (extension of right to set-off to capital allowances);
  - (c) in section 384 (restrictions on right of set-off), in subsection (1), the words “(including any amount in respect of capital allowances which, by virtue of section 383, is to be treated as a loss)”, and in subsection (2), the words “or an allowance in respect of expenditure incurred”, paragraph (b) and the word “or” immediately preceding that paragraph;
  - (d) in section 388 (carry-back of terminal losses), in subsection (6), paragraphs (b) and (d) and the word “and” immediately preceding paragraph (d), and in subsection (7), the words from the beginning to “an earlier year: and”; and
  - (e) in section 389 (supplementary provisions relating to carry-back of terminal losses), subsections (5) to (7).
- (2) In subsection (6) of section 384 of that Act—
  - (a) for the words “There shall be disregarded for the purposes of section 383 any allowances” there shall be substituted the words “ There shall be disregarded for the purposes of sections 380 and 381 so much of any loss as derives from any allowances ”; and
  - (b) for the words “the year of the loss (as defined in section 383)” there shall be substituted the words “ the year of assessment in which the loss was sustained ”.
- (3) In subsection (1) of section 397 of that Act (restriction of relief in case of farming and market gardening)—

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- (a) after the word “loss”, in the second place where it occurs, there shall be inserted the words “, computed without regard to capital allowances,”; and
- (b) the words from “and where” to the end shall cease to have effect.

F187(4) .....

F187(5) .....

F187(6) .....

(7) Subsection (1)(a) above—

- (a) except in its application to a trade set up and commenced on or after 6th April 1994, has effect where the first of the two years of assessment to which the claim relates is the year 1996-97 or any subsequent year, and
- (b) in its application to a trade so set up and commenced, has effect where the first of those two years of assessment is the year 1995-96 or any subsequent year.

**Textual Amendments**

F187 S. 214(4)-(6) repealed (22.3.2001 with effect as mentioned in s. 579(1) of the repealing Act) by 2001 c. 2, s. 580, Sch. 4

*Miscellaneous and supplemental*

**215 Treatment of partnerships.**

(1) For section 111 of the Taxes Act 1988 there shall be substituted the following section—

**“111 Treatment of partnerships.**

- (1) Where a trade or profession is carried on by two or more persons in partnership, the partnership shall not, unless the contrary intention appears, be treated for the purposes of the Tax Acts as an entity which is separate and distinct from those persons.
- (2) So long as a trade or profession (“the actual trade or profession”) is carried on by persons in partnership, and each of those persons is chargeable to income tax, the profits or gains or losses arising from the trade or profession shall be computed for the purposes of income tax in like manner as if the partnership were an individual.
- (3) A person’s share in the profits or gains or losses of the partnership which for any period are computed in accordance with subsection (2) above shall be determined according to the interests of the partners during that period; and income tax shall be chargeable or, as the case may require, loss relief may be claimed as if—
  - (a) that share derived from a trade or profession (“the deemed trade or profession”) carried on by the person alone;
  - (b) the deemed trade or profession was set up and commenced by him at the time when he became a partner or, where the actual trade or profession was previously carried on by him alone, the time when the actual trade was set up and commenced; and

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- (c) the deemed trade or profession is permanently discontinued by him at the time when he ceases to be a partner or, where the actual trade or profession is subsequently carried on by him alone, the time when the actual trade or profession is permanently discontinued.
- (4) Where—
- (a) subsections (2) and (3) above apply in relation to the profits or gains or losses of a trade or profession carried on by persons in partnership, and
- (b) other income accrues to those persons by virtue of their being partners,
- that other income shall be chargeable to tax by reference to the same periods as if it were profits or gains arising from the trade or profession.
- (5) Subsections (1) to (3) above apply, with the necessary modifications, in relation to a business as they apply in relation to a trade.”
- (2) In section 114 of that Act (special rules for computing profits or losses), after the word “trade”—
- (a) in subsection (1), in each place where it occurs;
- (b) in subsection (2); and
- (c) in subsection (3), in the first place where it occurs,
- there shall be inserted the words “ profession or business ”.
- (3) The following provisions of that Act shall cease to have effect, namely—
- (a) in section 114, in subsection (3), the words from “except that” to the end, and subsection (4);
- (b) in section 115 (provisions supplementary to section 114), subsections (1) to (3) and (6); and
- (c) in section 277 (personal reliefs: partnerships), in subsection (1), the words “Subject to subsection (2) below”, paragraph (c) and the word “and” immediately preceding that paragraph, and subsection (2).
- (4) This section and section 216 below—
- (a) except in their application to partnerships mentioned in subsection (5) below, have effect as respects the year 1997-98 and subsequent years of assessment, and
- (b) in its application to partnerships so mentioned, have effect as respects the year 1994-95 and subsequent years of assessment.
- (5) The partnerships referred to in subsection (4) above are partnerships—
- (a) whose trades, professions or businesses are set up and commenced on or after 6th April 1994; <sup>F188</sup> . . .
- <sup>F188</sup>(b) . . . . .

#### Textual Amendments

**F188** S. 215(5)(b) and the preceding word “and” repealed (1.5.1995 with effect as mentioned in s. 125(1) of the repealing Act for the year 1995-96 and subsequent years of assessment) by 1995 c. 4, s. 162, Sch. 29 Pt. VIII(16), Note 4

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

**C29** S. 215 amended (retrospectively) by 1995 c. 4, s. 117

**216 Effect of change in ownership of trade, profession or vocation.**

(1) For subsection (2) of section 113 of the Taxes Act 1988 (effect of change in ownership of trade, profession or vocation) there shall be substituted the following subsection—

“(2) Where—

- (a) there is such a change as is mentioned in subsection (1) above, and
- (b) a person engaged in carrying on the trade, profession or vocation immediately before the change continues to be so engaged immediately after it,

subsection (1) above shall not apply to treat the trade, profession or vocation as discontinued or a new one as set up and commenced.”

(2) Subsections (3) to (5) of that section and, in subsection (6) of that section, the words from “and where” to the end shall cease to have effect.

(3) The following provisions of that Act shall cease to have effect, namely—

- (a) in section 96 (farming and market gardening: relief for fluctuating profits), in subsection (6) the words from “except that” to the end;
- (b) in section 380 (set-off against general income), subsection (3);
- (c) in section 381 (further relief in early years of trade), subsection (6);
- (d) in section 384 (restrictions on right of set-off), subsection (5);
- (e) in section 385 (carry-forward against subsequent profits), subsections (2) and (5);
- (f) in section 386 (carry-forward where business transferred to a company), subsection (4); and
- (g) in section 389 (supplementary provisions relating to carry-back of terminal losses), subsection (3).

(4) For subsection (4) of section 389 of that Act, there shall be substituted the following subsection—

“(4) For the purposes of this section and section 388 a trade, profession or vocation shall be treated as discontinued, and a new one as set up and commenced, when it is so treated for the purposes of section 111 or 113.”

(5) Subsection (3)(a) above—

- (a) except in its application to a trade set up and commenced on or after 6th April 1994, has effect where the first of the two years of assessment to which the claim relates is the year 1996-97 or any subsequent year, and
- (b) in its application to a trade so set up and commenced, has effect where the first of those two years of assessment is the year 1995-96 or any subsequent year.

**217 Double taxation relief in respect of overlap profits.**

(1) In subsection (1) of section 804 of the Taxes Act 1988 (relief against income tax in respect of income arising in years of commencement), for the words “any income

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arising in the years of commencement” there shall be substituted the words “ any income which is an overlap profit ”.

(2) For subsection (5) of that section there shall be substituted the following subsections—

“(5) Subsections (5A) and (5B) below apply where—

- (a) credit against income tax for any year of assessment is allowed by virtue of subsection (1) above in respect of any income which is an overlap profit (“the original income”), and
- (b) the original income or any part of it contributes to an amount which, by virtue of section 63A(1) or (3), is deducted in computing the profits or gains of a subsequent year of assessment (“the subsequent year”).

(5A) The following shall be set off one against the other, namely—

- (a) the difference between—
  - (i) the amount of the credit which, under this Part (including this section), has been allowed against income tax in respect of so much of the original income as contributes as mentioned in subsection (5) above, and
  - (ii) the amount of the credit which, apart from this section, would have been so allowed; and
- (b) the amount of credit which, on the assumption that no amount were deducted by virtue of section 63A(1) or (3), would be allowable under this Part against income tax in respect of income arising in the subsequent year from the same source as the original income.

(5B) The person chargeable in respect of the income (if any) arising in the subsequent year from the same source as the original income shall—

- (a) if the amount given by paragraph (a) of subsection (5A) above exceeds that given by paragraph (b) of that subsection, be treated as having received in that year a payment chargeable under Case VI of Schedule D of an amount such that income tax on it at the basic rate is equal to the excess; and
- (b) if the amount given by paragraph (b) of subsection (5A) above exceeds that given by paragraph (a) of that subsection, be allowed for that year under this Part an amount of credit equal to the excess.

