Finance Act 2000

CHAPTER 17

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2000 CHAPTER 17

An Act to grant certain duties, to alter other duties, and to amend the law relating to the National Debt and the Public Revenue, and to make further provision in connection with Finance.

[28th July 2000]

Most Gracious Sovereign,

WE, Your Majesty's most dutiful and loyal subjects, the Commons of the United Kingdom in Parliament assembled, towards raising the necessary supplies to defray Your Majesty's public expenses, and making an addition to the public revenue, have freely and voluntarily resolved to give and grant unto Your Majesty the several duties hereinafter mentioned; and do therefore most humbly beseech Your Majesty that it may be enacted, and be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

PART I

EXCISE DUTIES

Alcoholic liquor duties

Rate of duty on beer.
1979 c. 4.

1.—(1) In section 36(1) of the Alcoholic Liquor Duties Act 1979 (rate of duty on beer), for "£11.50" substitute "£11.89".

(2) This section shall be deemed to have come into force on 1st April 2000.

Rates of duty on cider.

2.—(1) In section 62(1A) of the Alcoholic Liquor Duties Act 1979 (rates of duty on cider)—

(a) in paragraph (a) (rate of duty per hectolitre in the case of sparkling cider of a strength exceeding 5.5 per cent.), for "£161.20" substitute "£166.70";

(b) in paragraph (b) (rate of duty per hectolitre in the case of cider of a strength exceeding 7.5 per cent. which is not sparkling cider), for "£37.92" substitute "£39.21"; and

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(c) in paragraph (c) (rate of duty per hectolitre in any other case), for "£25.27" substitute "£26.13".

(2) This section shall be deemed to have come into force on 1st April 2000.

Rates of duty on wine and made-wine.
1979 c. 4.

3.—(1) For Part I of the Table of rates of duty in Schedule 1 to the Alcoholic Liquor Duties Act 1979 (wine and made-wine) substitute—

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WINE OR MADE-WINE OF A STRENGTH NOT EXCEEDING 22 PER CENT.

Description of wine or made-wine	*Rates of duty per hectolitre*
	£
Wine or made-wine of a strength not exceeding 4 per cent.	47.58
Wine or made-wine of a strength exceeding 4 per cent. but not exceeding 5.5 per cent.	65.42
Wine or made-wine of a strength exceeding 5.5 per cent. but not exceeding 15 per cent. and not being sparkling	154.37
Sparkling wine or sparkling made-wine of a strength exceeding 5.5 per cent. but less than 8.5 per cent.	166.70
Sparkling wine or sparkling made-wine of a strength of 8.5 per cent. or of a strength exceeding 8.5 per cent. but not exceeding 15 per cent.	220.54
Wine or made-wine of a strength exceeding 15 per cent. but not exceeding 22 per cent.	205.82

(2) This section shall be deemed to have come into force on 1st April 2000.

Hydrocarbon oil duties

Rates of duty and rebate on hydrocarbon oil.
1979 c. 5.

4.—(1) In section 6(1A) of the Hydrocarbon Oil Duties Act 1979 (rates of duty on hydrocarbon oil)—

(a) in paragraph (a) (light oil), for "£0.5288" substitute "£0.5468";

(b) in paragraph (b) (ultra low sulphur diesel), for "£0.4721" substitute "£0.4882"; and

(c) in paragraph (c) (heavy oil which is not ultra low sulphur diesel), for "£0.5021" substitute "£0.5182".

(2) In section 11(1) of that Act (rebate on heavy oil)—

(a) in paragraph (a) (fuel oil), for "£0.0265" substitute "£0.0274"; and

(b) in each of paragraphs (b) and (ba) (gas oil which is not ultra low sulphur diesel and ultra low sulphur diesel), for "£0.0303" substitute "£0.0313".

(3) In section 13A(1A) of that Act (rebate on unleaded petrol)—

(a) in paragraph (a) (higher octane unleaded petrol), for "£0.0367" substitute "£0.0379"; and

(b) in paragraph (b) (other unleaded petrol), for "£0.0567" substitute "£0.0586".

(4) In section 14(1) of that Act (rebate on light oil for use as furnace fuel), for "£0.0265" substitute "£0.0274".

(5) This section shall be deemed to have come into force at 6 o'clock in the evening of 21st March 2000.

Ultra low sulphur petrol.
1979 c. 5.

5.—(1) In section 1 of the Hydrocarbon Oil Duties Act 1979 (definitions of oil), after subsection (3) insert—

"(3A) 'Ultra low sulphur petrol' means unleaded petrol (other than higher octane unleaded petrol)—

(a) the sulphur content of which does not exceed 0.005 per cent. by weight or is nil, and

(b) the aromatics content of which does not exceed 35 per cent. by volume.

(3B) 'Unleaded petrol' means petrol that contains not more than 0.013 grams of lead per litre of petrol; and petrol is 'leaded petrol' if it is not unleaded.

(3C) 'Higher octane unleaded petrol' means unleaded petrol—

(a) whose research octane number is not less than 96 and whose motor octane number is not less than 86; or

(b) which is delivered for home use as petrol that satisfies the condition in paragraph (a) above; or

(c) which is delivered for home use as petrol that is suitable to be used as fuel for engines for which leaded petrol is suitable by virtue of being leaded; or

(d) which is delivered for home use under such a description, or in such a manner, as tends, in the circumstances, to suggest that it is—

(i) petrol satisfying the condition in paragraph (a) above, or

(ii) petrol that is suitable to be used as fuel for engines for which leaded petrol is suitable by virtue of being leaded.".

(2) In section 2 of that Act (provisions supplementary to section 1), after subsection (1) insert—

"(1A) Subsection (1) above applies, in particular, to the method of testing unleaded petrol for ascertaining its research octane number or motor octane number.".

(3) In section 6 of that Act (excise duty on hydrocarbon oil), for subsection (1A) (rates of duty) substitute—

"(1A) The rates at which the duty shall be charged are—

(a) £0.4782 a litre in the case of ultra low sulphur petrol;

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(b) £0.5468 a litre in the case of light oil other than ultra low sulphur petrol;

(c) £0.4882 a litre in the case of ultra low sulphur diesel; and

(d) £0.5182 a litre in the case of heavy oil other than ultra low sulphur diesel.".

(4) In section 13A of that Act (rebate on unleaded petrol)—

(a) in subsection (1) after "unleaded petrol" insert ", other than ultra low sulphur petrol,"; and

(b) omit subsections (1B), (1C) and (2).

Any directions given under subsection (1C) and in force immediately before the commencement of this section shall have effect as if given under section 2(1) of that Act.

(5) In section 27(1) of that Act (interpretation), at the appropriate places insert—

"'ultra low sulphur petrol' has the meaning given by section 1(3A) above;";

"'unleaded petrol' and 'leaded petrol' have the meaning given by section 1(3B) above."; and

"'higher octane unleaded petrol' has the meaning given by section 1(3C) above;".

(6) This section shall come into force on such day as the Commissioners of Customs and Excise may appoint by order made by statutory instrument.

Mixing of rebated light oils.
1979 c. 5.

6.—(1) Schedule 2A to the Hydrocarbon Oil Duties Act 1979 (mixing of rebated oils) is amended in accordance with Schedule 1 to this Act.

(2) The amendments in that Schedule come into force on the day appointed under section 5(6).

Power to amend definitions of types of hydrocarbon oil.

7. In the Hydrocarbon Oil Duties Act 1979, after section 2 insert—

"Power to amend definitions.

2A.—(1) The Treasury may by order made by statutory instrument amend the definitions for the purposes of this Act of—

'ultra low sulphur petrol';

'unleaded petrol' and 'leaded petrol';

'higher octane unleaded petrol'; and

'ultra low sulphur diesel'.

(2) An order under this section may contain such incidental, supplementary and transitional provision as appears to the Treasury to be appropriate.

(3) No order shall be made under this section unless a draft of it has been laid before and approved by a resolution of the House of Commons.".

Penalties for misuse of rebated heavy oil.

8.—(1) Section 13 of the Hydrocarbon Oil Duties Act 1979 (penalties for misuse of rebated heavy oil) is amended as follows.

(2) In subsection (1)—

(a) for "or, as the case may be, his becoming so liable" substitute "or his becoming so liable (or, where his conduct includes both, each of them)", and

(b) omit the words from "; and the Commissioners" to the end.

(3) After subsection (1) insert—

"(1A) Where oil is used, or is taken into a road vehicle, in contravention of section 12(2) above, the Commissioners may—

(a) assess an amount equal to the rebate on like oil at the rate in force at the time of the contravention as being excise duty due from any person who used the oil or was liable for the oil being taken into the road vehicle, and

(b) notify him or his representative accordingly.".

(4) This section shall have effect in relation to liability arising on or after 1st May 2000.

Use of rebated heavy oil as fuel. 1979 c. 5.

9.—(1) Schedule 1 to the Hydrocarbon Oil Duties Act 1979 (which sets out the categories of excepted vehicle which may use rebated heavy oil as fuel) is amended as follows.

(2) Omit the following provisions—

(a) paragraph 2(1)(b) (which provides that off-road tractors are excepted vehicles) and the word "or" immediately preceding it, and

(b) paragraph 2(4) (which defines off-road tractors).

(3) This section shall have effect in relation to the use of rebated heavy oil as fuel on or after 1st May 2000.

Rebates, marking and reliefs.

10.—(1) The Hydrocarbon Oil Duties Act 1979 is amended in accordance with subsections (2) to (4).

(2) In section 11 (rebate on heavy oil), after subsection (2) insert—

"(3) This subsection applies in any case where—

(a) oil is delivered for home use,

(b) regulations under section 24 below require, as a condition of allowing a rebate on the oil under subsection (1) above, that a marker prescribed by regulations under that section shall have been added to the oil, and

(c) the marker is present at the time of delivery for home use but in such a proportion that its presence falls to be disregarded by virtue of provision made by regulations under that section.

(4) In any case where subsection (3) above applies, a rebate may be allowed on the oil at the time it is delivered for home use if it appears to the Commissioners to be appropriate to allow it.

(5) Where a rebate is allowed under subsection (4) above, the rate at which the rebate is allowed—

(a) shall be such rate as appears to the Commissioners to be appropriate, but

(b) shall not be less than 95 per cent. of, and shall not exceed, the rate of rebate specified in the relevant paragraph of subsection (1) above.".

(3) In section 20AA(2) (provision in connection with allowing reliefs)—

(a) in paragraph (a) (relief may take form of repayment or remission), after "repayment or remission" insert "or an allowance to be set off against duty payable to the Commissioners by the person claiming relief"; and

(b) after paragraph (g) insert—

"(ga) provide for oil on which relief is allowed to be treated for the purposes of this Act as oil on which a rebate has been allowed;".

(4) In section 24 (regulations controlling use of duty-free and rebated oil), after subsection (4B) insert—

"(4C) In a case where subsection (4D) below applies, the power of the Commissioners under subsection (4A) above includes power, if it appears to them to be appropriate, to assess (and notify) an amount less than the amount of the rebate concerned.

(4D) This subsection applies in any case where—

(a) the Commissioners have power to assess (and notify) an amount under subsection (4A) above by virtue of a contravention of, or failure to comply with, a requirement such as is mentioned in paragraph 5 of Schedule 4 to this Act, and

(b) the marker whose addition is required by the requirement is present at the time of the contravention or failure but in such a proportion that its presence falls to be disregarded by virtue of provision made by regulations under this section for the purpose mentioned in paragraph 7 of that Schedule.".

1994 c. 9.
1979 c. 5.

(5) In paragraph 4 of Schedule 5 to the Finance Act 1994 (decisions under the Hydrocarbon Oil Duties Act 1979 of which a review may be required), after sub-paragraph (1) insert—

"(1A) Any decision which is made under or for the purposes of any regulations made under section 20AA of the Hydrocarbon Oil Duties Act 1979 and is a decision as to whether or not relief is to be allowed.".

Emulsions of water in gas oil.

11.—(1) In section 6A of the Hydrocarbon Oil Duties Act 1979 (duty on fuel substitutes), after subsection (2) (definition of chargeable use) insert—

"(2A) But the use of water is not a chargeable use if—

(a) the water is comprised in an emulsion of water in gas oil, and

(b) the emulsion is stabilised by additives.".

(2) This section shall have effect in relation to duty charged on or after the day on which this Act is passed.

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Tobacco products duty

Rates of tobacco products duty. 1979 c. 7.

12.—(1) For the Table of rates of duty in Schedule 1 to the Tobacco Products Duty Act 1979 substitute—

TABLE

1. Cigarettes	An amount equal to 22 per cent. of the retail price plus £90.43 per thousand cigarettes.
2. Cigars	£132.33 per kilogram.
3. Hand-rolling tobacco	£95.12 per kilogram.
4. Other smoking tobacco and chewing tobacco	£58.17 per kilogram.

(2) This section shall be deemed to have come into force at 6 o'clock in the evening of 21st March 2000.

Basis of calculation of *ad valorem* element of duty on cigarettes.

13.—(1) Section 5 of the Tobacco Products Duty Act 1979 (retail price of cigarettes) is amended as follows.

(2) In subsection (1) (meaning of retail price) for the words from "shall be taken to be" to the end substitute "shall be taken to be—

(a) the higher of—

(i) the recommended price for the sale by retail at that time in the United Kingdom of cigarettes of that description, and

(ii) any (or, if more than one, the highest) retail price shown at that time on the packaging of the cigarettes in question,

or

(b) if there is no such price recommended or shown, the highest price at which cigarettes of that description are normally sold by retail at that time in the United Kingdom.".

(3) In subsection (3) (determination of price by Commissioners), for "paragraph (a) of subsection (1)" substitute "paragraph (b) of subsection (1)".

(4) In subsection (4) (reference to arbitration of Commissioners' determination), for "subsection (1)(a)" substitute "subsection (1)(b)".

Fiscal marks on tobacco products.

14. After section 8 of the Tobacco Products Duty Act 1979 insert the following sections—

"Fiscal marks: introductory.

8A. Fiscal marking applies to tobacco products that are—

(a) cigarettes, or

(b) hand-rolling tobacco.

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Power to alter range of products to which fiscal marking applies.

8B.—(1) The Commissioners may by order made by statutory instrument amend section 8A above for the purpose of causing fiscal marking—

(a) to apply to any description of tobacco products to which it does not apply, or

(b) to cease to apply to any description of tobacco products to which it does apply.

(2) Where fiscal marking applies to any description of tobacco products, the Commissioners may by regulations provide that fiscal marking does not apply to such products of that description as are of a description specified in the regulations.

(3) A statutory instrument containing (whether alone or with other provisions) an order under subsection (1)(a) above shall not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.

(4) A statutory instrument that—

(a) contains (whether alone or with other provisions) an order under subsection (1) above, and

(b) is not subject to any requirement that a draft of the instrument be laid before and approved by a resolution of each House of Parliament,

shall be subject to annulment in pursuance of a resolution of either House of Parliament.

Fiscal mark regulations.

8C.—(1) The Commissioners may make provision by regulations—

(a) requiring the carrying of fiscal marks by tobacco products to which fiscal marking applies, and

(b) as to such matters relating to fiscal marks as appear to the Commissioners to be necessary or expedient.

(2) In this Act "fiscal mark" means a mark carried by tobacco products indicating all or any of the following—

(a) that excise duty has been paid on the products;

(b) the rate at which excise duty was paid on the products;

(c) the amount of excise duty paid on the products;

(d) when excise duty was paid on the products;

(e) that sale of the products—

(i) is only permissible on dates ascertainable from the mark;

(ii) is not permissible after (or on or after) a date so ascertainable;

(iii) is not permissible before (or before or on) a date so ascertainable.

(3) Regulations under this section may, in particular, make provision about—

(a) the contents of a fiscal mark;

(b) the appearance of a fiscal mark;

(c) in the case of tobacco products that have more than one layer of packaging, which of the layers is (or are) to carry a fiscal mark;

(d) the positioning of a fiscal mark on the packaging of any tobacco products;

(e) when tobacco products are required to carry a fiscal mark.

(4) Regulations under this section may make different provision for different cases.

Fiscal marks: public notices.

8D.—(1) The Commissioners may by notices published by them regulate any of the matters mentioned in paragraphs (a) to (d) of section 8C(3) above.

(2) A notice under this section may provide for provision made by regulations under section 8C above to have effect subject to provisions of the notice.

(3) A notice under this section may make different provision for different cases.

Failure to comply with fiscal mark regulations and public notices.

8E.—(1) This section applies if a person fails to comply with any requirement imposed by or under—

(a) regulations made under section 8C above, or

(b) a notice published under section 8D above.

(2) Any article in respect of which the person fails to comply with the requirement shall be liable to forfeiture.

(3) The person's failure to comply shall attract a penalty under section 9 of the Finance Act 1994 (civil penalties). 1994 c. 9.

(4) The Commissioners may by regulations make such provision as is mentioned in subsection (5) below about the calculation of the penalty in a case where the failure involves post-dating of any tobacco products.