(5C) For the purposes of subsections (5) to (5B) above, it shall be assumed that, where an amount is deducted by virtue of section 63A(1), each of the overlap profits included in the aggregate of such profits contributes to that amount in the proportion which that overlap profit bears to that aggregate.”

(3) In subsection (8) of that section—

(a) immediately before the definition of “overseas tax” there shall be inserted the following definition—

““overlap profit” means an amount of profits or gains which, by virtue of sections 60 to 62, is included in the computations for two successive years of assessment;” and

(b) the definitions of “non-basis period” and “years of commencement” and the words “references to the enactments relating to cessation are references to sections 63, 67 and 113” shall cease to have effect.”



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## 218 Commencement, transitional provisions and savings.

- (1) Unless the contrary intention appears, this Chapter—
- (a) except in its application to a trade set up and commenced on or after 6th April 1994 or income from a source arising to a person on or after that date, has effect as respects the year 1996-97 and subsequent years of assessment, and
  - (b) in its application to a trade so set up and commenced or income from a source so arising, has effect as respects the year 1994-95 and subsequent years of assessment.

[<sup>F189</sup>(1A) In a case where—

- (a) a trade is set up and commenced by a company, and
- (b) it is not set up and commenced before 6th April 1994,

sections 213(4) and (8) and 214(4) and (6) have effect only if it is set up and commenced on or after 6th April 1995.]

- (2) Any reference in subsection (1) above to a trade includes a reference to a profession, vocation, employment or office.
- (3) Where the first underwriting year of the underwriting business of a member of Lloyd’s is the year 1994, subsection (1) above shall have effect in relation to that business as if it had been set up and commenced on 6th April 1994.
- (4) Where, as respects income from any source, income tax is to be charged under Case IV or V of Schedule D by reference to the amounts of income received in the United Kingdom, the source shall be treated for the purposes of subsection (1) above as arising on the date on which the first amount of income is so received.
- (5) This Chapter shall have effect subject to the transitional provisions and savings contained in Schedule 20 to this Act.

### Textual Amendments

**F189** S. 218(1A) inserted (*retrospectively*) by 1995 c. 4, s. 102(2)

## CHAPTER V

### LLOYD’S UNDERWRITERS: CORPORATIONS ETC.

### Modifications etc. (not altering text)

- C30** Pt. IV Chapter V (ss. 219-230) modified (1.12.1997) by S.I. 1997/2681, reg. 3(2)(a)
- C31** Pt. IV Chapter V (ss. 219-230) applied (1.5.1995) by 1995 c. 4, s. 129(4)(6)
- Pt. IV Chapter V (ss. 219-230) applied (1.5.1995) by 1995 c. 4, s. 127(16)(a)(19)

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### *Main provisions*

## **219 Taxation of profits.**

- (1) Corporation tax for any accounting period on the profits arising from a corporate member’s underwriting business shall be computed on the profits of that accounting period.
- (2) As respects the profits arising to a corporate member for any accounting period directly from its membership of one or more syndicates, or from assets forming part of a premiums trust fund—
  - (a) the aggregate of those profits shall be computed for tax purposes under Case I of Schedule D; and
  - (b) accordingly, no part of those profits shall be computed for those purposes under any other Schedule or any other Case of Schedule D.
- (3) [<sup>F190</sup>Subject to subsection (4A) below,] the profits arising to a corporate member for any accounting period—
  - (a) from assets forming part of an ancillary trust fund; or
  - (b) from assets employed by it in, or in connection with, its underwriting business, shall be computed for tax purposes under Case I of Schedule D if, and to the extent that, they do not fall to be computed for those purposes under any other Schedule or any other Case of Schedule D.
- (4) Where the profits arising for any accounting period from the assets of a corporate member’s premiums trust fund include [<sup>F191</sup>UK distributions], subsection (2) above shall apply in relation to those distributions <sup>F192</sup> . . . notwithstanding anything in section 11(2)(a) or 208 of the Taxes Act 1988.
- [<sup>F193</sup>(4A) Notwithstanding anything in section 11(2)(a) or 208 of the Taxes Act 1988, UK distributions in respect of any assets of a corporate member which are mentioned in paragraph (a) or (b) of subsection (3) above—
  - (a) shall be taken into account in computing profits of the corporate member for tax purposes; and
  - (b) shall be so taken into account under Case I of Schedule D (and not under any other Schedule or any other Case of Schedule D).
- (4B) Section 231(1) of the Taxes Act 1988 (entitlement to tax credit) shall not apply where the distribution there mentioned is a distribution in respect of any asset of a corporate member’s premiums trust fund.
- (4C) In this section “UK distributions” means dividends or other distributions of a company resident in the United Kingdom.]
- (5) In section 20(2) of the Taxes Act 1988 (Schedule F), after the words “section 171 of the Finance Act 1993” there shall be inserted the words “ or section 219 of the Finance Act 1994 ”.

#### **Textual Amendments**

**F190** Words in s. 219(3) inserted (31.7.1997 with effect as mentioned in s. 22(7) of the amending Act) by 1997 c. 58, s. 22(2)

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- F191** Words in s. 219(4) substituted (31.7.1997 with effect as mentioned in s. 22(7) of the amending Act) by 1997 c. 58, s. 22(3)(a)
- F192** Words in s. 219(4) repealed (31.7.1997 with effect as mentioned in s. 22(7) and the Note to Sch. 8 Pt. II(5) of the repealing Act) by 1997 c. 58, ss. 22(3)(b), 52, Sch. 8 Pt. II(5)
- F193** S. 219(4A)-(4C) inserted (31.7.1997 with effect as mentioned in s. 22(7) of the amending Act) by 1997 c. 58, s. 22(4)

## 220 Accounting period in which certain profits or losses arise.

- (1) For the purposes of section 219 above and all other purposes of the Corporation Tax Acts, the profits or losses arising to a corporate member in any accounting period directly from its membership of one or more syndicates, or from assets forming part of a premiums trust fund, shall be taken to be—
  - (a) if two underwriting years each fall partly within that period, the aggregate of the apportioned parts of those profits or losses in those years; and
  - (b) if a single underwriting year falls wholly or partly within that period, those profits or losses or (as the case may be) the apportioned part of those profits or losses in that year.
- (2) Subject to the provisions of this Chapter, for the purposes of subsection (1) above and all other purposes of the Corporation Tax Acts—
  - (a) the profits or losses arising to a corporate member in any underwriting year directly from its membership of one or more syndicates shall be taken to be those of any previous year or years which are declared in that year; and
  - (b) the profits or losses arising to a corporate member in any underwriting year from assets forming part of a premiums trust fund shall be taken to be those allocated under the rules or practice of Lloyd’s to any previous year or years the profits or losses of which are declared in that year.
- (3) In this section “apportioned part”, in relation to the profits or losses of an underwriting year, means a part apportioned under section 72 of the Taxes Act 1988.

## 221 Assessment and collection of tax.

- (1) Subject to subsection (2) below, Schedule 19 (Lloyd’s underwriters: assessment and collection of tax) to the <sup>M74</sup>Finance Act 1993 (“the 1993 Act”) shall apply in relation to corporate members as it applies in relation to other members.
- (2) In its application to a corporate member, paragraph 13 of that Schedule shall have effect as if—
  - (a) in sub-paragraph (3)(b), the reference to the members’ agent of each member were a reference to each corporate member itself;
  - <sup>F194</sup>(b) . . . . .
  - (c) in sub-paragraph (4), the reference to section 824 of the Taxes Act 1988 were a reference to section 826 of that Act (interest on tax overpaid); <sup>F195</sup> . . .
  - <sup>F195</sup>(d) . . . . .

### Textual Amendments

- F194** S. 221(2)(b) repealed (31.7.1997 with effect as mentioned in the Note to Sch. 8 Pt. II(5) of the repealing Act) by 1997 c. 58, s. 52, Sch. 8 Pt. II(5)

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**F195** S. 221(2)(d) and the preceding word “and ” repealed (31.7.1997 with effect as mentioned in the Note to Sch. 8 Pt. II(5) of the repealing Act) by 1997 c. 58, s. 52, **Sch. 8 Pt. II(5)**

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**Marginal Citations**  
**M74** 1993 c.34.

*Trust funds*

**222 Premiums trust funds.**

- (1) For the purposes of the Corporation Tax Acts—
  - (a) a corporate member shall be treated as absolutely entitled as against the trustees to the assets forming part of a premiums trust fund belonging to it; and
  - (b) where a deposit required by a regulatory authority in a country or territory outside the United Kingdom is paid out of such a fund, the money so paid shall be treated as still forming part of that fund.
- (2) Where an asset forms part of a corporate member’s premiums trust fund at the beginning of any underwriting year, for the purposes of the Corporation Tax Acts—
  - (a) the trustees of the fund shall be treated as acquiring it on that day, and
  - (b) they shall be treated as paying in respect of the acquisition an amount equal to the value of the asset at the time of the acquisition.
- (3) Where an asset forms part of a corporate member’s premiums trust fund at the end of any underwriting year, for the purposes of the Corporation Tax Acts—
  - (a) the trustees of the fund shall be treated as disposing of it on that day, and
  - (b) they shall be treated as obtaining in respect of the disposal an amount equal to the value of the asset at the time of the disposal.

- F196(4) .....
- F196(5) .....
- F197(6) .....
- F197(7) .....

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**Textual Amendments**

**F196** S. 222(4)(5) repealed (19.3.1997 with effect as mentioned in Sch. 10 para. 7(1), Sch. 18 Pt. VI(10), Note 1 of the repealing Act) by 1997 c. 16, s. 113, **Sch. 18 Pt. VI(10)**; S.I. 1997/991, **art. 2**

**F197** S. 222(06)(07) repealed (coming into force in accordance with s. 154(9) of the repealing Act) by 1996 c. 8, s. 205, **Sch. 41 Pt. V(18)**, Note

**223 Ancillary trust funds.**

A corporate member shall be treated for the purposes of the Corporation Tax Acts as absolutely entitled as against the trustees to the assets forming part of an ancillary trust fund belonging to it.

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

**C32** S. 223 applied (with modifications) (1.12.1997) by S.I. 1997/2681, **reg. 5(1)**

*Other special cases*

**F198** **224** .....

**Textual Amendments**

**F198** S. 224 repealed (28.7.2000 with effect as mentioned in s. 107(12)(c) of the repealing Act) by 2000 c. 17, ss. 107(11), 156, **Sch. 40 Pt. II(9)**

**225 Stop-loss and quota share insurance.**

- (1) In computing for the purposes of corporation tax the profits of a corporate member’s underwriting business, each of the following shall be deductible as an expense, namely—
  - (a) any premium payable by it under a stop-loss insurance, and any repayment of insurance money paid to it under such an insurance; and
  - (b) any amount payable by it under a quota share contract, irrespective of the purpose for which the contract was entered into.
- (2) Subject to subsection (3) below, the following provisions apply where any insurance money is payable to a corporate member under a stop-loss insurance in respect of a loss in its underwriting business—
  - (a) if the underwriting year in which the loss is declared falls within two or more accounting periods, the apportioned part of the insurance money shall be treated as a trading receipt in computing the profits arising from the business for each of those periods; and
  - (b) if the underwriting year in which the loss is declared falls within a single accounting period, the insurance money shall be treated as a trading receipt in computing the profits arising from the business for that period.
- (3) Where, as respects the payment of any such insurance money as is mentioned in subsection (2) above—
  - (a) the inspector is not notified of the payment at least 30 days before the time after which any assessment or further assessment of profits for any of the accounting periods or (as the case may be) the accounting period is precluded by section 34 of the Management Act (ordinary time limit), and
  - (b) the inspector is not entitled, after that time, to make any such assessment or further assessment by virtue of section 36 (fraudulent or negligent conduct) of that Act,that subsection shall have effect in relation to the apportioned part of that insurance money or (as the case may be) that insurance money as if, instead of that accounting period, it referred to the accounting period in which the payment is made.
- (4) In this section—

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“apportioned part”, in relation to any insurance money, means a part apportioned under section 72 of the Taxes Act 1988;

“quota share contract” means any contract between a corporate member and another person which—

- (a) is made in accordance with the rules or practice of Lloyd’s; and
- (b) provides for that other person to take over any rights and liabilities of the member under any of the syndicates of which it is a member.

### *Miscellaneous*

#### **226 Provisions which are not to apply.**

- (1) Sections 92 to 95 of the 1993 Act (corporation tax: currency to be used) shall not apply for the purposes of computing for the purposes of corporation tax the profits or losses of a corporate member’s underwriting business.
- (2) No asset forming part of or liability attaching to a premiums trust fund of a corporate member shall be a qualifying asset or liability for the purposes of Chapter II of Part II of the 1993 Act (exchange gains and losses); and no contract forming part of such a fund shall be a currency contract for those purposes.
- (3) No contract or option forming part of a premiums trust fund of a corporate member shall be a qualifying contract for the purposes of Chapter II of this Part of this Act (interest rate and currency contracts and options).

#### **227 Cessation: final underwriting year.**

- (1) This section applies where a corporate member ceases to carry on its underwriting business, whether by reason of being wound up or otherwise.
- (2) Subject to the provisions of any regulations made by the Board—
  - (a) the member’s final underwriting year shall be that in which its deposit at Lloyd’s is paid over to it or its liquidator, and
  - (b) the member’s underwriting business shall be treated as continuing until the end of that year.

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

**C33** S. 227 excluded (1.12.1997) by S.I. 1997/2681, reg. 4(2)

#### **228 Lloyd’s underwriters: individuals.**

- (1) Chapter III of Part II of the 1993 Act (Lloyd’s underwriters: individuals) shall have effect subject to the amendments specified in Schedule 21 to this Act.
- (2) The following provisions shall cease to have effect, namely—
  - (a) section 627 of the Taxes Act 1988 (elections by Lloyd’s underwriters with respect to retirement annuities);
  - (b) in section 641 of that Act, subsection (2) (elections by Lloyd’s underwriters with respect to carry-back of contributions); and

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- (c) in section 183 of the 1993 Act, subsection (3) (amendments of sections 627(5) and 641(2) of the Taxes Act 1988).
- (3) Subject to any provision to the contrary, the provisions of Schedule 21 to this Act have effect for the year 1994-95 and subsequent years of assessment.
- (4) Subsection (2) above has effect for the year 1997-98 and subsequent years of assessment.

### *Supplemental*

## **229 Regulations.**

The Board may by regulations provide—

- (a) for the assessment and collection of tax charged in accordance with section 219 above (so far as not provided for by Schedule 19 to the 1993 Act as applied by section 221 above);
- (b) for making, in the event of any changes in the rules or practice of Lloyd’s, such amendments of this Chapter as appear to the Board to be expedient having regard to those changes;
- (c) for modifying the application of this Chapter in cases where a syndicate continues after the end of its closing year or a corporate member becomes insolvent or otherwise ceases to carry on its underwriting business;
- [<sup>F199</sup>(ca) for modifying the application of this Chapter in relation to cases where assets forming part of a premiums trust fund are the subject of—
  - <sup>F200</sup>(i) . . . . .
  - (ii) any such arrangements or agreements as are mentioned in section 737E(2) and (8) of the Taxes Act 1988 (sale and repurchase of securities etc.);]
- (d) for giving credit for foreign tax.

#### **Textual Amendments**

**F199** S. 229(ca) inserted (1.5.1995) by 1995 c. 4, s. 83(2)

**F200** S. 229(ca)(i) repealed (19.3.1997 with effect as mentioned in Sch. 10 para. 7(1), Sch. 18 Pt. VI(10), Note 1 of the repealing Act) by 1997 c. 16, s. 113, Sch. 18 Pt. VI(10); S.I. 1997/991, art. 2

## **230 Interpretation and commencement.**

- (1) In this Chapter, unless the context otherwise requires—
  - “the 1993 Act” means the <sup>M75</sup>Finance Act 1993;
  - “ancillary trust fund”, in relation to a corporate member, does not include a premiums trust fund but, subject to that, means any trust fund required or authorised by the rules of Lloyd’s, or required by a members’ agent or regulating trustee of the corporate member;
  - “closing year”—
    - (a) in relation to an underwriting year, means the underwriting year next but one following that year; and
    - (b) in relation to a syndicate, means the closing year of the underwriting year for which it was formed;



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“corporate member” means a body corporate which is a member of Lloyd’s and is or has been an underwriting member;

“inspector” includes any officer of the Board;

“the Management Act” means the <sup>M76</sup>Taxes Management Act 1970;

“managing agent”, in relation to a syndicate and an underwriting year, means—

- (a) the person registered as a managing agent at Lloyd’s who was acting as such an agent for the syndicate at the end of that year, or
- (b) such other person as may be determined in accordance with regulations made by the Board;

“member” means a member of Lloyd’s who is or has been an underwriting member;

“members’ agent”, in relation to a corporate member, means a person registered as a members’ agent at Lloyd’s who has been appointed by the corporate member to act as its members’ agent in respect of all or any part of its underwriting business;

“premiums trust fund” means such a trust fund as is referred to in section 83 of the <sup>M77</sup>Insurance Companies Act 1982;

“prescribed” means prescribed by regulations made by the Board;

“profits” includes gains;

“regulating trustee”, in relation to a corporate member, means a person designated as such by the terms of any trust deed by which a premiums trust fund of the corporate member is constituted;

“stop-loss insurance” means any insurance taken out by a corporate member against losses in its underwriting business;

“syndicate” means a syndicate of underwriting members of Lloyd’s formed for an underwriting year;

“underwriting business”, in relation to a corporate member, means its underwriting business as a member of Lloyd’s;

“underwriting year” means the calendar year.