For this purpose "post-dating" means that the products carry a fiscal mark ("the later period mark") that—

(a) is not one they are required to carry by virtue of this Act, and

(b) is one they would be required to carry by virtue of this Act if the requirement to pay the duty charged on them under section 2 above took effect at a time later than that at which it in fact takes effect.

(5) The provision that may be made by regulations under subsection (4) above is for the penalty to be calculated by reference to the duty currently charged on the products.

For this purpose "the duty currently charged" on the products is the amount of the duty charged under section 2 above that would be payable on the products if the requirement to pay the duty took effect at the time of the failure.

Sale of marked tobacco when not permitted: penalties.

8F.—(1) This section applies if provision made by or under—

(a) regulations made under section 8C above, or

(b) a notice published under section 8D above,

provides for any tobacco products to carry a period of sale mark.

(2) In this section—

"a period of sale mark" means a fiscal mark indicating any of the matters mentioned in subsection (2)(e) of section 8C above; and

"prohibited time", in relation to tobacco products that carry a period of sale mark, means a time when, according to the mark, sale of the products is not permissible.

(3) If—

(a) a person sells by way of retail sale, or exposes for retail sale, any tobacco products that carry a period of sale mark, and

(b) he so sells or exposes the products at a prohibited time,

his so selling or exposing the products shall attract a penalty under section 9 of the Finance Act 1994 (civil penalties) and the products are liable to forfeiture.

1994 c. 9.

Offences: possession and sale etc. of unmarked tobacco.

8G.—(1) In this section "unmarked products" means tobacco products that are subject to fiscal marking but do not carry a compliant duty-paid fiscal mark.

(2) For the purposes of this section "duty-paid fiscal mark" means a fiscal mark carried by tobacco products indicating that excise duty has been paid on the products.

(3) For the purposes of this section a duty-paid fiscal mark carried by tobacco products of any description is "compliant" if it complies with all relevant requirements for any duty-paid fiscal mark that by virtue of this Act is required to be carried by such tobacco products of that description as are by virtue of this Act required to carry such a mark.

For this purpose "relevant requirement" means a requirement, imposed by virtue of this Act, as to any of the matters mentioned in paragraphs (a) to (d) of section 8C(3) above (contents, appearance and positioning etc. of fiscal marks).

(4) If a person—

(a) is in possession of, transports or displays, or

(b) sells, offers for sale or otherwise deals in,

unmarked products then, except in such cases as may be prescribed in regulations made by the Commissioners, that person commits an offence and the products are liable to forfeiture.

(5) It is a defence for a person charged with an offence under subsection (4) above to prove that the unmarked products were not required by virtue of this Act to carry a duty paid fiscal mark.

(6) A person guilty of an offence under subsection (4) above shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

Offences: use of premises for sale of unmarked tobacco.

8H.—(1) A manager of premises commits an offence if he suffers the premises to be used for the sale of unmarked products.

In this section "unmarked products" has the same meaning as in section 8G above.

(2) It is a defence for a person charged with an offence under subsection (1) above to prove that the unmarked products were not required by virtue of this Act to carry a duty-paid fiscal mark.

For this purpose "duty-paid fiscal mark" has the same meaning as in section 8G above.

(3) A person guilty of an offence under subsection (1) above shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(4) A court by or before which a person is convicted of an offence under subsection (1) above may make an order prohibiting the use of the premises in question for the sale of tobacco products during a period specified in the order.

(5) The period specified in an order under subsection (4) above shall not exceed six months; and the first day of the period shall be the day specified as such in the order.

(6) A manager of premises commits an offence if he suffers the premises to be used in breach of an order under subsection (4) above.

(7) A person guilty of an offence under subsection (6) above shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(8) For the purposes of this section a person is a manager of premises if he—

(a) is entitled to control their use,

(b) is entrusted with their management, or

(c) is in charge of them.

Interfering with fiscal marks: penalties.

8J.—(1) This section applies where a person—

(a) alters or overprints any fiscal mark carried by any tobacco products in compliance with any provision made under this Act, or

(b) causes any such mark to be altered or overprinted.

(2) His altering or overprinting of the mark, or his causing it to be altered or overprinted, shall attract a penalty under section 9 of the Finance Act 1994 (civil penalties).

1994 c. 9.

(3) The products that carried the mark shall be liable to forfeiture.

(4) The penalty under subsection (2) above shall be calculated by reference to the duty currently charged on the products.

For this purpose "the duty currently charged" on the products is the amount of the duty charged under section 2 above that would be payable on the products if the requirement to pay the duty took effect at the time of the conduct attracting the penalty.".

Management of excise duty on tobacco products.

15.—(1) The Tobacco Products Duty Act 1979 has effect subject to the following amendments.

1979 c. 7.

(2) In section 2(2) (remission or repayment of duty where tobacco products exported, shipped as stores or used for research or experiment), for the words from "that" to the end of paragraph (b) substitute—

"that—

(a) the products in question have been—

(i) exported or shipped as stores, or

(ii) used solely for the purposes of research or experiment; and

(b) any fiscal marks carried by the products have been obliterated;".

(3) Section 7 (regulations for management of duty) is amended as follows.

(4) After paragraph (a) of subsection (1) (method of charging duty and securing and collecting duty) insert—

"(aa) for charging the duty, in such circumstances as may be specified in the regulations, by reference to the weight of the tobacco products at a time specified in the regulations or by the Commissioners (whether the time at which the products become chargeable or that at which the duty becomes payable or any other time);".

(5) In paragraph (b) of subsection (1) (registration of premises for storage of tobacco), after "regulating their" insert "storage and".

(6) After that paragraph insert—

"(ba) for the registration of premises for the manufacture of tobacco products, for restricting or prohibiting the manufacture of tobacco products otherwise than in premises so registered and for regulating their storage and treatment in, and removal from, such premises;".

(7) In paragraph (c) of subsection (1), omit sub-paragraph (i) (which is superseded by the amendment made by subsection (6) above).

(8) In paragraph (d) of subsection (1), for "and the making of such returns, as may be specified in the regulations" substitute "the notification of such information, and the making of such returns, as may be specified in the regulations or required by the Commissioners".

(9) After subsection (1) insert—

"(1A) Regulations under subsection (1) above may, in particular, include provision—

(a) imposing, or providing for the imposition under the regulations of, conditions and restrictions relating to any of the matters mentioned in that subsection;

(b) enabling the Commissioners to dispense with compliance with any provision contained in the regulations in such circumstances and subject to such conditions (if any) as they may determine.".

Gaming duty

16.—(1) For the table in section 11(2) of the Finance Act 1997 (rates of gaming duty) substitute— Rates of gaming duty. 1997 c. 16.

TABLE

Part of gross gaming yield	*Rate*
The first £470,500	$2\frac{1}{2}$ per cent.
The next £1,045,500	$12\frac{1}{2}$ per cent.
The next £1,045,500	20 per cent.
The next £1,830,000	30 per cent.
The remainder	40 per cent.

(2) This section has effect in relation to accounting periods beginning on or after 1st April 2000.

Amusement machine licence duty

17. Schedule 2 to this Act (which amends the Betting and Gaming Duties Act 1981) shall have effect. Amusement machine licence duty. 1981 c. 63.

Air passenger duty

18.—(1) Section 30 of the Finance Act 1994 is amended as follows. Rates of duty. 1994 c. 9.

(2) In subsection (1) (basis on which duty is charged) for the words from "appropriate" to the end substitute "determined in accordance with subsections (2) to (4) below."

(3) In subsection (2) (rate where destination is in an EEA State etc)—

(a) for "The rate is £10 if that place" substitute "If the place where the passenger's journey ends", and

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(b) after paragraph (b) add—

"the rate shall be determined in accordance with subsection (3A) below.".

(4) After subsection (3) insert—

"(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.".

(5) For subsection (4) (rate where destination is not in an EEA State etc) substitute—

"(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.".

(6) At the end of the section add—

"(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.".

(7) In consequence of the provision made by the preceding provisions of this section, in section 39 of the Finance Act 1994 (schemes for simplifying operation of reliefs)— 1994 c. 9.

(a) in subsection (4)(b), for "at the rate mentioned in section 30(2) above" substitute—

"(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";

(b) in subsection (4B)(c), for "at the rate mentioned in section 30(2) above" substitute—

"(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";

(c) in subsection (8)(b), for the words from "on the carriage" to the end substitute—

"(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"; and

(d) in subsection (8A)(c), for the words from "on the carriage" to the end substitute—

"(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".

(8) This section applies to any carriage of a passenger on an aircraft which begins on or after 1st April 2001.

Changes in exemption from duty.
1994 c. 9.

19.—(1) Section 31 of the Finance Act 1994 is amended as follows.

(2) Omit subsections (1) and (2) (exemption in relation to passengers making return journeys within the United Kingdom).

(3) After subsection (4A) insert—

"(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.

(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.".

(4) Omit subsection (6) (provision by regulations for subsection (1) to have effect in relation to journeys begun in the Isle of Man).

(5) In consequence of the provision made by subsection (2) above, in section 43 of the Finance Act 1994 (interpretation)—

(a) in subsection (2) (meaning of "journey" etc), omit "Subject to subsection (3) below", and

(b) omit subsection (3) (interpretation of references to a return ticket).

(6) This section applies to any carriage of a passenger on an aircraft which begins on or after 1st April 2001.

Vehicle excise duty

Threshold for reduced general rate.
1994 c. 22.

20.—(1) In paragraph 1 of Schedule 1 to the Vehicle Excise and Registration Act 1994 (rate of duty applicable where no other rate specified), in sub-paragraphs (2) and (2A) for "1,100 cubic centimetres" (the reduced rate threshold) substitute "1,200 cubic centimetres".

This amendment applies to licences issued on or after 1st March 2001.

(2) Refunds shall be made by the Secretary of State, in accordance with the following provisions of this section, in respect of licences—

(a) issued in the period beginning with 1st March 2000 and ending with 28th February 2001, and

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(b) not surrendered before the end of that period,

where the amount of vehicle excise duty chargeable on the licence would have been less if the amendment in subsection (1) had applied.

(3) The amount of the refund is—

(a) £55 for a 12 month licence, and

(b) £27.50 for a 6 month licence.

(4) The person entitled to the refund is—

(a) in the case of a licence in force on 28th February 2001, the keeper of the vehicle on that date;

(b) in the case of a licence that has ceased to be in force before that date, the keeper of the vehicle when the licence expired.

(5) For the purposes of subsection (4) the keeper of the vehicle shall be taken to be—

(a) the person registered as keeper of the vehicle on the date in question, or

(b) if the Secretary of State has received notification of a change of ownership of the vehicle as a result of which another person is on that date entitled to be registered as the new keeper of the vehicle, that person.

(6) A refund shall only be made if an application is made for it in such form, and containing such particulars and supported by such documents, as the Secretary of State may require.

(7) The Secretary of State shall give notice in writing to any person appearing to him to be entitled to a refund—

(a) informing him that he appears to be entitled to a refund,

(b) enclosing an application form, and

(c) specifying the particulars and supporting documents to be provided.

(8) An application for, or the making of, a refund under this section in respect of a licence does not affect the validity of the licence.

1994 c. 22.

(9) For the purposes of section 19 of the Vehicle Excise and Registration Act 1994 (surrender of licences) as it applies to the surrender on or after 1st March 2001 of a licence in respect of which a refund under this section has been made, or applied for, the annual rate of duty chargeable on the licence shall be taken to be that which would have been chargeable if the amendment in subsection (1) above had applied.

(10) Section 45 of that Act (offence of false or misleading declaration) applies to a declaration in connection with an application for a refund under this section as it applies to a declaration in connection with an application for a vehicle licence.

(11) In the application of this section to Northern Ireland, references to registration as the keeper of a vehicle shall be read as references to registration as the owner of the vehicle.

Increase in general rate.

21.—(1) In paragraph 1 of Schedule 1 to the Vehicle Excise and Registration Act 1994 (rate of duty applicable where no other rate specified)—

(a) in sub-paragraph (2) (the standard rate), for "£155" substitute "£160"; and

(b) in sub-paragraph (2A) (the reduced rate), for "£100" substitute "£105".

(2) This section applies to licences issued on or after 1st March 2001.

Rates of duty for new cars and vans.

22. Schedule 3 to this Act has effect with respect to vehicle excise duty on light passenger vehicles and light goods vehicles first registered on or after 1st March 2001.

Enforcement provisions for graduated rates.

23. Schedule 4 to this Act has effect with respect to vehicle licences for vehicles in respect of which vehicle excise duty is chargeable at different rates.

Rates of duty for goods vehicles.

24.—(1) Schedule 5 to this Act (which makes provision for new rates of vehicle excise duty for goods vehicles etc.) has effect.

(2) The provisions of that Schedule apply in relation to licences issued after 21st March 2000.

Enforcement of duties

Power to search premises. 1979 c. 2.

25. In Part XII of the Customs and Excise Management Act 1979 (general supplementary provisions), for section 161 (power to search premises) substitute—

"Power to search premises: writ of assistance.

161.—(1) The powers conferred by this section are exercisable by an officer having a writ of assistance if there are reasonable grounds to suspect that anything liable to forfeiture under the customs and excise Acts—

(a) is kept or concealed in any building or place, and

(b) is likely to be removed, destroyed or lost before a search warrant can be obtained and executed.

(2) The powers are—

(a) to enter the building or place at any time, whether by day or night, on any day, and search for, seize, and detain or remove any such thing, and

(b) so far as is necessary for the purpose of such entry, search, seizure, detention or removal, to break open any door, window or container and force and remove any other impediment or obstruction.

(3) An officer shall not exercise the power of entry conferred by this section by night unless accompanied by a constable.

(4) A writ of assistance shall continue in force during the reign in which it is issued and for six months thereafter.

Power to search premises: search warrant.

161A.—(1) If a justice of the peace is satisfied by information upon oath given by an officer that there are reasonable grounds to suspect that anything liable to forfeiture under the customs and excise Acts is kept or

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concealed in any building or place, he may by warrant under his hand authorise any officer, and any person accompanying an officer, to enter and search the building or place named in the warrant.

(2) An officer or other person so authorised has power—

(a) to enter the building or place at any time, whether by day or night, on any day, and search for, seize, and detain or remove any such thing, and

(b) so far as is necessary for the purpose of such entry, search, seizure, detention or removal, to break open any door, window or container and force and remove any other impediment or obstruction.

(3) Where there are reasonable grounds to suspect that any still, vessel, utensil, spirits or materials for the manufacture of spirits is or are unlawfully kept or deposited in any building or place, subsections (1) and (2) above apply in relation to any constable as they would apply in relation to an officer.

(4) The powers conferred by a warrant under this section are exercisable until the end of the period of one month beginning with the day on which the warrant is issued.

(5) A person other than a constable shall not exercise the power of entry conferred by this section by night unless accompanied by a constable.".

Power to search articles.
1979 c. 2.

26. In Part XII of the Customs and Excise Management Act 1979 (general supplementary provisions), after section 163 (power to search vehicles or vessels) insert—

"Power to search articles.

163A.—(1) Without prejudice to any other power conferred by the Customs and Excise Acts 1979, where there are reasonable grounds to suspect that a person in the United Kingdom (referred to in this section as "the suspect") has with him, or at the place where he is, any goods to which this section applies, an officer may—

(a) require the suspect to permit a search of any article that he has with him or at that place, and

(b) if the suspect is not under arrest, detain him (and any such article) for so long as may be necessary to carry out the search.

(2) The goods to which this section applies are dutiable alcoholic liquor, or tobacco products, which are—

(a) chargeable with any duty of excise, and

(b) liable to forfeiture under the customs and excise Acts.

(3) Notwithstanding anything in subsection (4) of section 24 of the Criminal Law (Consolidation) (Scotland) Act 1995 (detention and questioning by customs officers), detention of the suspect under subsection (1) above shall not prevent his subsequent detention under subsection (1) of that section.". 1995 c. 39.

Security for customs and excise duties. 1979 c. 2.

27.—(1) Section 157 of the Customs and Excise Management Act 1979 (bonds and security) is amended as follows.

(2) In subsection (1) (power to require security), for "by bond" substitute "(or further security) by bond, guarantee".

(3) After that subsection insert—

"(1A) For the purposes of this section "condition in connection with excise" includes a condition in connection with excise duty charged, under the law of a member State other than the United Kingdom, on—

(a) manufactured tobacco,

(b) alcohol or alcoholic beverages, or

(c) mineral oils.

The expressions used in paragraphs (a) to (c) above have the same meaning as in Council Directive 92/12/EEC.".

(4) In subsection (2) (bonds for the purposes of assigned matters), after "Any bond" insert ", guarantee or other security".

(5) In paragraph (a) of that subsection (bonds to be taken on behalf of Her Majesty), for "on behalf of Her Majesty" substitute "either on behalf of Her Majesty or on behalf of Her Majesty and the tax authorities of each member State other than the United Kingdom".

(6) At the end of that subsection add—

"In this subsection "assigned matter" includes any excise duty charged as mentioned in subsection (1A) above.".

Civil penalties for breach of excise duty requirements. 1994 c. 9.

28. In section 9(2)(a) of the Finance Act 1994 (how to calculate the penalty in cases where provision is made by any enactment for conduct to attract a penalty calculated by reference to an amount of excise duty), for "or any other enactment" substitute ", or by or under any other enactment,".

Correction of reference. 1999 c. 16.

29. In section 127 of the Finance Act 1999 (interest on repayments of customs duty), in subsection (1)(b) for "Council Regulation 2454/93" substitute "Commission Regulation 2454/93".

This amendment shall be deemed always to have had effect.

PART II

CLIMATE CHANGE LEVY

Climate change levy.

30.—(1) Schedule 6 to this Act (which makes provision for a new tax that is to be known as climate change levy) shall have effect.

(2) Schedule 7 to this Act (climate change levy: consequential amendments) shall have effect.

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(3) Part V of Schedule 6 to this Act (registration for the purposes of climate change levy) shall not come into force until such date as the Treasury may appoint by order made by statutory instrument; and different days may be appointed under this subsection for different purposes.

PART III

INCOME TAX, CORPORATION TAX AND CAPITAL GAINS TAX

CHAPTER I

CHARGE AND RATES

Income tax

Charge and rates for 2000-01.

31. Income tax shall be charged for the year 2000-01, and for that year—

(a) the starting rate shall be 10%,

(b) the basic rate shall be 22%, and

(c) the higher rate shall be 40%.

Extension of starting rate to savings income of individuals.

32.—(1) Section 1A of the Taxes Act 1988 (application of lower rate or Schedule F ordinary rate to income from savings and distributions) is amended as follows.

(2) In subsection (1)(b) (income of individuals to which those rates do not apply), after the words "is not" insert "—

(i) savings income falling within section 1(2)(aa), or

(ii)".

(3) After subsection (1) insert—

"(1AA) In subsection (1)(b)(i) above 'savings income' means income to which this section applies other than—

(a) income chargeable under Schedule F, or

(b) equivalent foreign income falling within subsection (3)(b) below and chargeable under Case V of Schedule D.".

(4) This section has effect for the year 2000-01 and subsequent years and shall be deemed to have had effect for the year 1999-00.

Deduction of income tax from foreign dividends.

33.—(1) In section 4 of the Taxes Act 1988 (construction of references in Income Tax Acts to deduction of tax), after subsection (1A) (which provides for deduction at lower rate from savings and distributions) insert—

"(1B) To the extent that section 118E (paying and collecting agents: deduction of tax) applies in relation to foreign dividend income—

(a) subsections (1) and (1A) above shall not apply, and

(b) any provision of that section of the kind mentioned in subsection (1) above shall be construed as referring to deduction or payment of income tax at the Schedule F ordinary rate in force for the relevant year of assessment.

For this purpose "foreign dividend income" means any such dividend or other distribution of a company not resident in the United Kingdom as would be chargeable under Schedule F if the company were resident in the United Kingdom.".

(2) This section has effect for the year 2000-01 and shall be deemed to have had effect for the year 1999-00.

Children's tax credit.

34.—(1) In section 257AA(2) of the Taxes Act 1988 (which specifies the amount by reference to which the children's tax credit is calculated) for "£4,160" substitute "£4,420".

(2) This section has effect for the year 2001-02 and subsequent years of assessment.

Corporation tax

Charge and main rate for financial year 2001.

35. Corporation tax shall be charged for the financial year 2001 at the rate of 30%.

Small companies' rate for financial year 2000.

36. For the financial year 2000—

(a) the small companies' rate shall be 20%, and

(b) the fraction mentioned in section 13(2) of the Taxes Act 1988 (marginal relief for small companies) shall be one fortieth.

Capital gains tax

Application of starting rate to capital gains tax.
1992 c. 12.

37.—(1) In section 4 of the Taxation of Chargeable Gains Act 1992 (rates of capital gains tax), after subsection (1AA) insert—

"(1AB) If (after allowing for any deductions in accordance with the Income Tax Acts) an individual has no income for a year of assessment or his total income for the year is less than the starting rate limit, then—

(a) if the amount on which he is chargeable to capital gains tax does not exceed the unused part of his starting rate band, the rate of capital gains tax in respect of gains accruing to him in the year shall be equivalent to the starting rate;

(b) if the amount on which he is chargeable to capital gains tax exceeds the unused part of his starting rate band, the rate of capital gains tax in respect of such gains accruing to him in the year as correspond to the unused part shall be equivalent to the starting rate.

(1AC) The references in subsection (1AB) above to the unused part of an individual's starting rate band are to the amount by which the starting rate limit exceeds his total income (as reduced by any deductions made in accordance with the Income Tax Acts).".

(2) This section has effect for the year 2000-01 and subsequent years of assessment.

CHAPTER II

OTHER PROVISIONS

Giving to charity

Payroll deduction scheme.

38.—(1) Where in accordance with a scheme approved under section 202 of the Taxes Act 1988 (donations to charity: payroll deduction scheme) an agent is to pay to a charity any sum which—

(a) is withheld by an employer from a payment which an employee is entitled to receive; and

(b) is paid by the employer to the agent,

the agent shall, within a period prescribed by regulations made by the Treasury, pay a supplement equal to 10% of that sum to the charity.

(2) On a claim made by an agent in such form as the Board may prescribe, the Board shall pay to the agent out of money provided by Parliament—

(a) such amounts as are required—

(i) to fund the payment of supplements falling to be paid by him; or

(ii) to reimburse him for supplements paid by him the payment of which has not been so funded; and

(b) in the case of an agent which is a charity, an amount which is equal to 10% of the aggregate of sums which—

(i) are withheld and paid as mentioned in paragraphs (a) and (b) of subsection (1) above; and

(ii) are sums to which the agent is itself entitled in its capacity as a charity.

(3) The Treasury may by regulations make provision—

(a) requiring agents to notify the Board of any failures of theirs to comply with subsection (1) above, and of the reasons for those failures;

(b) requiring agents to keep records of supplements paid by them under that subsection; and

(c) for the assessment and recovery under the Taxes Acts of amounts paid to agents under subsection (2) above which ought not to have been so paid.

The regulations may contain such supplementary and incidental provision as appears to the Treasury necessary or expedient.

(4) In this section—

"agent" means any such person or charity as is mentioned in subsection (4) of section 202 of the Taxes Act 1988;

"employee" and "employer" shall be construed in accordance with subsection (1) of that section;

"charity" has the same meaning as in section 506 of that Act and includes each of the bodies mentioned in section 507 of that Act;

1970 c. 9.

"the Taxes Acts" has the same meaning as in the Taxes Management Act 1970.

(5) In section 202 of the Taxes Act 1988—

(a) in subsection (6), the words "must not be paid by the employee under a covenant" shall cease to have effect;

(b) subsection (7) shall cease to have effect; and

(c) in subsection (11), in the definition of "charity", after "section 506" there shall be inserted "and includes each of the bodies mentioned in section 507".

(6) Subsections (1) to (4) above shall have effect in relation to supplements or other amounts payable in respect of sums withheld on or after 6th April 2000 and before 6th April 2003; and no claim under subsection (2) above shall be entertained if made on or after 6th April 2004.

(7) Subsection (5) above shall have effect in relation to sums withheld on or after 6th April 2000.

Gift aid payments by individuals. 1990 c. 29.

39.—(1) Section 25 of the Finance Act 1990 (donations to charity by individuals) shall be amended in accordance with subsections (2) to (7) below.

(2) In subsection (1)(c), for "an appropriate certificate" there shall be substituted "an appropriate declaration".

(3) In subsection (2)—

(a) paragraphs (c) and (g) shall cease to have effect;

(b) in paragraph (e), for "two and a half per cent of the amount of the gift" there shall be substituted "the limit imposed by subsection (5A) below"; and

(c) for paragraph (i) there shall be substituted—

"(i) either—

(i) at the time the gift is made, the donor is resident in the United Kingdom or performs duties which by virtue of section 132(4)(a) of the Taxes Act 1988 (Crown employees serving overseas) are treated as being performed in the United Kingdom; or

(ii) the grossed up amount of the gift would, if in fact made, be payable out of profits or gains brought into charge to income tax or capital gains tax.".

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

"(3) The reference in subsection (1)(c) above to an appropriate declaration is a reference to a declaration which—

(a) is given in such manner as may be prescribed by regulations made by the Board; and

(b) contains such information and such statements as may be so prescribed.

(3A) Regulations made for the purposes of subsection (3) above may—

(a) provide for declarations to have effect, to cease to have effect or to be deemed never to have had effect in such circumstances and for such purposes as may be prescribed by the regulations;

(b) require charities to keep records with respect to declarations given to them by donors; and

(c) make different provision for declarations made in a different manner.".

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

"(5A) The limit imposed by this subsection is—

(a) where the amount of the gift does not exceed £100, 25 per cent of the amount of the gift;

(b) where the amount of the gift exceeds £100 but does not exceed £1,000, £25;

(c) where the amount of the gift exceeds £1,000, 2.5 per cent of the amount of the gift.

(5B) Where a benefit received in consequence of making a gift—

(a) consists of the right to receive benefits at intervals over a period of less than twelve months;

(b) relates to a period of less than twelve months; or

(c) is one of a series of benefits received at intervals in consequence of making a series of gifts at intervals of less than twelve months,

the value of the benefit shall be adjusted for the purposes of subsection (4) above and the amount of the gift shall be adjusted for the purposes of subsection (5A) above.

(5C) Where a benefit, other than a benefit which is one of a series of benefits received at intervals, is received in consequence of making a gift which is one of a series of gifts made at intervals of less than twelve months, the amount of the gift shall be adjusted for the purposes of subsection (5A) above.

(5D) Where the value of a benefit, or the amount of a gift, falls to be adjusted under subsection (5B) or (5C) above, the value or amount shall be multiplied by 365 and the result shall be divided by—

(a) in a case falling within subsection (5B)(a) or (b) above, the number of days in the period of less than twelve months;

(b) in a case falling within subsection (5B)(c) or (5C) above, the average number of days in the intervals of less than twelve months;

and the reference in subsection (5B) above to subsection (4) above is a reference to that subsection as it applies for the purposes of subsection (2)(e) above.

(5E) In determining whether a gift to a charity falling within subsection (5F) below is a qualifying donation, there shall be disregarded the benefit of any right of admission received in consequence of the making of the gift—

(a) to view property the preservation of which is the sole or main purpose of the charity; or

(b) to observe wildlife the conservation of which is the sole or main purpose of the charity;

but this subsection shall not apply unless the opportunity to make gifts which attract such a right is available to members of the public.

(5F) A charity falls within this subsection if its sole or main purpose is the preservation of property, or the conservation of wildlife, for the public benefit.

(5G) In subsection (5E) above "right of admission" refers to admission of the person making the gift (or any member of his family who may be admitted because of the gift) either free of the charges normally payable for admission by members of the public, or on payment of a reduced charge.".

(6) For subsections (6) to (9) there shall be substituted—

"(6) Where any gift made by the donor in a year of assessment is a qualifying donation, then, for that year—

(a) the Income Tax Acts and the Taxation of Chargeable Gains Act 1992 shall have effect, in their application to him, as if— 1992 c. 12.

(i) the gift had been made after deduction of income tax at the basic rate; and

(ii) the basic rate limit were increased by an amount equal to the grossed up amount of the gift;

(b) the provisions mentioned in subsection (7) below shall have effect, in their application to him, as if any reference to income tax which he is entitled to charge against any person included a reference to the tax treated as deducted from the gift; and

(c) to the extent, if any, necessary to ensure that he is charged to an amount of income tax and capital gains tax equal to the tax treated as deducted from the gift, he shall not be entitled to relief under Chapter I of Part VII of the Taxes Act 1988;

but paragraph (a)(ii) above shall not apply for the purposes of any computation under section 550(2)(a) or (b) of that Act (relief where gain charged at a higher rate).

(7) The provisions referred to in subsection (6)(b) above are—

(a) section 289A(5)(e) of the Taxes Act 1988 (relief under enterprise investment scheme);

(b) section 796(3) of that Act (credit for foreign tax); and

(c) paragraph 1(6)(f) of Schedule 15B to that Act (venture capital trusts).

(8) Where the tax treated as deducted from a gift by virtue of subsection (6) above exceeds the amount of income tax and capital gains tax with which the donor is charged for the year of assessment, the donor shall be assessable and chargeable with income tax at the basic rate on so much of the gift as is necessary to recover an amount of tax equal to the excess.

(9) In determining for the purposes of subsection (8) above the total amount of income tax and capital gains tax with which the donor is charged for the year of assessment, there shall be disregarded—

(a) any tax charged at the basic rate by virtue of—

(i) section 348 of the Taxes Act 1988 (read with section 3 of that Act); or

(ii) section 349 of that Act (read with section 350 of that Act);

(b) any tax treated as having been paid under—

(i) section 233(1)(a) of that Act (taxation of certain recipients of distributions);

(ii) section 249(4)(a) of that Act (stock dividends treated as income); or

(iii) section 547(5)(a) of that Act (method of charging life policy gain to tax);

(c) any relief to which section 256(2) of that Act applies (relief by way of income tax reduction);

(d) any relief under—

(i) section 347B of that Act (relief for maintenance payments);

(ii) section 788 of that Act (relief by agreement with other countries); or

(iii) section 790(1) of that Act (unilateral relief);

(e) any set off of tax deducted, or treated as deducted, from income other than—

(i) tax treated as deducted from income by virtue of section 421(1)(a) of that Act (taxation of borrower when loan released etc); or

(ii) tax treated as deducted from a relevant amount within the meaning of section 699A of that Act (untaxed sums comprised in the income of an estate) except to the extent that the relevant amount is or would be paid in respect of a distribution chargeable under Schedule F; and

(f) any set off of tax credits.

(9A) For the purposes of sections 257(5) and 257A(5) of the Taxes Act 1988 (age related allowances), the donor's total income shall be treated as reduced by the aggregate amount of gifts from which tax is treated as deducted by virtue of subsection (6) above.".

(7) In subsection (12), paragraphs (b) and (e) and the word "and" immediately preceding paragraph (e) shall cease to have effect.

(8) In subsections (1)(b) and (3)(b) of section 257BB of the Taxes Act 1988 (transfer of relief under section 257A where relief exceeds income), after "section 256(2)(b)" there shall be inserted "(read with section 25(6)(c) of the Finance Act 1990 where applicable)".

1990 c. 29.

(9) In paragraph 4(1)(b) of Schedule 13B to that Act (children's tax credit), after "section 256(2)(b)" there shall be inserted "(read with section 25(6)(c) of the Finance Act 1990 where applicable)".

(10) This section has effect in relation to—

(a) gifts made on or after 6th April 2000 which are not covenanted payments; and

(b) covenanted payments falling to be made on or after that date;

and any regulations made under subsection (3) of section 25 of the Finance Act 1990 (as substituted by subsection (4) above) within three months of the passing of this Act may be so made as to apply to any payments in relation to which this section has effect. 1990 c. 29.

Gift aid payments by companies.

40.—(1) Section 339 of the Taxes Act 1988 (charges on income: donations to charity) shall be amended in accordance with subsections (2) to (8) below.

(2) In subsection (1), for paragraph (a) there shall be substituted—

"(a) a payment which, by reason of any provision of the Taxes Acts (within the meaning of the Management Act) except section 209(4), is to be regarded as a distribution; and".

(3) Subsections (2), (3), (3A), (3F), (6), (7) and (8) shall cease to have effect.

(4) In subsection (3B)(b), for "two and a half per cent. of the amount given after deducting tax under section 339(3)" there shall be substituted "the limit imposed by subsection (3DA) below".

(5) After subsection (3D) there shall be inserted—

"(3DA) The limit imposed by this subsection is—

(a) where the amount of the payment does not exceed £100, 25 per cent of the amount of the payment;

(b) where the amount of the payment exceeds £100 but does not exceed £1,000, £25;

(c) where the amount of the payment exceeds £1,000, 2.5 per cent of the amount of the payment.

(3DB) Where a benefit received in consequence of making a payment—

(a) consists of the right to receive benefits at intervals over a period of less than twelve months;

(b) relates to a period of less than twelve months; or

(c) is one of a series of benefits received at intervals in consequence of making a series of payments at intervals of less than twelve months,

the value of the benefit shall be adjusted for the purposes of subsection (3C) above and the amount of the payment shall be adjusted for the purposes of subsection (3DA) above.

(3DC) Where a benefit, other than a benefit which is one of a series of benefits received at intervals, is received in consequence of making a payment which is one of a series of payments made at intervals of less than twelve months, the amount of the payment shall be adjusted for the purposes of subsection (3DA) above.