- (2) For the purposes of this Chapter, unless the contrary intention appears—
  - (a) the profits or losses of a corporate member’s underwriting business include profits or losses arising to it—
    - (i) from assets forming part of a premiums trust fund or an ancillary trust fund; or
    - (ii) from assets employed by it in, or in connection with, its underwriting business; and
  - (b) any charge made on a corporate member by the managing agent of a syndicate of which it is a member, and any expense incurred on its behalf by the managing agent of such a syndicate, shall be treated as expenses arising directly from its membership of that syndicate.
- (3) Subject to any provision to the contrary, the provisions of this Chapter have effect for accounting periods ending on or after 1st January 1994 or, as the case may require, for the underwriting year 1994 and subsequent underwriting years.

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

**C34** S. 230 applied (1.5.1995) by 1995 c. 4, s. 127(16)(b)(19)



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S. 230 applied (29.4.1996 with effect as mentioned in s. 105 of the applying Act) by 1996 c. 8, s. 99, Sch. 11 para. 7(2) (with savings etc. in Pt. IV Chapter II (ss. 80-105))

#### Marginal Citations

**M75** 1993 c.34.

**M76** 1970 c.9.

**M77** 1982 c.50.

## PART V

### OIL TAXATION

#### CHAPTER I

##### ELECTION BY REFERENCE TO PIPE-LINE USAGE

#### **231 Election by reference to pipe-line with excess capacity.**

- (1) The provisions of this Chapter apply where, on or before 1st January 1996, a participator in a taxable field makes, in accordance with Part I of Schedule 22 to this Act, an election with respect to that field by reference to a pipe-line—
  - (a) which is a qualifying asset;
  - (b) which is used or intended to be used for transporting oil in circumstances which give rise or are expected to give rise to tariff receipts;
  - (c) which, at the date of the election, is at least 25 kilometres in length; and
  - (d) for which the initial usage fraction does not exceed one-half.
- (2) A participator may not make an election—
  - (a) unless the field to which the election applies is (or, as the case may be, is intended to be) the chargeable field in relation to the tariff receipts referred to in subsection (1)(b) above; or
  - (b) if the first chargeable period of that field ended on or before 30th June 1982; or
  - (c) if the participator's net profit period with respect to that field ended on or before 30th June 1993;and for the purposes of paragraph (c) above no account shall be taken of the operation of section 113 of the <sup>M78</sup>Finance Act 1981 (loss following net profit period).
- (3) If there is more than one pipe-line by reference to which the electing participator could, apart from this subsection, make an election (with respect to the same field) he may make an election only by reference to that pipe-line which is the longer or longest.
- (4) In this Chapter, in relation to a pipe-line or an election made by reference to a pipe-line, "the initial usage fraction" means the fraction of which—
  - (a) the numerator is the daily contracted and production throughput of oil in relation to the pipe-line on 16th March 1993; and
  - (b) the denominator is the design capacity of the pipe-line, expressed on a daily basis.

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- (5) Subject to subsection (6) below, where an election is in operation it shall apply to all those assets which, by reference to the field to which the election applies, are at the date of the election or subsequently become—
  - (a) qualifying assets in relation to the electing participator; and
  - (b) assets to which are or are expected to be referable any tariff receipts of the electing participator attributable to that field.
- (6) If the electing participator specifies in his election that the election is to be limited to oil which is, or is expected to be, transported by the pipe-line by reference to which the election is made, the election shall apply only to such of the assets referred to in subsection (5) above as, in whole or in part, are or subsequently become used in connection with that oil.
- (7) For the purposes of this Chapter, unless it is just and reasonable to determine some other quantity of oil, the daily contracted and production throughput of oil in relation to a pipe-line on 16th March 1993 is the aggregate of—
  - (a) the maximum daily capacity specified in contracts then in force for the use of the pipe-line (whether at that date or in the future) for transporting oil won from any taxable field (including the field to which the election applies); and
  - (b) the maximum expected daily throughput, otherwise than pursuant to such contracts, of oil transported by the pipe-line and won from the field to which the election applies or any other taxable field, being the throughput ascertained by reference to what was at that date the most recent development plan applicable to the field to which the election applies or, as the case may be, the other taxable field.
- (8) For the purposes of this Chapter, unless it is just and reasonable to determine some other capacity, the design capacity of a pipe-line is that which is specified for the pipe-line as a whole in what was, on 16th March 1993, the most recent development plan applicable to the field to which the election applies or, as the case may be, the pipe-line itself.

#### Marginal Citations

M78 1981 c. 35.

### 232 Restriction on electing participator’s allowable expenditure on elected assets.

- (1) This section has effect in relation to expenditure which is incurred on an asset to which an election applies; and in this section “allowable or allowed”, in relation to any expenditure, means allowable or allowed under any of the expenditure relief provisions.
- (2) Subject to the following provisions of this section, in the case of expenditure incurred before the date of the election, the amount which, apart from this section, would be allowable or allowed in the case of the electing participator shall be reduced by multiplying it by the initial usage fraction.
- (3) Subject to subsection (5) below, in the case of expenditure incurred on or after the date of the election, the amount which, apart from this section, would be allowable or allowed in the case of the electing participator shall be reduced to nil.

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- (4) Where, after 30th November 1993 and before the date of the election, expenditure was incurred on an asset to which the election applies and—
- (a) apart from this section, that expenditure would have qualified for supplement by virtue of paragraph (c) or paragraph (d) of subsection (5) of section 3 of the principal Act, and
  - (b) the effect of the expenditure is to increase the maximum capacity of the pipe-line by reference to which the election was made above its design capacity or to increase the capacity of any asset used or to be used for the initial treatment or initial storage of oil transported by the pipe-line above its development plan capacity,
- that expenditure shall be treated for the purposes of the application of subsections (2) and (3) above as if it had been incurred after the date of the election.
- (5) Where, at the date of the election, an asset to which the election applies is for the time being leased or hired under a contract which was entered into before 16th March 1993, any expenditure—
- (a) which is incurred on or after the date of the election on the leasing or hiring of the asset under the contract, and
  - (b) which is not of a description falling within paragraphs (a) and (b) of subsection (4) above,
- shall be treated for the purposes of the application of subsections (2) and (3) above as if it had been incurred before the date of the election.
- (6) For the purposes of subsection (4)(b) above, the development plan capacity of any asset used or to be used for the initial treatment or initial storage of oil transported by a pipe-line is—
- (a) the maximum capacity of that asset as specified in what, on 16th March 1993, was the most recent development plan applicable to the field to which the election applies or, as the case may be, to the asset itself; or
  - (b) if no such maximum capacity was so specified in relation to an asset, its actual maximum capacity on that date or, if there was no such capacity on that date, nil.
- (7) Where a claim under Schedule 5 or Schedule 6 to the principal Act relates to the allowance of any expenditure to which subsection (2) above applies, the amount claimed shall take account of the operation of that subsection; and where subsection (3) above applies to any expenditure, no such claim shall be made with respect to it.
- (8) Where a claim has been made under Schedule 5 or Schedule 6 to the principal Act with respect to any expenditure and, subsequently, an election is made which has the effect of altering the amount of expenditure which is allowable or allowed,—
- (a) a notice of variation such as is mentioned in paragraph 9 of Schedule 5 to the principal Act may be served after the end of the period referred to in subparagraph (1) of that paragraph if it is served before the expiry of the period of three years beginning on the date of the election; and
  - (b) if the effect of such a notice is that the net profit period with respect to the field to which the election applies is changed, the change shall not (by virtue of section 231(2) above) affect the validity of the election.
- (9) Nothing in this section affects the determination of the question whether an asset is a qualifying asset for the purposes of the 1983 Act and, accordingly, for that purpose,

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the preceding provisions of this section shall be disregarded in determining whether any expenditure is allowable or allowed.

### 233 Tax relief for certain receipts of an electing participator.

(1) If any sum—

- (a) is received or receivable by the electing participator on or after the date of an election, and
- (b) is so received or receivable from [<sup>F201</sup>any person] in respect of the use, [<sup>F201</sup>otherwise than in connection with a taxable field], of an asset to which the election applies or the provision of services or other business facilities of whatever kind in connection with that use, and
- (c) would, apart from this section, constitute a tariff receipt attributable to the field to which the election applies,

that sum shall not be regarded as a tariff receipt for the purposes of the Oil Taxation Acts.

(2) If any sum—

- (a) is received or receivable by the electing participator on or after the date of an election, and
- (b) is so received or receivable in respect of the disposal of an asset to which the election applies or of an interest in such an asset, and
- (c) constitutes a disposal receipt of the electing participator attributable to the field to which to the election applies,

that sum shall, for the purposes of the Oil Taxation Acts, be taken to be reduced in accordance with subsection (4) below.