(3DD) Where the value of a benefit, or the amount of a payment, falls to be adjusted under subsection (3DB) or (3DC) above, the value or amount shall be multiplied by 365 and the result shall be divided by—

(a) in a case falling within subsection (3DB)(a) or (b) above, the number of days in the period of less than twelve months;

(b) in a case falling within subsection (3DB)(c) or (3DC) above, the average number of days in the intervals of less than twelve months;

and the reference in subsection (3DB) to subsection (3C) above is a reference to that subsection as it applies for the purposes of subsection (3B) above.".

(6) For subsection (4) there shall be substituted—

"(4) Where a company gives a sum of money to a charity, the gift shall in the hands of the charity be treated for the purposes of this Act as if it were an annual payment.".

(7) For subsection (7AA) there shall be substituted—

"(7AA) Where—

(a) a qualifying donation to a charity is made by a company which is wholly owned by a charity, and

(b) the company makes a claim for the donation, or any part of it, to be deemed for the purposes of section 338 to be a charge on income paid in an accounting period falling wholly or partly within the period of nine months ending with the date of the making of the donation,

the donation or part shall be deemed for those purposes to be a charge on income paid in that accounting period, and not in any later period.

A claim under this subsection must be made within the period of two years immediately following the accounting period in which the donation is made, or such longer period as the Board may allow.".

(8) In subsection (9), the words "in subsections (1) to (4) above includes" shall cease to have effect.

(9) In subsection (1) of section 209 of the Taxes Act 1988 (meaning of "distribution"), for "section 339(6) and any other express exceptions" there shall be substituted "any express exceptions".

(10) In subsection (2)(a) of section 338 of that Act (allowance of charges on income and capital), after "company" there shall be inserted "or payments falling within paragraph (b) below".

(11) This section has effect in relation to payments made on or after 1st April 2000; and—

(a) so much of an accounting period as falls before that date; and

(b) so much of it as falls after 31st March 2000,

shall be treated as separate accounting periods for the purposes of the amendment made by subsection (5) above.

Covenanted payments to charities.

41.—(1) In subsection (5)(b) of section 338 of the Taxes Act 1988 (allowances of charges on income and capital), for "a covenanted donation to charity" there shall be substituted "a qualifying donation".

(2) In section 347A of that Act (annual payments and interest: general rule), subsections (2)(b), (7) and (8) shall cease to have effect.

(3) In subsection (3) of section 348 of that Act (payments out of profits or gains brought into charge to income tax: deductions of tax), at the end there shall be inserted "or to any payment which is a qualifying donation for the purposes of section 25 of the Finance Act 1990".

1990 c. 29.

(4) In subsection (1) of section 349 of that Act (payments not out of profits or gains brought into charge to income tax, and annual interest), at the end there shall be inserted "or to any payment which is a qualifying donation (within the meaning of section 339) or a qualifying donation for the purposes of section 25 of the Finance Act 1990".

(5) In subsection (6) of section 505 of that Act (charities: general), the words "and, for this purpose, all covenanted payments to charity (within the meaning of section 347A(7)) shall be treated as a single item" shall cease to have effect.

(6) In subsection (9) of section 660A of that Act (income arising under a settlement where settlor retains an interest), for paragraph (b) there shall be substituted—

"(b) qualifying donations for the purposes of section 25 of the Finance Act 1990.".

1989 c. 26.

(7) Section 59 of the Finance Act 1989 (covenanted subscriptions) shall cease to have effect.

(8) Where a deed of covenant executed by an individual before 6th April 2000 provides for the payment of specified amounts, any amount payable under the deed on or after that date shall be determined as if the individual were entitled to deduct tax from that amount at the basic rate.

(9) This section shall have effect in relation to covenanted payments—

(a) falling to be made by individuals on or after 6th April 2000; or

(b) made by companies on or after 1st April 2000.

Millennium gift aid.

1998 c. 36.

42.—(1) In section 48 of the Finance Act 1998 (gifts of money for relief in poor countries), subsections (3), (6) and (7) shall cease to have effect.

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

(a) in paragraph (a), after "made" there shall be inserted "before 6th April 2000";

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

"(bb) the subsequent gift, or at least one of the subsequent gifts, is made on or after 6th April 2000;"; and

(c) in paragraph (c), for "appropriate certificate" there shall be substituted "appropriate declaration".

(3) In subsection (8) of that section, for the definition of "relevant gift" there shall be substituted—

"'relevant gift' means a gift to which this section applies—

1990 c. 29.

(a) which satisfies the requirements of subsection (2) of section 25 of the Finance Act 1990 (as amended by section 39 of the Finance Act 2000); or

(b) which would satisfy those requirements if paragraph (e) of that subsection were disregarded.".

Gifts of shares and securities to charities etc.

43.—(1) After section 587A of the Taxes Act 1988 there shall be inserted—

"Gifts of shares and securities to charities etc.

587B.—(1) Subsections (2) and (3) below apply where, otherwise than by way of a bargain made at arm's length, an individual, or a company which is not itself a charity, disposes of the whole of the beneficial interest in a qualifying investment to a charity.

(2) On a claim made in that behalf to an officer of the Board—

(a) the relevant amount shall be allowed—

(i) in the case of a disposal by an individual, as a deduction in calculating his total income for the purposes of income tax for the year of assessment in which the disposal is made;

(ii) in the case of a disposal by a company, as a charge on income for the purposes of corporation tax for the accounting period in which the disposal is made; and

(b) no relief in respect of the disposal shall be given under section 83A or any other provision of the Income Tax Acts;

but paragraph (a)(i) above shall not apply for the purposes of any computation under section 550(2)(a) or (b).

(3) The consideration for which the charity's acquisition of the qualifying investment is treated by virtue of section 257(2) of the 1992 Act as having been made—

(a) shall be reduced by the relevant amount; or

(b) where that consideration is less than that amount, shall be reduced to nil.

(4) Subject to subsections (5) to (7) below, the relevant amount is an amount equal to—

(a) where the disposal is a gift, the market value of the qualifying investment at the time when the disposal is made;

(b) where the disposal is at an undervalue, the difference between that market value and the amount or value of the consideration for the disposal.

(5) Where there are one or more benefits received in consequence of making the disposal which are received by the person making the disposal or a person connected

with him, the relevant amount shall be reduced by the value of that benefit or, as the case may be, the aggregate value of those benefits; and section 839 applies for the purposes of this subsection.

(6) Where the disposal is a gift, the relevant amount shall be increased by the amount of the incidental costs of making the disposal to the person making it.

(7) Where the disposal is at an undervalue—

(a) to the extent that the consideration for the disposal is less than that for which the disposal is treated as made by virtue of section 257(2)(a) of the 1992 Act, the relevant amount shall be increased by the amount of the incidental costs of making the disposal to the person making it; and

(b) section 48 of that Act (consideration due after time of disposal) shall apply in relation to the computation of the relevant amount as it applies in relation to the computation of a gain.

(8) In the case of a disposal by a company which is carrying on life assurance business—

(a) if the company is charged to tax under Case I of Schedule D in respect of such business, subsections (2) and (3) above shall not apply;

(b) if the company is not so charged to tax in respect of such business—

(i) subsection (2)(a)(ii) above shall have effect as if for 'a charge on income' there were substituted 'an expense of management'; and

(ii) the relevant amount given by subsection (4) above shall be reduced by so much (if any) of that amount as is not referable to basic life assurance and general annuity business;

and for the purpose of determining how much (if any) of that amount is not so referable, section 432A shall have effect as if that amount were a gain accruing on the disposal of the qualifying investment to the company.

(9) In this section—

'authorised unit trust' and 'open-ended investment company' have the meanings given by section 468;

'charity' has the same meaning as in section 506 and includes each of the bodies mentioned in section 507(1);

'the incidental costs of making the disposal to the person making it' shall be construed in accordance with section 38(2) of the 1992 Act;

'life assurance business' and related expressions have the same meaning as in Chapter I of Part XII;

1986 c. 60.

'offshore fund' means a collective investment scheme (within the meaning of the Financial Services Act 1986) which is constituted by any company, unit trust scheme or other arrangement falling within paragraph (a), (b) or (c) of section 759(1);

'qualifying investment' means any of the following—

(a) shares or securities which are listed or dealt in on a recognised stock exchange;

(b) units in an authorised unit trust;

(c) shares in an open-ended investment company; and

(d) an interest in an offshore fund.

(10) Subject to subsection (11) below, the market value of any qualifying investment shall be determined for the purposes of this section as for the purposes of the 1992 Act.

(11) In the case of an interest in an offshore fund for which there are separate published buying and selling prices, section 272(5) of the 1992 Act (meaning of 'market value' in relation to rights of unit holders in a unit trust scheme) shall apply with any necessary modifications for determining the market value of the interest for the purposes of this section.".

(2) In subsection (2) of section 338 of that Act (allowances of charges on income and capital), immediately before paragraph (a) there shall be inserted—

"(za) amounts allowed as charges on income under section 587B(2)(a)(ii);".

(3) This section has effect in relation to—

(a) disposals made by individuals on or after 6th April 2000; and

(b) disposals made by companies on or after 1st April 2000.

Gifts to charity from certain trusts.

44.—(1) Chapter IA of Part XV of the Taxes Act 1988 (liability of settlors) shall not apply to any qualifying income which arises under a trust the trustees of which are resident in the United Kingdom (a "UK trust") if—

(a) it is given by the trustees to a charity in the year of assessment in which it arises; or

(b) it is income to which a charity is entitled under the terms of the trust.

(2) Subject to subsection (3) below, where in any year of assessment qualifying income arising under a UK trust from different sources exceeds the amount of that income falling within subsection (1) above, that amount shall be rateably apportioned between those sources.

(3) Nothing in subsection (2) above shall affect the operation of any requirement that the whole, or any specified part, of the income from a particular source be given to a charity.

(4) Where in any year of assessment qualifying income arising under a UK trust exceeds the amount of that income falling within subsection (1) above, any management expenses for that year shall be rateably apportioned between—

(a) so much of that income as is equal to that amount; and

(b) so much of that income as exceeds that amount.

(5) In this section—

"charity" has the same meaning as in section 506 of the Taxes Act 1988 and includes each of the bodies mentioned in section 507 of that Act;

"qualifying income" means—

(i) income which is to be accumulated;

(ii) income which is payable at the discretion of the trustees or any other person (whether or not the trustees have power to accumulate it); or

(iii) income which (before being distributed) is income of any person other than the trustees;

"resident", in relation to the trustees of a trust, shall be construed in accordance with section 110 of the Finance Act 1989; 1989 c. 26.

and the reference to Chapter IA of Part XV of the Taxes Act 1988 includes a reference to that Chapter as it has effect by virtue of section 660E of that Act (application to settlements by two or more settlors).

(6) This section has effect in relation to qualifying income arising to a UK trust on or after 6th April 2000.

Loans to charities.

45.—(1) In Chapter IA of Part XV of the Taxes Act 1988 "settlement" does not include any arrangement so far as it consists of a loan of money made by an individual to a charity either—

(a) for no consideration; or

(b) for a consideration which consists only of interest.

(2) In this section "charity" has the same meaning as in section 44 above.

(3) This section has effect in relation to income arising on or after 6th April 2000 on loans made before, as well as loans made on or after, that date.

Exemption for small trades etc.

46.—(1) Subject to subsection (2) below, exemption from tax under Case I or VI of Schedule D shall be granted, on a claim made in that behalf to the Board, in respect of any income of a charity if the requirements of subsection (3) below are satisfied with respect to the income.

(2) Exemption shall not be granted under subsection (1) above in respect of income which is chargeable to tax under Case VI of Schedule D by virtue of any of the following—

(a) section 30 of the Taxes Management Act 1970; 1970 c. 9.

(b) sections 214, 412, 547(1)(b) and (6), 553(6), 660C, 677, 703, 776, 788, 790 and 804 of the Taxes Act 1988;

(c) paragraph 14 of Schedule 4 to the Finance (No. 2) Act 1997; 1997 c. 58.

1998 c. 36.

(d) paragraph 52(4) of Schedule 18, and paragraph 13(7) of Schedule 19, to the Finance Act 1998; and

(e) any other enactment specified in an order made by the Treasury.

(3) The requirements of this subsection are satisfied with respect to any income for a chargeable period if it is applied solely for the purposes of the charity and either—

(a) the charity's gross income for the chargeable period does not exceed the requisite limit; or

(b) the charity had, at the beginning of the period, a reasonable expectation that its gross income for the period would not exceed that limit.

(4) Subject to subsection (5) below, the requisite limit is whichever is the greater of—

(a) £5,000; and

(b) whichever is the lesser of £50,000 and 25% of all of the charity's incoming resources for the chargeable period.

(5) For a chargeable period of less than twelve months, the amounts of £5,000 and £50,000 specified in subsection (4) above shall be proportionally reduced.

(6) In this section—

"charity" means any body of persons or trust established for charitable purposes only;

"gross income", in relation to a charity, means income before deduction of any expenses;

"income", in relation to a charity, means any profits or gains or other income which is chargeable to tax under Case I or VI of Schedule D and which is not, apart this section, exempted from tax under that Case.

(7) This section applies for the year 2000-01 and subsequent years of assessment or, in the case of charities which are companies, for accounting periods beginning on or after 1st April 2000.

Employee share ownership

Employee share ownership plans.

47. Schedule 8 to this Act (employee share ownership plans) shall have effect.

Relief for transfers to employee share ownership plans.

1992 c. 12.

48.—(1) In the Taxation of Chargeable Gains Act 1992, after section 236 insert—

"Employee share ownership plans

Relief for transfers to employee share ownership plans

236A. Schedule 7C (which makes provision for roll-over relief where shares are transferred to an approved employee share ownership plan) shall have effect.".

(2) After Schedule 7B to that Act insert the Schedule 7C set out in Schedule 9 to this Act.

Phasing out of approved profit sharing schemes.

49.—(1) The Board shall not approve a profit sharing scheme under Schedule 9 to the Taxes Act 1988 (approval of share option schemes and profit sharing schemes) unless the application for approval is received by the Board before 6th April 2001.

(2) For the purposes of subsection (1) an application for approval which is not accompanied by the particulars and evidence referred to in paragraph 1(2) of that Schedule is not regarded as received by the Board until the required particulars and evidence have been received by them.

(3) In section 186 of that Act (approved profit sharing schemes), in subsection (1) (under which the section applies to appropriations of shares made after 5th April 1979) after "5th April 1979" insert "and before 1st January 2003".

Phasing out of relief for payments to trustees of profit sharing schemes.

50.—(1) This section has effect to phase out deductions under section 85 of the Taxes Act 1988 (corporation tax relief for payments to trustees of approved profit sharing schemes).

(2) In the case of sums paid to the trustees on or after 21st March 2000 and before 6th April 2002 no deduction may be made by virtue of subsection (2)(a) of that section (sums applied in acquiring shares for appropriation) unless the trustees appropriate the shares acquired, by the application of the sum, as mentioned in that provision—

(a) before the end of the period of nine months beginning on the day following the end of the period of account in which payment to the trustees was made, and

(b) before 1st January 2003.

(3) No deduction may be made by virtue of subsection (2)(a) of that section in respect of any sum paid to the trustees on or after 6th April 2002.

(4) No deduction may be made by virtue of subsection (2)(b) of that section (sums to meet expenses of trustees in administering the scheme) in respect of any sum paid to the trustees more than three years after the date of the last appropriation of shares to individuals which was made—

(a) in accordance with the approved profit sharing scheme, and

(b) before 1st January 2003.

(5) For the purposes of this section references to a deduction under section 85 are to a deduction under subsection (1)(a) or by virtue of subsection (1)(b) of that section.

Approved profit sharing scheme: other awards of shares.

51.—(1) In Schedule 9 to the Taxes Act 1988 (approved share option schemes and profit sharing schemes), in paragraph 3(2) (grounds for withdrawing approval of profit sharing schemes), after "below" in paragraph (e) insert—

"; or

(f) the trustees appropriate shares to participants, one or more of whom have had free shares appropriated to them, at an earlier time in the same year of assessment, under a relevant share plan".

(2) After paragraph 3(3) of that Schedule insert—

"(4) For the purposes of sub-paragraph (2)(f) above the reference to persons having had free shares appropriated to them includes

persons who would have had free shares appropriated to them but for their failure to obtain a performance allowance (within the meaning of paragraph 25 of Schedule 8 to the Finance Act 2000).

(5) In sub-paragraph (2)(f) and (4) above—

'free shares' has the same meaning as in Schedule 8 to the Finance Act 2000;

'relevant share plan', in relation to a profit sharing scheme, means an employee share ownership plan that—

(a) was established by the grantor or a connected company, and

(b) is approved under Schedule 8 to that Act.

(6) For the purposes of sub-paragraph (5) above 'connected company' means—

(a) a company which controls or is controlled by the grantor or which is controlled by a company which also controls the grantor, or

(b) a company which is a member of a consortium owning the grantor or which is owned in part by the grantor as a member of a consortium.".

Approved profit sharing schemes: restriction on type of shares.

52.—(1) Schedule 9 to the Taxes Act 1988 (share option schemes and profit sharing schemes) is amended in accordance with subsections (2) to (4).

(2) In paragraph 9(1) (requirements to be satisfied by shares in share option schemes), after "below" insert "(disregarding paragraph 11A)".

(3) After paragraph 11 (requirements as to listing etc.) insert—

"11A.—(1) In the case of a profit sharing scheme, scheme shares must not be shares—

(a) in an employer company, or

(b) in a company that—

(i) has control of an employer company, and

(ii) is under the control of a person or persons within sub-paragraph (2)(b)(i) below in relation to an employer company.

(2) For the purposes of this paragraph a company is "an employer company" if—

(a) the business carried on by it consists substantially in the provision of the services of the persons employed by it, and

(b) the majority of those services are provided to—

(i) a person who has, or two or more persons who together have, control of the company, or

(ii) a company associated with the company.

(3) For the purposes of sub-paragraph (2)(b)(ii) above a company shall be treated as associated with another company if both companies are under the control of the same person or persons.

(4) For the purposes of sub-paragraphs (1) to (3) above—

(a) references to a person include a partnership, and

(b) where a partner, alone or together with others, has control of a company, the partnership shall be treated as having like control of that company.

(5) For the purposes of this paragraph the question whether a person controls a company shall be determined in accordance with section 416(2) to (6).".

(4) In paragraph 12—

(a) in sub-paragraph (1), in paragraph (c) for "other than" to the end of that paragraph there shall be substituted "other than those permitted by sub-paragraph (1A) below.", and

(b) after sub-paragraph (1) insert—

"(1A) Subject to sub-paragraph (1B) below, scheme shares may be subject to—

(a) restrictions which attach to all shares of the same class, or

(b) a restriction authorised by sub-paragraph (2) below.

(1B) In the case of a profit sharing scheme, scheme shares must not be subject to any restrictions affecting the rights attaching to those shares which relate to—

(a) dividends, or

(b) assets on a winding-up of the company,

other than restrictions which attach to all other ordinary shares in the same company.".

(5) Subsections (1) to (4) shall be deemed to have come into force on 21st March 2000.

(6) Subsections (3) and (4) do not have effect in relation to shares acquired before 21st March 2000 by the trustees of a profit sharing scheme approved under Schedule 9 to the Taxes Act 1988.

Approved profit sharing schemes: loan arrangements.

53.—(1) In paragraph 2 of Schedule 9 to the Taxes Act 1988 (conditions for approval of share option schemes and profit sharing schemes), after sub-paragraph (2) insert—

"(2A) The Board shall not approve a profit sharing scheme unless they are satisfied—

(a) that the arrangements for the scheme do not make any provision, and are not in any way associated with any provision made, for loans to some or all of the employees of—

(i) the company that established the scheme, or

(ii) in the case of a group scheme, any participating company, and

(b) that the operation of the scheme is not in any way associated with such loans.

(2B) For the purposes of sub-paragraph (2A) above 'arrangements' includes any scheme, agreement or understanding, whether or not legally enforceable.".

(2) In paragraph 3(2) of that Schedule (withdrawal of approval of profit sharing schemes), before paragraph (d) insert—

"(ca) the Board—

(i) cease to be satisfied of the matters mentioned in paragraph 2(2A) above, or

(ii) in the case of a scheme approved before 21st March 2000, are not satisfied of those matters; or".

(3) This section shall be deemed to have come into force on 21st March 2000.

Employee share ownership trusts.
1992 c. 12.

54. No claim for relief under section 229(1) or (3) of the Taxation of Chargeable Gains Act 1992 (roll-over relief where disposal made to employee share ownership trust) may be made in relation to a disposal of shares, or an interest in shares, made on or after 6th April 2001.

Shares transferred from employee share ownership trust.
1989 c. 26.

55.—(1) Section 69 of the Finance Act 1989 (chargeable events in relation to employee share ownership trusts) is amended in accordance with subsections (2) to (5).

(2) In subsection (1) (definition of "chargeable event"), after paragraph (d) insert—

"(e) where—

(i) the trustees make a qualifying transfer within subsection (3AA) below for a consideration, and

(ii) they do not, during the period specified in subsection (5A) below, expend a sum of not less than the amount of that consideration for one or more qualifying purposes,

the expiry of that period.".

(3) After subsection (3) insert—

"(3AA) For the purposes of subsection (1)(a) above a transfer is also a qualifying transfer if—

(a) it is a transfer of relevant shares made to the trustees of the plan trust of an employee share ownership plan,

(b) the plan is approved under Schedule 8 to the Finance Act 2000 when the transfer is made, and

(c) the consideration (if any) for which the transfer is made does not exceed the market value of the shares.

(3AB) For the purpose of determining whether a transfer by the trustees is a qualifying transfer within subsection (3AA) above, where on or after 21st March 2000—

(a) the trustees transfer or dispose of part of a holding of shares (whether by way of a qualifying transfer or otherwise), and

(b) the holding includes any relevant shares,

the relevant shares shall be treated as transferred or disposed of before any other shares included in that holding.

For this purpose 'holding' means any number of shares of the same class held by the trustees, growing or diminishing as shares of that class are acquired or disposed of.

(3AC) For the purposes of subsections (3AA) and (3AB) above—

'market value' has the same meaning as in Schedule 8 to the Finance Act 2000; and

'relevant shares' means—

(i) shares that are held by the trustees of the employee share ownership trust at midnight on 20th March 2000, and

(ii) shares purchased by those trustees with original funds after that time.

(3AD) For the purposes of subsection (3AC) above—

(a) "original funds" means any money held by the trustees of the employee share ownership trust in a bank or building society account at midnight on 20th March 2000, and

(b) any payment made by the trustees after that time (whether to acquire shares or otherwise) shall be treated as made out of original funds (and not out of money received after that time) until those funds are exhausted.".

(4) In subsection (5) after "(1)(d)" insert "or (e)".

(5) After that subsection insert—

"(5A) The period referred to in paragraph (e) of subsection (1) above is the period—

(a) beginning with the qualifying transfer mentioned in that paragraph, and

(b) ending nine months after the end of the period of account in which that qualifying transfer took place.

For this purpose the period of account means the period of account of the company that established the employee share ownership trust.".

(6) In section 70 of the Finance Act 1989 (chargeable amounts), after subsection (3) insert— 1989 c. 26.

"(4) If the chargeable event falls within section 69(1)(e) above the chargeable amount is an amount equal to—

(a) the amount of the consideration received for the qualifying transfer mentioned in section 69(1)(e) above, less

(b) the amount of any expenditure by the trustees for a qualifying purpose during the period mentioned in section 69(5A) above.".

Further provisions about share options.

56.—(1) In Chapter IV of Part V of the Taxes Act 1988 (provisions relating to the Schedule E charge: other exemptions and reliefs), after section 187 insert—

"Contributions in respect of share option gains

Relief for contributions in respect of share option gains.

187A.—(1) Where a person ("the earner") is chargeable to tax under section 135 on a gain, relief is available under this section if—

(a) an agreement has been entered into allowing the secondary contributor to recover from the

earner the whole or part of any secondary Class 1 contributions in respect of the gain, or

(b) an election is in force which has the effect of transferring to the earner the whole or part of the liability to pay secondary Class 1 contributions in respect of the gain.

(2) The amount of the relief is the total of—

(a) any amount that, in pursuance of any such agreement as is mentioned in subsection (1)(a), is recovered in respect of the gain by the secondary contributor not later than 60 days after the end of the year of assessment in which occurred the event giving rise to the charge to tax under section 135; and

(b) the amount of any liability in respect of that gain that, by virtue of any such election as is mentioned in subsection (1)(b), has become the earner's liability.

(3) Where notice of withdrawal of approval of any such election is given, relief under subsection (2)(b) is limited to so much of the earner's liability in respect of the gain as is met before the end of the 60th day after the end of the year of assessment in which occurred the event giving rise to the charge under section 135.

(4) Relief under this section shall be given by way of deduction from the amount of the gain on which the earner is chargeable to tax under section 135.

(5) Any such deduction does not affect the amount of the gain for the purposes of—

1992 c. 12.

(a) section 120(4) of the Taxation of Chargeable Gains Act 1992 (amount treated as consideration for acquisition of shares), or

(b) section 4(4)(a) of the Contributions and Benefits Act (amount treated as remuneration for contributions purposes).

(6) The agreements and elections referred to in this section are those having effect under paragraph 3A or 3B of Schedule 1 to the Contributions and Benefits Act.

References to approval in relation to an election are to approval by the Inland Revenue under paragraph 3B of that Schedule.

(7) In this section—

'the Contributions and Benefits Act' means the Social Security Contributions and Benefits Act 1992 or the Social Security Contributions and Benefits (Northern Ireland) Act 1992; and

1992 c. 4.
1992 c. 7.

'secondary Class 1 contributions' and 'secondary contributor' have the same meaning as in that Act.".

Section 187A inserted by this subsection applies to any agreement or election having effect as mentioned in subsection (6) of that section, whether made before or after the passing of this Act.

(2) Section 203FB of the Taxes Act 1988 (PAYE: gains from share options) is amended as follows—

(a) in subsections (2) and (3), for "subsection (7)" substitute "subsection (6A)";

(b) after subsection (6) insert—

"(6A) Where section 203F has effect in accordance with subsection (2) or (3) above, subsection (3) of section 203F shall apply as if the reference in that subsection to the amount of income likely to be chargeable to tax under Schedule E in respect of the provision of the asset were a reference to the amount on which tax is likely to be chargeable by virtue of section 135 in respect of the event in question, reduced by the amount of any relief likely to be available under section 187A.";

(c) in subsection (7), for "any of the preceding provisions of this section" substitute "subsection (4) or (5) above" and for "section 135, 140A or 140D" substitute "section 140A or 140D".

These amendments apply where the event giving rise to the charge to tax occurs after the passing of this Act.

(3) In section 136(6) of the Taxes Act 1988 and section 85(1) of the Finance Act 1988 (duty to deliver particulars relating to share options, etc. within 30 days after end of year of assessment), for "30 days" substitute "92 days". 1988 c. 39.

These amendments apply where the event giving rise to the duty to deliver particulars occurs on or after 6th April 2000.

(4) After section 136(6) of the Taxes Act 1988 add—

"(7) A body corporate is not obliged to deliver particulars under subsection (6) above which it has already given in a notice under paragraph 2 of Schedule 14 to the Finance Act 2000 (enterprise management incentives: notice required for option to be qualifying option).

In other respects the obligations imposed by that subsection and that paragraph are independent of each other.

(8) The duty of a body corporate under subsection (6) above to deliver particulars of any matter includes a duty to deliver particulars of any secondary Class 1 contributions payable in connection with that matter that—

(a) are recovered as mentioned in section 187A(2)(a), or

(b) are met as mentioned in section 187A(3).

In this subsection 'secondary Class 1 contributions' has the same meaning as in section 187A.".

Section 136(8) inserted by this subsection applies to any amounts recovered or met as mentioned in section 187A(2)(a) or (3) of the Taxes Act 1988, whether before or after the passing of this Act.

PART III
CHAPTER II

Other provisions about employment

Benefits in kind: deregulatory amendments.

57.—(1) Chapter II of Part V of the Taxes Act 1988 (provisions relating to the Schedule E charge: benefits in kind, etc.) is amended in accordance with Schedule 10 to this Act.

(2) The amendments have effect for the year 2000-01 and subsequent years of assessment.

Education and training.

58.—(1) After section 200D of the Taxes Act 1988 (work-related training) insert—

"Education and training funded by employers.

200E.—(1) This section applies for the purposes of Schedule E where any person (in this section, and sections 200F and 200G, called 'the employer') incurs expenditure—

(a) by making a payment to a person ('the provider') in respect of the costs of any qualifying education or training provided by the provider to a fundable employee of the employer (in this section, and sections 200F and 200G, called 'the employee'), or

(b) in paying or reimbursing any related costs.

(2) Subject to sections 200F to 200H, the emoluments of the employee from the office or employment shall not be taken to include—

(a) any amount in respect of that expenditure, or

(b) any amount in respect of the benefit of the education or training provided by means of that expenditure.

(3) In subsection (1) above 'related costs', in relation to any qualifying education or training provided to the employee, means—

(a) any costs that are incidental to the employee's undertaking the education or training and are incurred wholly and exclusively as a result of his doing so;

(b) any expenses incurred in connection with an assessment (whether by examination or otherwise) of what the employee has gained from the education or training; and

(c) the cost of obtaining for the employee any qualification, registration or award to which he has or may become entitled as a result of undertaking the education or training or of undergoing such an assessment.

(4) In this section 'qualifying education or training' means education or training of a kind that qualifies for grants whose payment is authorised by—

(a) regulations under section 108 or 109 of the Learning and Skills Act 2000, or

2000 c. 21.
2000 asp 8.

(b) regulations under section 1 of the Education and Training (Scotland) Act 2000.

(5) For the purposes of this section, a person is a fundable employee of the employer if—

(a) he holds, or has at any time held, an office or employment under the employer, and

(b) he holds an account that qualifies under section 104 of the Learning and Skills Act 2000 or he is a party to qualifying arrangements.

(6) In subsection (5) above 'qualifying arrangements' means arrangements which qualify under—

(a) section 105 or 106 of the Learning and Skills Act 2000, or

(b) section 2 of the Education and Training (Scotland) Act 2000.

Section 200E: exclusion of expenditure not directly related to training.

200F.—(1) Section 200E shall not apply in the case of any expenditure to the extent that it is incurred in paying or reimbursing the cost of any facilities or other benefits provided or made available to the employee for either or both of the following purposes, that is to say—

(a) enabling the employee to enjoy the facilities or benefits for entertainment or recreational purposes;

(b) rewarding the employee for the performance of the duties of his office or employment under the employer, or for the manner in which he has performed them.

(2) Section 200E shall not apply in the case of any expenditure incurred in paying or reimbursing any expenses of travelling or subsistence, except to the extent that those expenses would be deductible under section 198 if the employee—

(a) undertook the education or training in question in the performance of the duties of—

(i) his office or employment under the employer, or

(ii) where the employee no longer holds an office or employment under the employer, the last office or employment that he did hold under the employer; and

(b) incurred those expenses out of the emoluments of that office or employment.

(3) Section 200E shall not apply in the case of any expenditure incurred in paying or reimbursing the cost of providing the employee with, or with the use of, any asset except where—

(a) the asset is provided or made available for use only in the course of the education or training;

(b) the asset is provided or made available for use in the course of the education or training and in the performance of the duties of the employee's office or employment but not to any significant extent for any other use;

(c) the asset consists in training materials provided in the course of the education or training; or

(d) the asset consists in something made by the employee in the course of the education or training or incorporated into something so made.

(4) In subsection (1) above the reference to enjoying facilities or benefits for entertainment or recreational purposes includes a reference to enjoying them in the course of any leisure activity.

(5) In this section—

'subsistence' includes food and drink and temporary living accommodation; and

'training materials' means stationery, books or other written material, audio or video tapes, compact disks or floppy disks.

Section 200E: exclusion of expenditure if contributions not generally available to staff.

200G.—(1) Section 200E shall not apply to any expenditure incurred in respect of—

(a) the costs of any education or training provided to the employee, or

(b) any related costs,

unless the expenditure is incurred in giving effect to fair-opportunity arrangements that were in place at the time when the employer agreed to incur the expenditure.

In this subsection 'related costs', in relation to any education or training provided to the employee, has the meaning given by section 200E(3).

(2) For the purposes of subsection (1) above 'fair-opportunity arrangements' are in place at any time if at that time arrangements are in place that provide—

(a) for the making of contributions by the employer to costs arising from qualifying education or training being undertaken by persons who hold, or have held, an office or employment under the employer, and

(b) for such contributions to be generally available, on similar terms, to the persons who at that time hold an office or employment under the employer.

In this subsection 'qualifying education or training' has the same meaning as in section 200E.

(3) The Treasury may by regulations make provision specifying the persons or other entities under whom

Crown servants are to be treated for the purposes of this section as holding office or employment; and such regulations may—

(a) deem a description of Crown servants (or two or more such descriptions taken together) to be an entity for the purposes of the regulations;

(b) make different provision for different descriptions of Crown servants.

In this subsection 'Crown servant' means a person holding an office or employment under the Crown.

Section 200E: exclusion of expenditure otherwise relieved.

200H. Section 200E does not apply to expenditure to the extent that—

(a) section 200B (expenditure on work-related training) applies to it, or

(b) section 588(1) (expenditure on retraining courses) has effect in respect of it.

Education or training funded by third parties.

200J.—(1) This section applies where—

(a) any person ('the employee') who holds, or has at any time held, an office or employment under another ('the employer') is provided by reason of that office or employment with any benefit,

(b) that benefit consists in any qualifying education or training or is provided in connection with any such education or training, and

(c) the amount which (apart from this section and sections 200E to 200H) would be included in respect of that benefit in the emoluments of the employee ('the chargeable amount') is or includes an amount that does not represent expenditure incurred by the employer.