(3) Any reference in subsection (1) or subsection (2) above to a sum received or receivable includes a reference to an amount which (apart from this section) would be treated as a tariff receipt or disposal receipt by virtue of paragraph 5 of Schedule 2 to the 1983 Act (acquisition and disposal of qualifying assets otherwise than at arm's length).

(4) Unless it is just and reasonable to make a different reduction, the reduction referred to in subsection (2) above shall be determined by reference to that applicable under subsection (2) or subsection (3) of section 232 above to the expenditure incurred on the asset concerned so that if, for the purposes of determining under those subsections the amount of that expenditure which was allowed or allowable,—

- (a) the whole or any part of that expenditure was reduced by multiplying it by the initial usage fraction, or
- (b) the whole or any part of that expenditure was reduced to nil,

a similar reduction shall apply to the whole or, as the case may require, to each correspondingly proportionate part of any sum falling within subsection (2) above.

(5) In this section “the Oil Taxation Acts” means Parts I and III of the principal Act, the 1983 Act and any other enactment relating to petroleum revenue tax.

#### Textual Amendments

**F201** Words in s. 233(1)(b) substituted (27.7.1999 with application as mentioned in s. 101(2) of the amending Act) by 1999 c. 16, s. 101(1)

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## 234 Interpretation of Chapter and supplementary provisions.

- (1) In this Chapter “the 1983 Act” means the <sup>M79</sup>Oil Taxation Act 1983 and expressions used in this Chapter have the same meaning as in that Act.
- (2) In this Chapter—
  - (a) “election” means an election under section 231 above and “electing participator” means a participator who makes or has made an election;
  - (b) “the expenditure relief provisions” means sections 3 and 4 of the principal Act and section 3 of the 1983 Act; and
  - (c) “the initial usage fraction” shall be construed in accordance with section 231(4) above.
- (3) In this Chapter—
  - (a) any reference to the assets to which an election applies is a reference to the pipe-line by reference to which the election is made together with the assets determined in accordance with subsections (5) and (6) of section 231 above;
  - (b) any reference to the net profit period is a reference to the chargeable period which is the net profit period for the purposes of section 111 of the <sup>M80</sup>Finance Act 1981 (restriction of expenditure supplement); and
  - (c) any reference to a development plan is a reference to a consent for, or programme of, development granted, served or approved by the Secretary of State.
- (4) Any reference in this Chapter to expenditure incurred on an asset is a reference to expenditure (whether or not of a capital nature) which—
  - (a) is incurred in acquiring, bringing into existence or enhancing the value of the asset, or
  - (b) is incurred (for any of the purposes mentioned in section 3(1) of the principal Act) by reference to the use of the asset in connection with a taxable field, other than expenditure which, in the hands of the recipient, constitutes a tariff receipt.
- (5) For the purposes of this Chapter—
  - (a) an election is “in operation” if it has been accepted by the Board; and
  - (b) the date of an election which is in operation is the date on which the election was received by the Board.
- (6) The provisions of Part II of Schedule 22 to this Act shall have effect for supplementing the preceding provisions of this Chapter.
- (7) The Board may make all such amendments of assessments or determinations or of decisions on claims as may be necessary in consequence of the provisions of this Chapter.

### Marginal Citations

**M79** 1983 c. 56.

**M80** 1981 c. 35.

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*Status:* Point in time view as at 11/05/2001. This version of this Act contains provisions that are not valid for this point in time.  
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## CHAPTER II

### MISCELLANEOUS

#### 235 Valuation of oil.

- (1) With respect to chargeable periods ending after 31st December 1993, subsection (5A) of section 2 of the <sup>M81</sup>Oil Taxation Act 1975 (special rules for valuation of oil consisting of gas which is disposed of in a sale at arm's length on terms including transportation costs etc.) shall be amended as follows—
- (a) for the words “oil consisting of gas” there shall be substituted “ oil ”;
  - (b) for the word “gas”, in each place where it subsequently occurs, there shall be substituted “ oil ”;
  - (c) for the words “for delivery at a place” there shall be substituted “ or another country for delivery at another place in or ”; and
  - (d) in paragraph (ii) after the words “United Kingdom”, in the second place where they occur, there shall be inserted “ or, in the case of oil first landed in another country, at the place in that or any other country ”.
- (2) In Schedule 3 to that Act, in each of paragraphs 2(3) and 2A(3) for “(2)(e)” there shall be substituted “ (2)(f) ”.
- (3) In Schedule 10 to the <sup>M82</sup>Finance Act 1987 (nomination scheme for disposals and appropriations of oil), in paragraph 4 (timing of nominations)—
- (a) in sub-paragraph (1) for the words “sub-paragraph (2)” there shall be substituted “ sub-paragraphs (2) and (2A) ”; and
  - (b) after sub-paragraph (2) there shall be inserted—
 

“(2A) Where the proposed transaction has a transaction base date later than 31st December 1993, sub-paragraph (1) above has effect with the substitution for the reference to the second business day of a reference to the first business day.”
- (4) In paragraph 11 of that Schedule (a participator's aggregate nominated proceeds for a month), in sub-paragraph (2) for the words “sub-paragraph (2A)” there shall be substituted “ sub-paragraphs (2A) and (2B) ” and after sub-paragraph (2A) there shall be inserted the following sub-paragraph—
- “(2B) In the case of a nominated transaction which is a disposal to which subsection (5A) of section 2 of the principal Act applies, for the amount which, apart from this sub-paragraph, would be the nominated price for the purposes of sub-paragraph (2) above there shall be substituted the amount which, under that subsection, is deemed to be the price received or receivable for the oil in question.”

#### Marginal Citations

**M81** 1975 c. 22.

**M82** 1987 c. 16.

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### 236 Valuation of certain light gases.

- (1) Subject to subsection (2) below, the principal Act shall have effect subject to the amendments in Schedule 23 to this Act, being—
  - (a) amendments altering the rules for determining the market value of certain light gases for the purposes of petroleum revenue tax; and
  - (b) amendments consequential upon, or incidental to, those amendments.
- (2) The amendments in Schedule 23 to this Act do not have effect in relation to any light gases if, before 1st January 1994, an election was made under section 134 of the <sup>M83</sup>Finance Act 1982 (alternative valuation of certain ethane) or section 109 of the <sup>M84</sup>Finance Act 1986 (alternative valuation of certain light gases) and the election applies to those gases.
- (3) No election may be made after 31st December 1993 under section 134 of the Finance Act 1982 or section 109 of the Finance Act 1986; and, accordingly—
  - (a) in subsection (2) of the said section 134, after the word “section” there shall be inserted “ must be made before 1st January 1994 and ”; and
  - (b) in subsection (1) of the said section 109, after the word “section” there shall be inserted “ before 1st January 1994 ”.
- (4) In section 12 of the principal Act (interpretation), in subsection (1) after the definition of “licensee” there shall be inserted—

““light gases”, except in relation to an election under section 134 of the Finance Act 1982 or section 109 of the Finance Act 1986, means oil consisting of gas of which the largest component by volume over any chargeable period, measured at a temperature of 15 degrees centigrade and a pressure of one atmosphere, is methane or ethane or a combination of those gases”.

#### Marginal Citations

**M83** 1982 c. 39.

**M84** 1986 c. 41.

### 237 Abortive exploration expenditure.

- (1) In section 5 of the principal Act (allowance of abortive exploration expenditure incurred before 16th March 1983), after subsection (2) there shall be inserted the following subsection—

“(2A) For the purpose only of determining under paragraph (c) of subsection (1) above whether expenditure is or is likely to become allowable for any oil field, it shall be assumed that any oil field which, apart from this subsection, would be a non-taxable field is or, as the case may be, will be a taxable field and, accordingly, that section 185(4)(e) of the Finance Act 1993 (no expenditure allowable for non-taxable fields) does not apply.”
- (2) Subsection (1) above shall be deemed to have come into force at the same time as Part III of the <sup>M85</sup>Finance Act 1993 (27th July 1993).



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- (3) The Board may make all such amendments of assessments or determinations or of decisions on claims as may be necessary in consequence of the preceding provisions of this section.

**Marginal Citations**

**M85** 1993 c. 34.

**238 Disposals of assets producing tariff receipts.**

- (1) With respect to disposals made after 30th November 1993, paragraph 5 of Schedule 2 to the <sup>M86</sup>Oil Taxation Act 1983 (acquisition and disposal of qualifying assets otherwise than at arm's length: limit on tariff and disposal receipts) shall be amended in accordance with subsections (2) and (3) below; and in this subsection “disposal” has the same meaning as in that paragraph.
- (2) In sub-paragraph (1) of paragraph 5, at the end of paragraph (c), and in place of the amendment made by section 190(5)(b) of the <sup>M87</sup>Finance Act 1993, there shall be inserted “and
- (d) the use of the asset will be wholly by that person in connection with a taxable field in which he is a participator (and accordingly, and in particular, there will be no use giving rise to tariff receipts)”; and for the words “those receipts”, where they next occur, there shall be substituted “the receipts referred to in paragraphs (b) and (c) above”.
- (3) In sub-paragraph (3) of paragraph 5, for paragraph (b) there shall be substituted the following paragraph—
- “(b) the disposal does not fall within sub-paragraph (1) above, and”.
- (4) The Board may make all such amendments of assessments or determinations or of decisions on claims as may be necessary in consequence of the preceding provisions of this section.