(2) For the purposes of Schedule E, the questions whether and to what extent those emoluments shall be taken to include an amount in respect of that benefit shall be determined in accordance with sections 200E to 200H as if the benefit had been provided by means of a payment by the employer of an amount equal to the whole of the chargeable amount.

(3) In this section 'qualifying education or training' has the same meaning as in section 200E.".

(2) In section 200A(3)(b) of that Act (definition of a qualifying absence from home), at the end of sub-paragraph (iv) insert ", or

(v) expenses the amount of which, having been paid or reimbursed by the person under whom he holds that office or employment, is excluded from his emoluments in pursuance of section 200E, or

(vi) expenses the amount of which would be so excluded if it were so paid or reimbursed.".

(3) This section applies for the year 2000-01 and subsequent years of assessment.

PART III
CHAPTER II

Cars available for private use.

59. Schedule 11 to this Act (which makes provision in relation to the taxation of cars available for private use) has effect for the year 2002-03 and subsequent years of assessment.

Provision of services through intermediary.

60. Schedule 12 to this Act has effect with respect to the provision of services through an intermediary.

Pension schemes

Occupational and personal pension schemes.

61. Schedule 13 to this Act (which makes provision in relation to occupational and personal pension schemes) has effect.

Enterprise incentives

Enterprise management incentives.

62. Schedule 14 to this Act (enterprise management incentives) has effect in relation to any right to acquire shares granted after the passing of this Act.

Corporate venturing scheme.

63.—(1) Schedule 15 to this Act (which makes provision for the corporate venturing scheme) has effect.

(2) Schedule 16 to this Act (which makes consequential amendments) has effect.

(3) Paragraph 3(2)(a)(i) to (iii) and (3) of Schedule 16 (and paragraph 3(1) so far as it relates to those provisions) have effect—

(a) in relation to claims made under section 573 of the Taxes Act 1988, in respect of disposals on or after 1st April 2000, and

(b) in relation to claims made under section 574 of that Act, in respect of disposals on or after 6th April 2000.

(4) Subject to that, Schedules 15 and 16 apply in relation to shares issued on or after 1st April 2000 but before 1st April 2010.

Enterprise investment scheme: amendments.

64. The provisions relating to the enterprise investment scheme are amended in accordance with Schedule 17 to this Act.

In that Schedule—

Part I makes amendments reducing various periods which apply in relation to the provisions which determine the reliefs under the scheme;

Part II makes amendments about qualifying companies;

Part III makes other minor amendments.

Venture capital trusts: amendments.

65. The provisions relating to venture capital trusts are amended in accordance with Schedule 18 to this Act.

In that Schedule—

Part I makes amendments reducing various periods which apply in relation to the provisions which determine the reliefs; and

Part II makes amendments about qualifying holdings.

Taper relief: taper for business assets.

1992 c. 12.

66.—(1) Section 2A of the Taxation of Chargeable Gains Act 1992 (taper relief) is amended as follows.

(2) In subsection (5), for the first two columns of the table (which relate to gains on disposals of business assets) substitute—

Gains on disposals of business assets	
Number of whole years in qualifying holding period	Percentage of gain chargeable
1	87.5
2	75
3	50
4 or more	25

(3) For subsections (8) and (9) substitute—

"(8) The qualifying holding period of an asset for the purposes of this section is—

(a) in the case of a business asset, the period after 5th April 1998 for which the asset had been held at the time of its disposal;

(b) in the case of a non-business asset where—

(i) the time which, for the purposes of paragraph 2 of Schedule A1, is the time when the asset is taken to have been acquired by the person making the disposal is a time before 17th March 1998, and

(ii) there is no period which by virtue of paragraph 11 or 12 of that Schedule does not count for the purposes of taper relief,

the period mentioned in paragraph (a) plus one year;

(c) in the case of any other non-business asset, the period mentioned in paragraph (a).

This subsection is subject to paragraph 2(4) of Schedule A1 and paragraph 3 of Schedule 5BA.".

(4) This section applies to disposals on or after 6th April 2000.

Taper relief: assets qualifying as business assets.
1992 c. 12.

67.—(1) Schedule A1 to the Taxation of Chargeable Gains Act 1992 (application of taper relief) is amended as follows.

(2) In paragraph 4 (conditions for shares to qualify as business assets)—

(a) in sub-paragraph (4) (disposal by personal representatives), for the words following "if at that time" substitute "the relevant company was a qualifying company by reference to the personal representatives"; and

(b) in sub-paragraph (5) (disposal by legatee), for paragraph (b) substitute—

"(b) the relevant company was a qualifying company by reference to the personal representatives.".

(3) In paragraph 5 (conditions for other assets to qualify as business assets)—

(a) in sub-paragraph (2) (disposal by individual), for paragraphs (d) and (e) substitute—

"(d) the purposes of any office or employment held by that individual with a person carrying on a trade.";

and

(b) in sub-paragraph (3) (disposal by trustees of settlement), for paragraphs (e) and (f) substitute—

"(e) the purposes of any office or employment held by an eligible beneficiary with a person carrying on a trade.".

(4) For paragraph 6 (companies which are qualifying companies) substitute—

"6.—(1) A company shall be taken to have been a qualifying company by reference to an individual at any time when—

(a) the company was a trading company or the holding company of a trading group, and

(b) one or more of the following conditions was met—

(i) the company was unlisted,

(ii) the individual was an officer or employee of the company, or of a company having a relevant connection with it, or

(iii) the voting rights in the company were exercisable, as to not less than 5%, by the individual.

(2) A company shall be taken to have been a qualifying company by reference to the trustees of a settlement at any time when—

(a) the company was a trading company or the holding company of a trading group, and

(b) one or more of the following conditions was met—

(i) the company was unlisted,

(ii) an eligible beneficiary was an officer or employee of the company, or of a company having a relevant connection with it, or

(iii) the voting rights in the company were exercisable, as to not less than 5%, by the trustees.

(3) A company shall be taken to have been a qualifying company by reference to an individual's personal representatives at any time when—

(a) the company was a trading company or the holding company of a trading group, and

(b) one or more of the following conditions was met—

(i) the company was unlisted, or

(ii) the voting rights in the company were exercisable, as to not less than 5%, by the personal representatives.".

(5) In paragraph 22(1) (interpretation), at the appropriate place insert—

"'unlisted company' means a company—

(a) none of whose shares is listed on a recognised stock exchange, and

(b) which is not a 51 per cent subsidiary of a company whose shares, or any class of whose shares, is so listed;";

and omit the definitions of "full-time working officer or employee" and "qualifying office or employment".

(6) After paragraph 22 insert—

"Qualifying shareholdings in joint venture companies

23.—(1) This Schedule has effect subject to the following provisions where a company ('the investing company') has a qualifying shareholding in a joint venture company.

(2) For the purposes of this paragraph a company is a 'joint venture company' if, and only if—

(a) it is a trading company or the holding company of a trading group, and

(b) 75% or more of its ordinary share capital (in aggregate) is held by not more than five companies.

For the purposes of paragraph (b) above the shareholdings of members of a group of companies shall be treated as held by a single company.

(3) For the purposes of this paragraph a company has a 'qualifying shareholding' in a joint venture company if—

(a) it holds more than 30% of the ordinary share capital of the joint venture company, or

(b) it is a member of a group of companies, it holds ordinary share capital of the joint venture company and the members of the group between them hold more than 30% of that share capital.

(4) For the purpose of determining whether the investing company is a trading company—

(a) any holding by it of shares in the joint venture company shall be disregarded, and

(b) it shall be treated as carrying on an appropriate proportion—

(i) of the activities of the joint venture company, or

(ii) where the joint venture company is the holding company of a trading group, of the activities of that group.

This sub-paragraph does not apply if the investing company is a holding company.

(5) For the purpose of determining whether the investing company is a holding company—

(a) any holding by it of shares in the joint venture company shall be disregarded, and

(b) it shall be treated as carrying on an appropriate proportion of the activities—

(i) of the joint venture company, or

(ii) where the joint venture company is the holding company of a trading group, of that group.

This sub-paragraph does not apply if the joint venture company is a 51 per cent subsidiary of the investing company.

(6) For the purpose of determining whether a group of companies is a trading group—

(a) every holding of shares in the joint venture company by a member of the group having a qualifying shareholding in that company shall be disregarded, and

(b) each member of the group having such a qualifying shareholding shall be treated as carrying on an appropriate proportion of the activities—

(i) of the joint venture company, or

(ii) where the joint venture company is the holding company of a trading group, of that group.

This sub-paragraph does not apply if the joint venture company is a member of the group.

(7) In sub-paragraphs (4)(b), (5)(b) and (6)(b) above 'an appropriate proportion' means a proportion corresponding to the percentage of the ordinary share capital of the joint venture company held by the investing company or, as the case may be, by the group member concerned.

(8) The following shall be treated as having a relevant connection with each other—

(a) the investing company;

(b) the joint venture company;

(c) any company having a relevant connection with the investing company;

(d) any company having a relevant connection with the joint venture company by virtue of being—

(i) a 51 per cent subsidiary of that company, or

(ii) a member of the same commercial association of companies.

(9) The acquisition by the investing company of the qualifying shareholding shall not be treated as a relevant change of activity for the purposes of paragraph 11 above.

(10) For the purposes of this paragraph 'ordinary share capital' has the meaning given by section 832(1) of the Taxes Act.".

(7) This section has effect for determining whether an asset is a business asset at any time on or after 6th April 2000.

It does not affect the determination on or after that date whether an asset was a business asset at a time before that date.

Research and development

Meaning of "research and development".

68.—(1) Schedule 19 to this Act (meaning of "research and development") has effect.

In that Schedule—

Part I contains a new definition of "research and development" for the purposes of the Tax Acts, and

Part II contains consequential amendments.

(2) The amendments in Part II of that Schedule have effect—

(a) for the purposes of income tax and capital gains tax, in relation to the year 2000-01 and subsequent years of assessment, and

(b) for the purposes of corporation tax, for accounting periods ending on or after 1st April 2000.

Tax relief for expenditure on research and development.

69.—(1) Schedule 20 to this Act (tax relief for expenditure on research and development) has effect for accounting periods ending on or after 1st April 2000.

In that Schedule—

Part I provides for entitlement to relief,

Part II provides for the manner of giving effect to the relief, and

Part III contains supplementary provisions.

(2) Schedule 21 to this Act (which contains consequential amendments) has effect accordingly.

Capital allowances

First year allowances for small or medium-sized enterprises.
1990 c. 1.

70.—(1) In section 22(3D) of the Capital Allowances Act 1990 (expenditure qualifying for 40% first year allowances), for "in the period beginning with 2nd July 1998 and ending with 1st July 2000" substitute "on or after 2nd July 1998".

(2) In that Act—

(a) in section 22(3C)(a), (3CA)(a) and (3D)(a), for "a small company or a small business" substitute "a small or medium-sized enterprise";

(b) in section 22A—

(i) in the sidenote, for "small company or small business",

(ii) in subsection (1) for "small company", and

(iii) in subsection (2) for "small business",

substitute "small or medium-sized enterprise".

The amendments in this subsection are of nomenclature only.

First year allowances for ICT expenditure by small enterprises.

71.—(1) In section 22 of the Capital Allowances Act 1990 (first-year allowances), after subsection (3D) insert—

"(3E) This section applies to—

(a) any expenditure on information and communications technology which, disregarding any effect of section 83(2) on the time at which it is to be treated as incurred, is incurred by a small enterprise in the period beginning with 1st April 2000 and ending with 31st March 2003; and

(b) any additional VAT liability incurred in respect of expenditure to which this section applies by virtue of paragraph (a) above.

(3F) For the purposes of subsection (3E) above expenditure on information and communications technology means expenditure on items within any of the classes set out in subsection (3G) below.

(3G) The classes referred to in subsection (3F) above are as follows:

A. Computers and associated equipment

This class covers—

(a) computers,

(b) peripheral devices designed to be used by being connected to or inserted in a computer,

(c) equipment (including cabling) for use primarily to provide a data connection—

(i) between one computer and another, or

(ii) between a computer and a data communications network,

(d) dedicated electrical systems for computers.

For this purpose "computer" does not include computerised control or management systems or other systems that are part of a larger system whose principal function is not processing or storing information.

B. Other qualifying equipment

This class covers—

(a) wireless application protocol telephones,

(b) third generation mobile telephones,

(c) devices designed to be used by being connected to a television set that are capable of receiving and transmitting information from and to data networks, and

(d) other devices substantially similar to those within paragraphs (a), (b) and (c) that are capable of receiving and transmitting information from and to data networks.

This is subject to any order under subsection (3H) below.

C. Software

This class covers the right to use or otherwise deal with software for the purposes of any equipment within Class A or B above.

(3H) The Treasury may make provision by order—

(a) further defining the descriptions of equipment within Class B in subsection (3G), or

(b) adding further descriptions of equipment to that class.".

(2) In sections 22(4), (6B) and (6C), 23(6), 42(9) and 50(3) and (4A) of that Act, for "and (3D)" substitute ", (3D) and (3E)".

(3) In sections 43(5), 44(5), 46(8) and 48(7) of that Act, for "or (3D)" substitute ", (3D) or (3E)".

(4) In section 39(2)(a) of that Act for "to (3D)" substitute "to (3E)".

Expenditure of a small enterprise. 1990 c. 1.

72. After section 22A of the Capital Allowances Act 1990, insert—

"Expenditure of a small enterprise.

22AA.—(1) For the purposes of section 22 capital expenditure incurred by a company is capital expenditure incurred by a small enterprise if the company—

(a) qualifies as small in relation to the financial year of the company in which the expenditure is incurred, and

(b) is not a member of a large or medium-sized group at the time when the expenditure is incurred.

(2) For the purposes of section 22, capital expenditure is capital expenditure incurred by a small enterprise if—

(a) it is incurred by a business for the purposes of a trade (the 'first trade') carried on by that business, and

(b) were the first trade carried on by a company (the 'hypothetical company') in the circumstances set out in subsection (3) below, that company would qualify as small in relation to the financial year of that company in which the expenditure would be treated as incurred.

(3) Those circumstances are—

(a) that every trade, profession or vocation carried on by the business concerned is carried on by the business as a part of the first trade,

(b) that the financial years of the hypothetical company coincide with the chargeable periods of the business concerned, and

(c) that accounts of the hypothetical company for any relevant chargeable period were prepared in accordance with the requirements of the Companies Act 1985 as if that period were a financial year of the company.

(4) Subject to subsection (5) below, a company is a member of a large or medium-sized group at the time when any expenditure is incurred if —

(a) it is at that time the parent undertaking of a group which does not qualify as small in relation to the financial year of the parent company in which that time falls; or

(b) it is at that time a subsidiary undertaking in relation to the parent undertaking of such a group.

(5) If, at the time when any expenditure is incurred by any company any arrangements exist which are such that, had effect been given to them immediately before that time, the company or a successor of the company would, at that time, have been a member of a large or medium-sized group, this section shall have effect as if the company concerned was a member of a large or medium-sized group at that time.

(6) In this section the following expressions have the same meaning as in section 22A above: 'arrangements', 'business', 'company', 'financial year', 'group', 'parent undertaking' and 'subsidiary undertaking'.

(7) References in this section, in relation to a company, to its qualifying as small—

(a) except in the case of a company formed and registered in Northern Ireland, are references to its so qualifying, or being treated as so qualifying, for the purposes of section 247 of the Companies Act 1985; and

1985 c. 6.

(b) in the case of a company so formed and registered, are references to a company so qualifying, or being treated as so qualifying, for the purposes of Article 255 of the Companies (Northern Ireland) Order 1986.

(8) In relation to a company with respect to which the question arises whether it is or would be a member of a large or medium-sized group, references to a group's qualifying as small—

(a) except in the case of a company formed and registered in Northern Ireland, are references to its so qualifying, or being treated as so qualifying, for the purposes of section 249 of the Companies Act 1985; and

(b) in the case of a company so formed and registered, are references to its so qualifying, or being treated as so qualifying, for the purposes of Article 257 of the Companies (Northern Ireland) Order 1986;

but for the purposes of this section each of those provisions shall be construed as if references, in relation to a group, to the parent company were references to the parent undertaking.

(9) For the purposes of this section a company is the successor of another if—

(a) it carries on a trade which, in whole or in part, the other company has ceased to carry on, and

(b) the circumstances are such that section 343 of the principal Act applies in relation to the two companies as the predecessor and the successor within the meaning of that section.".

Repeal of notification requirements.
1994 c. 9.

73.—(1) In section 118 of the Finance Act 1994 (notification requirements)—

(a) subsections (1) to (5) and (7) to (9) shall cease to have effect; and

(b) in subsection (6), for "the provisions mentioned in subsection (2) above" there shall be substituted—

"(a) section 25(1) of the Capital Allowances Act 1990 (meaning of qualifying expenditure for the purposes of writing-down allowances for expenditure on machinery or plant); and

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

(2) This section has effect for chargeable periods as respects which the period specified in subsection (3A) of that section ends on or after 1st April 2000.

Pool for certain leased assets and inexpensive cars. 1990 c. 1.

74.—(1) In section 41 of the Capital Allowances Act 1990 (writing-down allowances etc for leased assets and inexpensive cars)—

(a) in subsection (1), paragraphs (b) and (c) and the word "or" at the end of paragraph (a); and

(b) in subsection (4), paragraph (a) and, in paragraph (b), the words from "or within (1)(b) or (c)" to "subsection (1)(c)" and the words "or subsection (1)(b) or (c)",

shall cease to have effect for chargeable periods ending on or after the relevant date.

(2) Subsection (3) below applies where—

(a) immediately before the end of the relevant chargeable period, a person was treated for the purposes of sections 24, 25 and 26 of the Capital Allowances Act 1990 as having incurred expenditure on the provision of machinery or plant wholly and exclusively for the purposes of a separate trade carried on by him;

(b) the expenditure fell within subsection (1)(b) or (c) of section 41 of that Act; and

(c) qualifying expenditure in respect of the separate trade for the relevant chargeable period exceeded any disposal value brought into account in respect of that trade for that period.

(3) The balance of the excess (after the deduction of any writing-down allowances made by reference to it) shall be treated for the purposes of sections 24, 25 and 26 of the Capital Allowances Act 1990 as capital expenditure which—

(a) was incurred by that person in the relevant chargeable period on the provision of the machinery or plant for the purposes of the trade which is the actual trade for the purposes of section 41 of that Act; and

(b) does not form part of his qualifying expenditure for that period.

(4) In this section—

"the relevant chargeable period" means the chargeable period immediately preceding that which begins on or before and ends on or after the relevant date;

"the relevant date" means, subject to subsection (5) below, 6th April 2000 for the purposes of income tax and 1st April 2000 for the purposes of corporation tax.

(5) A person may, by a notice given to an officer of the Board, elect that this section shall have effect in relation to any trade carried on by him as if the relevant date were 6th April 2001 or, as the case may be, 1st April 2001.

Machinery and plant allowances for non-residents etc.

75.—(1) In section 83 of the Capital Allowances Act 1990 (interpretation of Part II), after subsection (2) there shall be inserted—

"(2A) In this Part (except in Chapter V and sections 64A and 75 to 78), references—

(a) to a trade, or

(b) to activities falling in accordance with section 28A, 29 or 61 to be treated as a trade,

shall be construed as if activities were capable of being comprised in a trade, or of being treated as a trade, to the extent only that they are activities the profits or gains from which are, or (if there were any) would be, chargeable to income tax or corporation tax.".

(2) After section 79 of that Act there shall be inserted—

"Reduction in qualifying use.

79A.—(1) This section applies where—

(a) any expenditure falls, for the purposes of making allowances or charges, to be treated in accordance with section 79 as incurred on the provision of machinery or plant for the purposes of a notional trade;

(b) there is such a change of circumstances as would make it appropriate for any reduction falling to be made under subsection (5) of that section—

(i) for the chargeable period in which the change takes place ('the relevant chargeable period'), or

(ii) for any subsequent chargeable period,

to represent a larger proportion of the amount reduced than would have been appropriate apart from the change;

(c) no disposal value in respect of the machinery or plant would, apart from this section, fall to be brought into account for the relevant chargeable period; and

(d) the open market value of the machinery or plant at the end of the relevant chargeable period exceeds the qualifying expenditure in respect of the notional trade for that period by more than £1 million.

(2) It shall be assumed that the notional trade is permanently discontinued immediately before the end of the relevant chargeable period.

(3) Section 79(3) shall have effect as if immediately after the beginning of the following chargeable period expenditure had been incurred on the provision of the machinery or plant of an amount equal to the disposal value brought into account by virtue of subsection (2) above.

(4) In this section 'open market value' has the same meaning as in section 76.".

(3) In section 81 of that Act (effect of bringing an asset into use for the purposes of a trade after it has been used for a purpose that does not attract capital allowances), after subsection (2) there shall be inserted—

"(2AA) Where—

(a) a person is treated by virtue of subsection (1)(a) above as having incurred capital expenditure on the provision of machinery or plant, and

(b) the sum which (apart from this subsection) would be taken to be the amount of that expenditure is more than the amount of capital expenditure actually incurred by that person on the provision of the machinery or plant,

the amount of the capital expenditure treated by virtue of subsection (1)(a) above as incurred on the provision of the machinery or plant shall be deemed (subject to subsection (2AB) below) to be equal to the amount actually so incurred by that person.

(2AB) Where any of the amount of capital expenditure actually incurred on the provision of the machinery or plant by the person in question would have fallen by virtue of section 75, 76 or 76A to be disregarded for the purposes of sections 24, 25 and 26 had it been in consequence of that expenditure that the machinery or plant was provided for the purposes of a trade, the references in subsection (2AA) above to that amount shall be construed as references to only so much of that expenditure as would not have fallen to be so disregarded.".

(4) In Schedule 19AC to the Taxes Act 1988 (overseas life insurance companies), in paragraph 10B (modifications of section 440), after sub-paragraph (2) there shall be inserted—

"(2A) The following subsection shall be treated as inserted after subsection (4)—

'(4AA) Section 81 of the 1990 Act (as it has effect by virtue of section 83(2A) of that Act) shall apply in relation to any case in which an asset or part of an asset held by an overseas life insurance company—

(a) ceases to be within the category set out in paragraph (h) of subsection (4) above; and

(b) at the same time comes within another of the categories set out in that subsection.'.".

(5) In section 53 of the Capital Allowances Act 1990— 1990 c. 1.

(a) in subsection (1), paragraph (bb) (which, for the purposes of making allowances in respect of machinery or plant subject to equipment leasing, requires the equipment lessee to be within the charge to tax) shall cease to have effect; and

(b) in subsection (1B)(b), for "paragraphs (bb) and" there shall be substituted "paragraph".

(6) In this section—

(a) subsections (1), (4) and (5) have effect for chargeable periods ending on or after 21st March 2000;

(b) subsection (2) has effect where the change of circumstances occurs on or after that date; and

(c) subsection (3) has effect where the condition mentioned in section 81(1)(a) of that Act is fulfilled on or after that date.

PART III
CHAPTER II

Production animals.
1990 c. 1.

76.—(1) Section 82 of the Capital Allowances Act 1990 (capital expenditure to which Part II does not apply) shall be renumbered as subsection (1) of that section; and after that provision as so renumbered there shall be inserted—

"(2) This Part shall not apply to capital expenditure—

(a) on animals or other creatures to which Schedule 5 to the principal Act (treatment of farm animals etc for purposes of Case I of Schedule D) applies; or

(b) on shares in such animals or creatures.".

(2) In paragraph 9(4) of Schedule 5 to the Taxes Act 1988 (treatment of farm animals etc for purposes of Case I of Schedule D), for the words from "in relation to animals" to the end there shall be substituted—

"(a) in relation to animals or other creatures kept singly as they apply in relation to herds; and

(b) in relation to shares in animals or other creatures as they apply in relation to animals or other creatures themselves.".

(3) The enactments amended by subsections (1) and (2) above shall be deemed always to have had effect with the amendments made by those subsections.

Sale and leaseback.

77.—(1) After section 76A of the Capital Allowances Act 1990 insert—

"Special provision for sale and leaseback cases.

76B.—(1) This section applies where—

(a) subsection (1), (2) or (3) of section 75 applies by virtue of paragraph (b) (and not by virtue of paragraph (a) or (c)) of that subsection, or is treated (under one or both of sections 76(1) and 76A(1)) as so applying;

(b) the conditions set out in subsection (2) below are fulfilled; and

(c) the seller and the buyer elect that this section should apply.

(2) The conditions are—

(a) that the seller incurred capital expenditure on the provision of the machinery or plant;

(b) that the machinery or plant was new at or after the time when it was acquired by the seller;

(c) that the machinery or plant was acquired by the seller otherwise than as a result of a transaction to which section 75(1), (2) or (3) applies, or is treated (under one or both of sections 76(1) and 76A(1)) as applying;

(d) that the sale is effected not more than four months after the first occasion on which the machinery or plant is brought into use by any person for any purpose;

(e) that the seller has not—

(i) made a claim for an allowance in respect of capital expenditure incurred on the provision of the machinery or plant;

(ii) made a return in which such expenditure is taken into account in determining his qualifying expenditure for the purposes of section 24; or

(iii) given notice of any such amendment of a return as provides for such expenditure to be so taken into account.

(3) In a case where this section applies—

(a) no allowance shall be made to the seller under this Act in respect of the capital expenditure incurred on the provision of the machinery or plant, or any additional VAT liability incurred in respect of it;

(b) the whole amount of that expenditure, and any such liability, shall be left out of account in determining the amount for any period of the seller's qualifying expenditure under section 25;

(c) section 76(2) shall have effect as if paragraph (a) were omitted; and

(d) section 76A shall have effect as if subsection (5) were omitted.

(4) An election under this section shall be made by notice to an officer of the Board not more than two years after the time of the sale.

(5) An election under this section shall be irrevocable once made; and nothing in—

(a) section 42 of, or Schedule 1A to, the Taxes Management Act 1970 (claims and elections for income tax purposes); or 1970 c. 9.

(b) paragraphs 54 to 60 of Schedule 18 to the Finance Act 1998 (claims and elections for corporation tax purposes), 1998 c. 36.

shall apply to such an election.

(6) In this section, in a case where section 75(2) applies or is treated as applying, 'the seller' means the owner of the machinery or plant, 'the buyer' means the person entering into the contract and 'the sale' means the making of the contract.

(7) In this section, in a case where section 75(3) applies or is treated as applying—

(a) 'the seller' means the assignor, 'the buyer' means the assignee and 'the sale' means the assignment; and

(b) references to the machinery or plant being acquired by the seller shall be construed as references to the contract being entered into by the assignor.

1970 c. 9.

(8) In this section 'return' means any return required to be made under the Taxes Management Act 1970 for income tax or corporation tax purposes.".

(2) In subsections (1), (2) and (3) of section 75 of that Act, after "76A" there shall be inserted ", 76B".

Meaning of "fixture".
1990 c. 1.

78.—(1) Section 51 of the Capital Allowances Act 1990 (application and interpretation of Chapter VI: plant and machinery: fixtures) is amended as follows.

(2) In subsection (1) for the words from the beginning to "other land" substitute—

"(1) This Chapter applies to determine entitlement to allowances under this Part in respect of expenditure on the provision of machinery or plant that is, or becomes, a fixture;".

(3) In subsection (2) (definitions), for the definition of "fixture" substitute—

"'fixture', subject to subsection (2A) below, means machinery or plant that is so installed or otherwise fixed in or to a building or other description of land as to become, in law, part of that building or other land;".

(4) After subsection (2), insert—

"(2A) In this Chapter—

'fixture' includes any boiler, or water-filled radiator, installed in a building as part of a space or water heating system; and

'relevant land', in relation to such a fixture, means the building in which it is so installed.".

(5) For subsection (8) substitute—

"(8) Nothing in this Chapter affects the entitlement of any person to an allowance by virtue of section 154 (allowances in respect of contributions to capital expenditure).".

(6) The amendments in this section shall be deemed always to have had effect.

Leased assets under the Affordable Warmth Programme.

79.—(1) In section 53 of the Capital Allowances Act 1990 (fixtures: expenditure incurred by equipment lessor), after subsection (1C) insert—

"(1D) Where the conditions in subsection (1E) below are satisfied in any case, subsection (1) above shall have effect as if the following were omitted, that is to say—

(a) in paragraph (b), the words from 'for the purposes of' to 'by the equipment lessee', and

(b) paragraphs (ba), (bb) and (d).

(1E) Those conditions are—

(a) that the machinery or plant consists of a boiler, heat exchanger, radiator or heating control that is installed in a building as part of a space or water heating system; and

(b) that the agreement for the lease is approved for the purposes of this section as entered into as part of the Affordable Warmth Programme.

(1F) The approval mentioned in subsection (1E)(b) above may be given, with the consent of the Treasury—

(a) by the Secretary of State;

(b) in the case of buildings in Scotland, by the Scottish Ministers;

(c) in the case of buildings in Wales, by the National Assembly for Wales;

(d) in the case of buildings in Northern Ireland, by the Department for Social Development in Northern Ireland.

(1G) Where any such approval is withdrawn—

(a) the approval shall be treated for the purposes of subsection (1E)(b) above as never having had effect, and

(b) all such assessments and adjustments of assessments shall be made as are necessary in consequence of the withdrawal of the approval.

(1H) Where a person who has made a return becomes aware that anything contained in the return has, after being made, become incorrect by reason of the withdrawal of any such approval, he shall, within three months of first becoming so aware, give notice to an officer of the Board of the amendments required to his return in consequence of the withdrawal of approval.".

(2) In the second column of the table in section 98 of the Taxes Management Act 1970 (penalty for failure to provide information etc.), in the entry relating to requirements imposed by provisions of the Capital Allowances Act 1990, for "and 51(6A)" substitute "51(6A) and 53(1H)". 1970 c. 9. 1990 c. 1.

(3) This section has effect in relation to expenditure incurred after the passing of this Act and before 1st January 2008.

Fixtures and machinery and plant on hire-purchase etc.

80.—(1) In section 60 of the Capital Allowances Act 1990 (machinery and plant on hire-purchase etc.), after subsection (3) insert—

"(4) This section has effect subject to section 60A below.".

(2) After that section insert—

"Machinery and plant on hire-purchase etc.: fixtures.

60A.—(1) Section 60 does not—

(a) apply to expenditure incurred on machinery or plant that is a fixture, or

(b) prevent Chapter VI of this Part (fixtures) applying in relation to expenditure on machinery or plant incurred under such a contract as is mentioned in subsection (1) of that section.

(2) If machinery or plant that is treated as belonging to a person under section 60 becomes a fixture, then, unless it is treated under Chapter VI of this Part as belonging to

that person, it shall be treated for the purposes of this Part as ceasing to belong to him at the time when it becomes a fixture.

(3) In this section 'fixture' has the same meaning as in Chapter VI of this Part.".

(3) In section 60A of that Act (as inserted by subsection (2) above)—

(a) subsection (1) shall be deemed always to have had effect, and

(b) subsection (2) does not apply where the machinery or plant concerned became a fixture (within the meaning of that section) before the passing of this Act.

Production sharing contracts. 1990 c. 1.

81.—(1) After section 64 of the Capital Allowances Act 1990 insert—

"Production sharing contracts.

64A.—(1) Subsection (2) below applies where—

(a) a person ('the contractor') is entitled to an interest in a contract made with, or with the authorised representative of, the government of a country or territory in which oil is or may be produced;

(b) the contract provides (among other things) that any machinery or plant of a description specified in the contract which—

(i) is provided by the contractor; and

(ii) is used for qualifying purposes under the contract,

shall (whether immediately or at some later time) be transferred to the government or representative;

(c) the contractor incurs capital expenditure on the provision of machinery or plant of a description so specified which, for the purposes of a trade of oil extraction carried on by him, is to be used for qualifying purposes under the contract;

(d) the amount of that expenditure is commensurate with the value of the contractor's interest under the contract; and

(e) in accordance with the provision mentioned in paragraph (b) above, the machinery or plant is transferred to the government or representative.

(2) The machinery or plant shall, notwithstanding the transfer and subject to subsection (6) below, be deemed for the purposes of this Part to belong to the contractor (and not to any other person) until such time as it—

(a) ceases to belong to the government or representative; or

(b) ceases to be used, or held for use, by any person under the contract.

(3) Subsection (4) below applies where, in a case falling within subsection (1)(a) and (b) above—

(a) a person ('the participator') acquires an interest in the contract, whether from the contractor or from another person who has acquired it (directly or indirectly) from the contractor;

(b) the participator incurs capital expenditure on the provision of machinery or plant which, for the purposes of a trade of oil extraction carried on by him, is to be used for qualifying purposes under the contract;

(c) the amount of that expenditure is commensurate with the value of the participator's interest under the contract; and

(d) in accordance with the provision mentioned in subsection (1)(b) above, the machinery or plant is transferred to the government or representative.

(4) The machinery or plant shall, notwithstanding the transfer and subject to subsection (6) below, be deemed for the purposes of this Part to belong to the participator (and not to any other person) until such time as it—

(a) ceases to belong to the government or representative; or

(b) ceases to be used, or held for use, by any person under the contract.

(5) Subsections (6) to (9) below apply where, in a case falling within subsection (1)(a) and (b) above—

(a) a person ('the participator') acquires an interest in the contract, whether from the contractor or from another person who has acquired it (directly or indirectly) from the contractor; and

(b) some of the expenditure incurred by the participator to acquire his interest in the contract is attributable to machinery or plant which—

(i) is deemed by subsection (2) above to belong to the contractor; or

(ii) is deemed by subsection (4) above or subsection (6) below to belong to another person ('the other participator').

(6) The machinery or plant shall, subject to any subsequent application of this subsection, be deemed for the purposes of this Part to belong to the participator (and not to any other person) until such time as it—

(a) ceases to belong to the government or representative; or

(b) ceases to be used, or held for use, by any person under the contract.