**Marginal Citations**

**M86** 1983 c. 56.

**M87** 1993 c. 34

**PART VI**

STAMP DUTY

**239 Execution of deeds.**

- (1) In section 122 of the <sup>M88</sup>Stamp Act 1891 (definitions)—
- (a) after subsection (1) there shall be inserted—
- “(1A) For the purposes of this Act a deed (or, in Scotland, a deed for which delivery is required) shall be treated as executed when it is delivered



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- or, if it is delivered subject to conditions, when the conditions are fulfilled”, and
- (b) at the end of the definition of “executed” and “execution” in subsection (1) there shall be added “ (but subject to subsection (1A) of this section) ”.
- (2) In section 27 of the <sup>M89</sup>Stamp Duties Management Act 1891 (definitions), in the definition of “executed” and “execution”, for the words following “execution” there shall be substituted “ have the same meaning as in the Stamp Act 1891 ”.
- (3) This section shall apply to any instrument except one which, on or before 7th December 1993, has been executed for the purposes of the <sup>M90</sup>Stamp Act 1891 as that Act has effect before amendment by this section.

#### Marginal Citations

- M88** 1891 c. 39.  
**M89** 1891 c. 38.  
**M90** 1891 c. 39.

#### [<sup>F202</sup>240 Time for presenting agreement for lease.

- (1) This section applies if there are presented for stamping at the same time in pursuance of Schedule 13 to the Finance Act 1999—
- (a) an agreement for a lease, and
- (b) the lease which gives effect to the agreement, and the duty (if any) chargeable on the agreement is paid.
- (2) Section 15A of that Act (interest payable on late stamping) applies in relation to the agreement as if the reference to the day on which the instrument was executed were to the day on which the lease was executed.
- (3) For the purposes of section 15B of that Act (penalty on late stamping) the agreement is treated—
- (a) as if it had been executed at the same time and place as the lease, and
- (b) where the lease was executed outside the United Kingdom, as if it had been first received in the United Kingdom at the same time as the lease.
- (4) For the purposes of this section a lease gives effect to an agreement if the lease is granted subsequent to the agreement and either is in conformity with the agreement or relates to substantially the same property and term as the agreement.
- (5) References in this section to an agreement for a lease include missives of let in Scotland.]

#### Textual Amendments

- F202** Ss. 240, 240A substituted for s. 240 (27.7.1999 with application as mentioned in s. 109(4) of the amending Act) by 1999 c. 16, s. 109(3), 122, Sch. 12 para. 4

#### <sup>F203</sup>240A Requirements before lease treated as duly stamped.

- (1) A lease shall not be treated as duly stamped unless—

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- (a) it contains a certificate that there is no agreement to which it gives effect, or
- (b) it is stamped with a stamp denoting—
  - (i) that there is an agreement to which it gives effect which is not chargeable with duty, or
  - (ii) the duty paid on the agreement to which it gives effect.
- (2) For the purposes of this section a lease gives effect to an agreement if the lease is granted subsequent to the agreement and either is in conformity with the agreement or relates to substantially the same property and term as the agreement.
- (3) References in this section to a lease do not include, and references in this section to an agreement do include, missives of let in Scotland.

**Textual Amendments**

**F203** Ss. 240, 240A substituted for s. 240 (27.7.1999 with application as mentioned in s. 109(4) of the amending Act) by 1999 c. 16, s. 109(3), 122, **Sch. 12 para. 4**

**241 Exchange, partition, etc.**

- (1) Where—
  - (a) the consideration for the transfer or vesting of any estate or interest in land or the grant of any [<sup>F204</sup>lease] consists of or includes any property, and
  - (b) for the purposes of stamp duty chargeable under or by reference to [<sup>F205</sup>Part I of Schedule 13 to the Finance Act 1999 (conveyance or transfer on sale)] no amount or value is, apart from this section, attributed to that property on that transfer, vesting or grant,

then, for those purposes, the consideration or, as the case may be, the consideration so far as relating to that property shall be taken to be the market value of the property immediately before the instrument in question is executed and accordingly the instrument shall be charged with ad valorem duty under that heading.
- (2) For the purposes of this section the market value of property at any time is the price which that property might reasonably be expected to fetch on a sale at that time in the open market.

<sup>F206</sup>(3) .....

<sup>F206</sup>(4) .....

<sup>F206</sup>(5) .....

- (6) This section shall apply to instruments executed after 7th December 1993, not being instruments executed in pursuance of a contract made before 30th November 1993.

**Textual Amendments**

**F204** Word in s. 241(1)(a) substituted (27.7.1999 with effect as mentioned in s. 112(6) of the amending Act) by 1999 c. 16, s. 112(4)(6), 122, **Sch. 14 para. 30(a)**

**F205** Words in s. 241(1)(b) substituted (27.7.1999 with effect as mentioned in s. 112(6) of the amending Act) by 1999 c. 16, s. 112(4)(6), 122, **Sch. 14 para. 30(b)**

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**F206** S. 241(3)-(5) repealed (27.7.1999 with effect as mentioned in Notes 1 and 2 to Sch. 20 Pt. V(2) of the repealing Act) by 1999 c. 16, s. 139, **Sch. 20 Pt. V(2)**

## 242 Where consideration not ascertainable from conveyance or lease.

- (1) Where, for the purposes of stamp duty chargeable under or by reference to <sup>F207</sup>Part I of Schedule 13 to the Finance Act 1999 (conveyance or transfer on sale)], the consideration, or any part of the consideration, for—
- (a) the transfer or vesting of any estate or interest in land, or
  - (b) the grant of any <sup>F208</sup>lease],
- cannot, apart from this subsection, be ascertained at the time the instrument in question is executed, the consideration for the transfer, vesting or grant shall for those purposes be taken to be the market value immediately before the instrument is executed of the estate or interest transferred or vested or, as the case may be, the <sup>F208</sup>lease] granted.
- (2) Where, for the purposes of stamp duty chargeable under <sup>F209</sup>paragraph 12 of Schedule 13 to the Finance Act 1999], the rent, or any part of the rent, payable under any <sup>F208</sup>lease] cannot, apart from this subsection, be ascertained at the time it is executed, the rent shall for those purposes be taken to be the market rent at that time.
- (3) For the purposes of this section—
- (a) the cases where consideration or rent cannot be ascertained at any time do not include cases where the consideration or rent could be ascertained on the assumption that any future event mentioned in the instrument in question were or were not to occur, and
  - (b) the market rent of a <sup>F208</sup>lease] at any time is the rent which the <sup>F208</sup>lease] might reasonably be expected to fetch at that time in the open market, and in this section “market value” has the same meaning as in section 241 above.
- (4) This section shall apply to instruments executed after 7th December 1993.

### Textual Amendments

- F207** Words in s. 242(1) substituted (27.7.1999 with effect as mentioned in s. 112(6) of the amending Act) by 1999 c. 16, s. 112(4), 122, **Sch. 14 para. 31(3)**
- F208** Words in s. 242 substituted (27.7.1999 with effect as mentioned in s. 112(6) of the amending Act) by 1999 c. 16, s. 112(4), 122, **Sch. 14 para. 31(2)**
- F209** Words in s. 242(2) substituted (27.7.1999 with effect as mentioned in s. 112(6) of the amending Act) by 1999 c. 16, s. 112(4), 122, **Sch. 14 para. 31(4)**

## 243 Agreements to surrender leases.

- (1) Where, in pursuance of any agreement, any lease is surrendered (or, in Scotland, renounced) at any time otherwise than by deed, the agreement shall be treated for the purposes of <sup>F210</sup>stamp duty] as if it were a deed executed at that time effecting the surrender (or, as the case may be, renunciation).
- (2) This section shall apply to any agreement made after 7th December 1993.

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### Textual Amendments

**F210** Words in s. 243 substituted (27.7.1999 with effect as mentioned in s. 112(6) of the amending Act) by 1999 c. 16, s. 112(4), 122, **Sch. 14 para. 32**

## 244 Production of documents on transfer of land in Northern Ireland.

- (1) Subject to section 245 below, on the occasion of—
  - (a) any transfer on sale of any freehold interest in land in Northern Ireland, or
  - (b) the grant, or any transfer on sale, of any lease of such land,
 the transferee, lessee or proposed lessee shall produce to the Commissioners the instrument by means of which the transfer is effected or the lease granted or agreed to be granted, as the case may be.
- (2) Any transferee, lessee or proposed lessee required to produce any instrument under subsection (1) above shall produce with it a document (signed by him or by some person on his behalf and showing his address) giving such particulars as may be prescribed.
- (3) Any person who, within thirty days—
  - (a) after the execution of an instrument which he is required under subsection (1) above to produce, or
  - (b) in the case of such an instrument executed at a place outside Northern Ireland, after it is first received in Northern Ireland,
 fails to comply with that subsection or subsection (2) above shall be liable on summary conviction to a fine not exceeding level 1 on the standard scale.
- (4) Where any agreement for any lease of land in Northern Ireland is produced to the Commissioners together with a document (signed as mentioned in subsection (2) above) giving such particulars as may be prescribed—
  - (a) it shall not be necessary to produce to them the instrument granting the lease, or any further such document as is referred to in that subsection, unless that instrument is inconsistent with the agreement, but
  - (b) the Commissioners shall, if any such instrument is produced to them and application is made for that purpose, denote on the instrument that it has been produced to them.
- (5) Notwithstanding anything in section 12 of the <sup>M91</sup>Stamp Act 1891, no instrument required by this section to be produced to the Commissioners shall be deemed, for the purposes of section 14 of that Act, to be duly stamped unless it is stamped with a stamp denoting that the instrument has been so produced.

### Commencement Information

**I17** S. 244 wholly in force; s. 244 not in force at Royal Assent, see s. 245(8); s. 244 in force at 4.11.1996 by S.I. 1996/2316, **art. 2**

### Marginal Citations

**M91** 1891 c. 39.

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## 245 Production of documents: supplementary.

- (1) Section 244 above shall not apply to any instrument (an “exempt instrument”) falling within any prescribed class; but regulations may, in respect of exempt instruments or such descriptions of exempt instruments as may be prescribed, require such a document as is mentioned in subsection (2) of that section to be furnished in accordance with the regulations to the Commissioner of Valuation for Northern Ireland.
- (2) The information contained in any document produced to the Commissioners under section 244(2) above shall be available for use by the Commissioner of Valuation for Northern Ireland.
- (3) Any person who fails to comply with any requirement imposed by virtue of subsection (1) above shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (4) Section 244 above shall also not apply to any instrument which relates solely to—
  - (a) incorporeal hereditaments or to a grave or right of burial, or
  - (b) land subject to land purchase annuities which are registered in the Land Registry in Northern Ireland.
- (5) In this section and section 244 above—

“lease”—

  - (a) includes an underlease or other tenancy and an agreement for a lease, underlease or tenancy, but
  - (b) does not include a mortgage, charge or lien on any property for securing money or money’s worth,

and “lessee” and “grant” shall be construed accordingly,  
“prescribed” means prescribed by regulations, and  
“regulations” means regulations made by the Commissioners under this section.
- (6) The power to make regulations under this section shall be exercisable by statutory instrument which shall be subject to annulment in pursuance of a resolution of the House of Commons.
- (7) Regulations under this section may make different provision for different cases.
- (8) This section and section 244 above shall come into force on such day as the Treasury may by order made by statutory instrument appoint.

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### Subordinate Legislation Made

**P6** S. 245(8) power exercised: 4.11.1996 appointed by [S.I. 1996/2316, art. 2](#)

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### Commencement Information

**I18** S. 245 wholly in force; s. 245 not in force at Royal Assent, see s. 245(8); s. 245 in force at 4.11.1996 by [S.I. 1996/2316, art. 2](#)

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## PART VII

### INHERITANCE TAX

#### 246 Rate bands: no indexation in 1994.

The Table substituted by section 72(1) of the <sup>M92</sup>Finance (No. 2) Act 1992 shall apply to chargeable transfers made in the year beginning 6th April 1994, and accordingly section 8(1) of the <sup>M93</sup>Inheritance Tax Act 1984 (indexation of rate bands) shall not apply to such transfers.

#### Marginal Citations

**M92** 1992 c. 48.

**M93** 1984 c. 51.

#### 247 Business and agricultural relief.

- (1) In section 113B of the Inheritance Tax Act 1984 (replacement business property)—
  - (a) in subsections (2)(a) and (5)(b), for “twelve months” substitute, in each case, “ the allowed period ”; and
  - (b) in subsection (8), at the end add “ and “allowed period” means the period of three years or such longer period as the Board may allow ”.
- (2) In section 124B of the Act of 1984 (replacement agricultural property)—
  - (a) in subsections (2)(a) and (5)(b), for “twelve months” substitute, in each case, “ the allowed period ”; and
  - (b) in subsection (8), at the end add “ and “allowed period” means the period of three years or such longer period as the Board may allow ”.
- (3) This section applies in relation to transfers of value made, and other events occurring, on or after 30th November 1993.

#### 248 Corporate Lloyd’s underwriters.

- (1) No property forming part of a premiums trust fund or ancillary trust fund of a corporate member shall be relevant property for the purposes of Chapter III of Part III of the Inheritance Tax Act 1984 (settlements without interests in possession).
- (2) In this section “ancillary trust fund”, “corporate member” and “premiums trust fund” have the same meanings as in Chapter V of Part IV of this Act (Lloyd’s underwriters: corporations etc.).

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## PART VIII

### MISCELLANEOUS AND GENERAL

#### *Companies treated as non-resident*

#### **249 Certain companies treated as non-resident.**

- (1) A company which—
- (a) would (apart from this section) be regarded as resident in the United Kingdom for the purposes of the Taxes Acts, and
  - (b) is regarded for the purposes of any double taxation relief arrangements as resident in a territory outside the United Kingdom and not resident in the United Kingdom,
- shall be treated for the purposes of the Taxes Acts as resident outside the United Kingdom and not resident in the United Kingdom.
- (2) For the purpose of deciding whether the company is regarded as mentioned in subsection (1)(b) above it shall be assumed that—
- (a) the company has made a claim for relief under the arrangements, and
  - (b) in consequence of the claim it falls to be decided whether the company is to be regarded as mentioned in subsection (1)(b) above.
- (3) This section shall apply whether the company would otherwise be regarded as resident in the United Kingdom for the purposes of the Taxes Acts by virtue of section 66(1) of the <sup>M94</sup>Finance Act 1988 (company incorporated in UK to be regarded as resident there) or by virtue of some other rule of law.
- (4) In this section—
- (a) “double taxation relief arrangements” means arrangements having effect by virtue of section 788 of the Taxes Act 1988;
  - (b) “the Taxes Acts” has the same meaning as in the <sup>M95</sup>Taxes Management Act 1970.
- (5) This section shall be deemed to have come into force on 30th November 1993.

#### **Marginal Citations**

**M94** 1988 c. 39.

**M95** 1970 c. 9.

#### **250 Companies treated as non-resident: supplementary.**

- (1) Sections 130(1) to (6) and 131(1) to (5) of the Finance Act 1988 (securing payment of outstanding tax) shall not apply where the company concerned ceases to be resident in the United Kingdom on 30th November 1993 solely by virtue of the coming into force of section 249 above.
- (2) References in section 179 of the <sup>M96</sup>Taxation of Chargeable Gains Act 1992 to a company ceasing to be a member of a group of companies do not apply to cases where a company ceases to be a member of a group by virtue of that company, or another



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company, ceasing to be resident in the United Kingdom on 30th November 1993 solely by virtue of the coming into force of section 249 above.

- (3) Subsection (4) below applies where—
- (a) a company ceases to be resident in the United Kingdom on 30th November 1993 solely by virtue of the coming into force of section 249 above, and
  - (b) by virtue of section 185(2) of the <sup>M97</sup>Taxation of Chargeable Gains Act 1992 it is deemed to have disposed of assets immediately before the time it so ceases.
- (4) In such a case—
- (a) if the company makes an actual disposal of the assets on or before the day when (apart from this subsection) corporation tax is due and payable in respect of the deemed disposal, the tax shall be due and payable on that day;
  - (b) in any other case the tax shall be due and payable on the day the company makes an actual disposal of the assets or on 30th November 1999 (whichever falls first).
- (5) Where subsection (4) above applies, for the purposes of section 87A of the <sup>M98</sup>Taxes Management Act 1970 (interest on overdue corporation tax) the tax shall be treated as becoming due and payable on the relevant day in accordance with section 10 of the Taxes Act 1988; and the relevant day is the day on which the tax is due and payable by virtue of subsection (4) above.
- (6) If the company makes an actual disposal of part of the assets subsections (4) and (5) above shall be applied separately as regards the different parts and the tax shall be apportioned (and carry interest) accordingly.

#### Marginal Citations

- M96** 1992 c. 12.  
**M97** 1992 c. 12.  
**M98** 1970 c.9.

## 251 Companies treated as non-resident: repeals.

- (1) For the purposes of this section—
- (a) the relevant date is 30th November 1993;
  - (b) the <sup>M99</sup>1992 Act is the Taxation of Chargeable Gains Act 1992.
- (2) In section 468F of the Taxes Act 1988 the following shall be omitted—
- (a) in subsection (1)(c) the words “and not a dual resident”;
  - (b) in subsection (8) the definition of “dual resident”;
- and this subsection shall have effect where the date of payment is the relevant date or later.
- (3) In sections 742(8) and 745(4) of the Taxes Act 1988 the words “, or regarded for the purposes of any double taxation arrangements having effect by virtue of section 788 as resident in a territory outside the United Kingdom,” shall be omitted; and—
- (a) subject to paragraph (b) below, the omissions shall apply in relation to transfers of assets and associated operations on or after the relevant date;



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- (b) in so far as the omission in subsection (4) of section 745 relates to subsections (3)(b) and (5) of that section, it shall be deemed to have come into force on the relevant date.
- (4) Sections 749(4A) and 751(2)(bb) of the Taxes Act 1988 shall be omitted; and this subsection shall be deemed to have come into force on the relevant date.
- (5) Section 139(3) of the 1992 Act shall be omitted; and this subsection shall have effect in relation to acquisitions on or after the relevant date.
- (6) Section 160 of the 1992 Act shall be omitted; and this subsection shall have effect where the disposal of the old assets (or of the interest in them) is made on or after the relevant date or the acquisition of the new assets is made (or the acquisition of the interest in them is made or the unconditional contract for their acquisition is entered into) on or after the relevant date.
- (7) The following provisions shall be omitted—
  - (a) in section 166(2) of the 1992 Act the words “or a company” and the words “or company”;
  - (b) in section 171(2) of that Act, paragraph (e) and the word “or” immediately preceding it;
  - (c) section 172(3)(a) of that Act;and this subsection shall have effect in relation to disposals on or after the relevant date.
- (8) In section 175(2) of the 1992 Act the words from “or a company which” to the end of paragraph (b) shall be omitted; and this subsection shall have effect where the disposal of the old assets (or of the interest in them) or the acquisition of the new assets (or of the interest in them) is made on or after the relevant date.
- (9) Section 186 of the 1992 Act shall be omitted together with the following in section 187—
  - (a) in subsection (1)(a) the words “or 186”;
  - (b) in subsection (6) the words “or, as the case may be, section 186(2),” and the words “or, as the case may be, section 186(1)”;and this subsection shall have effect where the company concerned becomes on or after the relevant date a company which falls to be regarded as mentioned in section 186(1).
- (10) Section 188 of the 1992 Act shall be omitted; and this subsection shall be deemed to have come into force on the relevant date.
- (11) In section 211(3) of the 1992 Act the words “(and would not be a gain on which, under any double taxation relief arrangements, it would not be liable to tax)” shall be omitted; and this subsection shall have effect where the transfer is made on or after the relevant date.

<sup>F211</sup>(12) .....

**Textual Amendments**

**F211** S. 251(12) repealed (the repeal coming into force in accordance with the provisions of Pt. IV Ch. II (ss. 80-105) of the repealing Act) by 1996 c. 8, s. 205, **Sch. 41 Pt. V(3)**, Note

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**Commencement Information**

**I19** S. 251 partly in force retrospectively (to 30.11.1993) as mentioned in this section.

**Marginal Citations**

**M99** 1992 c. 12.

*Privatisations*

**252 Railways.**

- (1) Schedule 24 to this Act (which makes provision in connection with transfers and other disposals under or by virtue of the <sup>M100</sup>Railways Act 1993) shall have effect.
- (2) Paragraphs 4(1) and 17 of that Schedule, and this section so far as relating to those provisions, shall be taken to have come into force on 5th November 1993 (the date on which the <sup>M101</sup>Railways Act 1993 was passed).
- (3) Subject to subsection (2) above, this section and that Schedule shall be taken to have come into force on 11th January 1994.

**Commencement Information**

**I20** S. 252 in force retrospectively (partly 5.11.93 and partly 11.1.1994) as mentioned in s. 252(2)(3)

**Marginal Citations**

**M100** 1993 c. 43.

**M101** 1993 c. 43.

**253 Northern Ireland Airports Limited.**

Schedule 25 to this Act (which makes provision in connection with the transfer of the undertaking of Northern Ireland Airports Limited) shall have effect.

*Management*

**254 Practice and procedure in connection with appeals.**

- (1) Section 56B of the <sup>M102</sup>Taxes Management Act 1970 (regulations about practice and procedure in connection with appeals) shall be amended as follows.
- (2) In subsection (2)(b) (documents to be made available for inspection by Commissioners or by officers of the Board) for “the Commissioners or by officers of the Board” there shall be substituted “ specified persons ”.
- (3) The following subsection shall be inserted after subsection (2)—
  - “(2A) In subsection (2)(b) above “specified persons” means such of the following as may be specified in the regulations—
    - (a) the Commissioners;
    - (b) any party to the appeal;

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(c) officers of the Board.”

**Marginal Citations**

M102 1970 c.9.

**255 Calling for documents of taxpayers and others.**

(1) Section 20 of the <sup>M103</sup>Taxes Management Act 1970 (power to call for documents) shall be amended as follows.

(2) The following subsections shall be inserted after subsection (7A)—

“(7AB) A Commissioner who has given his consent under subsection (7) above shall neither take part in, nor be present at, any proceedings on, or related to, any appeal brought—

- (a) in the case of a notice under subsection (1) above, by the person to whom the notice applies, or
- (b) in the case of a notice under subsection (3) above, by the taxpayer concerned,

if the Commissioner has reason to believe that any of the required information is likely to be adduced in evidence in those proceedings.

(7AC) In subsection (7AB) above “required information” means any document or particulars which were the subject of the proposed notice with respect to which the Commissioner gave his consent.”

(3) The following subsections shall be inserted after subsection (8D)—

“(8E) An inspector who gives a notice under subsection (1) or (3) above shall also give to—

- (a) the person to whom the notice applies (in the case of a notice under subsection (1) above), or
- (b) the taxpayer concerned (in the case of a notice under subsection (3) above),

a written summary of his reasons for applying for consent to the giving of the notice.

(8F) Subsection (8E) above does not apply, in the case of a notice under subsection (3) above, if by virtue of section 20B(1B) a copy of that notice need not be given to the taxpayer.

(8G) Subsection (8E) above does not require the disclosure of any information—

- (a) which would, or might, identify any person who has provided the inspector with any information which he took into account in deciding whether to apply for consent; or
- (b) if the Commissioner giving the required consent has given a direction that that information is not to be subject to the obligation imposed by that subsection.

(8H) A General or Special Commissioner shall not give a direction under subsection (8G) above unless he is satisfied that the inspector has reasonable

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grounds for believing that disclosure of the information in question would prejudice the assessment or collection of tax.”

**Marginal Citations**

**M103** 1970 c. 9.

*Assigned matters*

**256 Minor corrections.**

- (1) The provisions mentioned in subsection (2) below (which enable revenue traders and taxable persons to be required to keep records) shall be amended in accordance with subsections (3) and (4) below (which correct minor errors in those provisions so far as they relate to the admissibility in evidence of the recorded information).
- (2) The provisions are—
  - (a) in the <sup>M104</sup>Customs and Excise Management Act 1979, section 118A; and
  - (b) in Schedule 7 to the <sup>M105</sup>Value Added Tax Act 1983, paragraph 7.
- (3) In subsection (6) and sub-paragraph (5) of those provisions—
  - (a) in paragraph (c) for the words “sections 13 and 14 of the <sup>M106</sup>Law Reform (Miscellaneous Provisions) (Scotland) Act 1968” there shall be substituted “sections 5 and 6 of the Civil Evidence (Scotland) Act 1988”; and
  - (b) in paragraph (d), for the words “except in accordance with the said sections 13 and 14” to the end there shall be substituted “except in accordance with Schedule 3 to the Prisoners and Criminal Proceedings (Scotland) Act 1993”.
- (4) Subsection (7) and sub-paragraph (6) of those provisions shall be omitted.

**Marginal Citations**

**M104** 1979 c. 2.

**M105** 1983 c. 55.

**M106** 1968 c. 70.

*General*

**257 Interpretation and construction.**

- (1) In this Act “the Taxes Act 1988” means the <sup>M107</sup>Income and Corporation Taxes Act 1988.
- (2) Part V of this Act shall be construed as one with Part I of the <sup>M108</sup>Oil Taxation Act 1975, and in Part V that Act is referred to as “the principal Act”.
- (3) Part VI of this Act shall be construed as one with the <sup>M109</sup>Stamp Act 1891.

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**Marginal Citations**

M107 1988 c. 1.

M108 1975 c. 22.

M109 1891 c. 39.

**258 Repeals.**

The enactments specified in Schedule 26 to this Act (which include provisions which are already spent) are hereby repealed to the extent specified in the third column of that Schedule, but subject to any provision of that Schedule.

**259 Short title.**

This Act may be cited as the Finance Act 1994.

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