(7) The contractor or, as the case may be, the other participator shall be deemed for the purposes of this Part

to have disposed of the machinery or plant for a consideration equal to the expenditure attributable as mentioned in subsection (5)(b) above.

(8) The participator shall be deemed for the purposes of this Part to have incurred, on the provision of the machinery or plant, capital expenditure of an amount which, subject to subsection (9) below, is equal to the expenditure so attributable.

(9) There shall be disregarded for the purposes of this Part so much (if any) of the expenditure deemed to be incurred by the participator on the provision of the machinery or plant as exceeds any disposal value which falls to be brought into account by the contractor or, as the case may be, the other participator by reason of his deemed disposal of the machinery or plant.

(10) In determining for the purposes of this Part the expenditure which is attributable as mentioned in subsection (5)(b) above, regard shall be had to what is just and reasonable in all the circumstances.

(11) For the purposes of this section machinery or plant is used for qualifying purposes if it is used—

(a) to explore for, win access to or extract oil;

(b) for the initial storage or treatment of oil; or

(c) for other purposes ancillary to the extraction of oil.

1992 c. 12.

(12) In this section 'oil' has the same meaning as in section 196 of the Taxation of Chargeable Gains Act 1992.".

1990 c. 1.

(2) In section 26(1) of the Capital Allowances Act 1990 (disposal value), for the word "and" at the end of paragraph (ee) there shall be substituted—

"(ef) if that event is a deemed disposal of the machinery or plant which arises solely by virtue of subsection (2), (4) or (6) of section 64A and capital compensation is received by the contractor or participator (within the meaning of that subsection), equals the amount of that compensation;

(eg) if that event is such a deemed disposal and no such compensation is so received, equals nil; and".

(3) This section has effect where the capital expenditure—

(a) is incurred on or after 21st March 2000; or

(b) is treated as incurred by virtue of section 81(1)(a) of the Capital Allowances Act 1990 and the condition mentioned in that provision is fulfilled on or after that date.

Tonnage tax

Tonnage tax.

82. Schedule 22 to this Act (tonnage tax) has effect.

Other relieving provisions

Relief for interest on loans to buy annuities.

83.—(1) In section 365(3) of the Taxes Act 1988 (loans to buy annuities)—

(a) for the words "the qualifying maximum for the year of assessment", in the first place where they occur, there shall be substituted the words "the sum of £30,000"; and

(b) for those words, in the second place where they occur, there shall be substituted the words "that sum".

(2) In section 353(1G) of that Act (percentage of interest eligible for relief), for the words from "the percentage" to the end there shall be substituted "23 per cent.".

(3) In section 369(1A) of that Act (deductible percentage where interest payable under deduction of tax), for the words from "the percentage" to the end there shall be substituted "23 per cent.".

(4) This section has effect in relation to payments of interest made on or after 6th April 2000.

Exemption of payments under New Deal 50plus.
1973 c. 50.
1950 c. 29 (N. I.).

84.—(1) This section applies to—

(a) the scheme under section 2(2) of the Employment and Training Act 1973 known as "New Deal 50plus", and

(b) the corresponding scheme under section 1 of the Employment and Training Act (Northern Ireland) 1950.

(2) A payment to a person as a participant in the scheme by way of an employment credit or training grant under the scheme is exempt from income tax and, accordingly, shall be disregarded in computing the amount of any receipts brought into account for income tax purposes.

(3) This section applies to any such payment made on or after 25th October 1999.

Exemption of payments under Employment Zones programme.
1999 c. 30.

85.—(1) A payment to a person as a participant in an employment zone programme is exempt from income tax and, accordingly, shall be disregarded in computing the amount of any receipts brought into account for income tax purposes.

(2) An "employment zone programme" means an employment zone programme established for an area or areas designated under section 60 of the Welfare Reform and Pensions Act 1999.

(3) This section applies to any such payment made on or after 6th April 2000.

Loan where return bears inverse relationship to results.

86.—(1) In section 209 of the Taxes Act 1988 (meaning of "distribution"), after subsection (3A) insert—

"(3B) For the purposes of subsection (2)(e)(iii) above the consideration given by the company for the use of the principal secured shall not be treated as being to any extent dependent on the results of the company's business or any part of it by reason only of the fact that the terms of the security provide—

(a) for the consideration to be reduced in the event of the results improving, or

(b) for the consideration to be increased in the event of the results deteriorating.".

This subsection applies to payments made on or after 21st March 2000.

(2) In Schedule 18 to the Taxes Act 1988 (group relief: equity holders and profits available for distribution), in paragraph 1(5E)—

(a) in paragraph (a), after "improving" insert ", or for the rate of interest to be increased in the event of the results of the company's business or any part of it deteriorating"; and

(b) in paragraph (b), after "increasing" insert ", or for the rate of interest to be increased in the event of the value of any of the company's assets diminishing".

This subsection applies for the purposes of determining whether, at any time on or after 21st March 2000, a loan is a normal commercial loan for the purposes of paragraph 1(1)(b) of Schedule 18 to the Taxes Act 1988.

Tax treatment of acquisition, disposal or revaluation of certain rights.
1949 c. 54.
1998 c. 6.

87. Schedule 23 to this Act has effect with respect to the treatment of amounts relating to the acquisition, disposal or revaluation of—

(a) licences granted under section 1 of the Wireless Telegraphy Act 1949 in accordance with regulations made under section 3 of the Wireless Telegraphy Act 1998 (bidding for licences),

(b) indefeasible rights to use a telecommunications cable system, or

(c) rights derived, directly or indirectly, from a right within paragraph (a) or (b).

Contributions to local enterprise agencies, etc.

88. In sections 79(11) and 79A(7) of the Taxes Act 1988 (relief for contributions to local enterprise agencies, business links and similar organisations: time limits), the words "and before 1st April 2000" shall cease to have effect.

Waste disposal: entitlement of successor to allowances.

89. In Chapter V of Part IV of the Taxes Act 1988 (provisions relating to the Schedule D charge: deductions), after section 91B (waste disposal: site preparation), insert—

"Waste disposal: entitlement of successor to allowances.

91BA.—(1) This section applies where—

(a) site preparation expenditure has been incurred in relation to a waste disposal site,

(b) that expenditure was incurred by a person in the course of carrying on a trade, and

(c) on or after 21st March 2000—

(i) that person ('the predecessor') ceases to carry on that trade, or ceases to carry it on so far as it relates to that site, and

(ii) another person ('the successor') begins to carry on that trade, or to carry on in the course of a trade the activities formerly carried on by the predecessor in relation to that site.

(2) If the conditions specified in the following provisions of this section are met, then, for the purposes of section 91B above—

(a) the trade carried on by the successor shall be treated as the same trade as that carried on by the predecessor, and

(b) allowances shall be made to the successor (and not to the predecessor) as if everything done to or by the predecessor had been done to or by the successor.

(3) The first condition is that the whole of the site in question is transferred to the successor.

Provided the successor holds an estate or interest in the whole of the site, it need not be the same as that held by the predecessor.

(4) The second condition is that the successor, at the time he first deposits waste material at the site, holds a relevant licence in respect of the site which is then in force.

(5) Expressions used in this section have the same meaning as in section 91B.".

Capital gains tax: gifts and trusts

Restriction of gifts relief.
1992 c.12.

90.—(1) In section 165(1) of the Taxation of Chargeable Gains Act 1992 (relief for gifts of business assets), in the closing words (which list the provisions restricting relief), for "sections 166 and 167" substitute "sections 166, 167 and 169".

(2) In section 260(1) of that Act (gifts on which inheritance tax is chargeable etc.), in the closing words (which list the provisions restricting relief), for "section 261" substitute "sections 169 and 261".

(3) In section 165(2)(b)(i) of, and paragraph 2(2)(b)(i) of Schedule 7 to, that Act (shares or securities in respect of which gifts relief may be claimed), for "neither listed on a recognised stock exchange nor dealt in on the Unlisted Securities Market" substitute "not listed on a recognised stock exchange".

(4) In section 165(3)(b) of that Act (disposals of shares or securities excepted from gifts relief), after "shares or securities," insert "the transferee is a company or".

(5) This section has effect in relation to disposals made on or after 9th November 1999.

Disposal of interest in settled property: deemed disposal of underlying assets.
1992 c. 12.

91.—(1) After section 76 of the Taxation of Chargeable Gains Act 1992, insert—

"Disposal of interest in settled property: deemed disposal of underlying assets.

76A. Schedule 4A to this Act has effect with respect to disposals for consideration of an interest in settled property.".

(2) After Schedule 4 to that Act insert the Schedule 4A set out in Schedule 24 to this Act.

(3) This section applies to any disposal of an interest in settled property made, or the effective completion of which falls, on or after 21st March 2000.

Expressions used in this subsection have the same meaning as in Schedule 4A to the Taxation of Chargeable Gains Act 1992. 1992 c. 12.

Transfers of value by trustees linked with trustee borrowing.

92.—(1) After section 76A of the Taxation of Chargeable Gains Act 1992 (inserted by section 91(1) above), insert—

"Transfers of value by trustees linked with trustee borrowing.

76B. Schedule 4B to this Act has effect with respect to transfers of value by trustees that are, in accordance with the Schedule, treated as linked with trustee borrowing.".

(2) After Schedule 4A to that Act (inserted by section 91(2) above), insert the Schedule 4B set out in Schedule 25 to this Act.

(3) After section 85 of that Act, insert—

"Transfers of value: attribution of gains to beneficiaries.

85A. Schedule 4C to this Act has effect with respect to the attribution to beneficiaries of gains accruing under Schedule 4B.".

(4) After Schedule 4B to the Taxation of Chargeable Gains Act 1992 (inserted by subsection (2) above), insert the Schedule 4C set out in Part I of Schedule 26 to this Act.

The consequential amendments in Part II of Schedule 26 to this Act have effect.

(5) The provisions of this section have effect in relation to any transfer of value in relation to which the material time is on or after 21st March 2000.

The expressions "transfer of value" and "material time" have the same meaning in this subsection as in Schedule 4B to the Taxation of Chargeable Gains Act 1992.

Restriction on set-off of trust losses.

93.—(1) After section 79 of the Taxation of Chargeable Gains Act 1992, insert—

"Restriction on set-off of trust losses.

79A.—(1) This section applies to a chargeable gain accruing to the trustees of a settlement where—

(a) in computing the gain, the allowable expenditure is reduced in consequence, directly or indirectly, of a claim to gifts relief in relation to an earlier disposal to the trustees;

(b) the transferor on that earlier disposal, or any person connected with the transferor, has at any time—

(i) acquired an interest in the settled property, or

(ii) entered into an arrangement to acquire such an interest; and

(c) in connection with that acquisition or arrangement any person has at any time received, or become entitled to receive, any consideration.

(2) Where this section applies to a chargeable gain, no allowable losses accruing to the trustees (in the year in which the gain accrues or any earlier year) may be set against the gain.

This applies to the whole of the chargeable gain (and not just the element deferred as a result of the claim to gifts relief).

(3) In this section—

(a) "gifts relief" means relief under section 165 or 260; and

(b) references to losses not being allowed to be set against a chargeable gain are to the losses not being allowed as a deduction against chargeable gains to the extent that they include that gain.

(4) The references in subsection (1)(b) above to an interest in settled property have the same meaning as in Schedule 4A.".

(2) This section applies to gains accruing on or after 21st March 2000.

Attribution to trustees of gains of non-resident companies. 1992 c. 12.

94.—(1) After section 79A of the Taxation of Chargeable Gains Act 1992 (inserted by section 93 above), insert—

"Attribution to trustees of gains of non-resident companies.

79B.—(1) This section applies where trustees of a settlement are participators—

(a) in a close company, or

(b) in a company that is not resident in the United Kingdom but would be a close company if it were resident in the United Kingdom.

For this purpose 'participator' has the same meaning as in section 13.

(2) Where this section applies, nothing in any double taxation relief arrangements shall be read as preventing a charge to tax arising by virtue of the attribution to the trustees under section 13, by reason of their participation in the company mentioned in subsection (1) above, of any part of a chargeable gain accruing to a company that is not resident in the United Kingdom.

(3) Where this section applies and—

(a) a chargeable gain accrues to a company that is not resident in the United Kingdom but would be a close company if it were resident in the United Kingdom, and

(b) all or part of the chargeable gain is treated under section 13(2) as accruing to a close company which is not chargeable to corporation tax in respect of the gain by reason of double taxation relief arrangements, and

(c) had the company mentioned in paragraph (b) (and any other relevant company) not been resident in the United Kingdom, all or part of the chargeable gain would have been attributed to the trustees by reason of their participation in the company mentioned in subsection (1) above,

section 13(9) shall apply as if the company mentioned in paragraph (b) above (and any other relevant company) were not resident in the United Kingdom.

(4) The references in subsection (3) above to "any other relevant company" are to any other company which if it were not resident in the United Kingdom would be a company in relation to which section 13(9) applied with the result that all or part of the chargeable gain was attributed to the trustees as mentioned in that subsection.".

(2) This section applies where a chargeable gain accrues on or after 21st March 2000 to a company that is not resident in the United Kingdom.

Disposal of interest in non-resident settlement. 1992 c. 12.

95.—(1) Section 85 of the Taxation of Chargeable Gains Act 1992 (disposal of interest in non-resident settlements) is amended as follows.

(2) In subsection (2) (market value uplift for interest where trustees become non-resident) for "Subject to subsections (4) and (9) below," substitute "Subject to subsections (4), (9) and (10) below,".

(3) In subsection (5) (market value uplift for interest where trustees become treaty non-resident), at the beginning insert "Subject to subsection (10) below,".

(4) After subsection (9) add—

"(10) Subsection (3) or (7) above does not apply to the disposal of an interest created by or arising under a settlement which has relevant offshore gains at the material time.

The material time is—

(a) in relation to subsection (3) above, the relevant time within the meaning of section 80;

(b) in relation to subsection (7) above, the time found under subsection (8) above.

(11) For the purposes of subsection (10) above, a settlement has relevant offshore gains at any time if, were the year of assessment to end at that time, there would be an amount of trust gains which by virtue of section 89(2) or paragraph 8(3) of Schedule 4C would be available to be treated as chargeable gains accruing to any beneficiaries of the settlement receiving capital payments in the following year of assessment.".

(5) This section applies where the material time (within the meaning of section 85(10) of the Taxation of Chargeable Gains Act 1992, inserted by subsection (4) above) falls on or after 21st March 2000.

Payments by trustees to non-resident companies.

96.—(1) In section 96(5) of the Taxation of Chargeable Gains Act 1992 (capital payments by trustees to non-resident company), in the opening

words (which refer to the persons by whom the company is controlled), omit "and each of them is then resident or ordinarily resident in the United Kingdom".

(2) This section applies to payments received on or after 21st March 2000.

Groups and group relief

Group relief for non-resident companies etc.

97. Schedule 27 to this Act has effect.

In that Schedule—

Part I makes amendments of Chapter IV of Part X of the Taxes Act 1988 (group relief), and

Part II contains consequential amendments.

Recovery of tax payable by non-resident company.

98.—(1) Schedule 28 to this Act has effect with respect to the recovery of unpaid corporation tax payable by a company not resident in the United Kingdom.

(2) The provisions of that Schedule have effect in relation to corporation tax for accounting periods ending on or after 1st April 2000.

Joint arrangements for claims.
1998 c. 36.

99. In paragraph 77 of Schedule 18 to the Finance Act 1998 (power to make provision by regulations about joint arrangements for group relief), in sub-paragraph (1)(a) (arrangements permitting claim for relief without copy of notice of consent to surrender), after "the surrendering company" insert ", provided authority for the claim being so made is given by a company which is authorised in relation to the claimant company as mentioned in paragraph (b)".

Limit on amount of group relief in case of consortium claim.

100.—(1) For section 403C of the Taxes Act 1988 (special rules for consortium cases) substitute—

"Amount of relief in consortium cases.

403C.—(1) In the case of a consortium claim the amount that may be set off against the total profits of the claimant company is limited by this section.

(2) Where the claimant company is a member of the consortium, the amount that may be set off against the total profits of that company for the overlapping period is limited to the relevant fraction of the surrenderable amount.

That fraction is whichever is the lowest in that period of the following percentages—

(a) the percentage of the ordinary share capital of the surrendering company that is beneficially owned by the claimant company;

(b) the percentage to which the claimant company is beneficially entitled of any profits available for distribution to equity holders of the surrendering company; and

(c) the percentage to which the claimant company would be beneficially entitled of any assets of the surrendering company available for distribution to its equity holders on a winding-up.

If any of those percentages have fluctuated in that period, the average percentage over the period shall be taken.

(3) Where the surrendering company is a member of the consortium, the amount that may be set off against the total profits of the claimant company for the overlapping period is limited to the relevant fraction of the claimant company's total profits for the overlapping period.

That fraction is whichever is the lowest in that period of the following percentages—

(a) the percentage of the ordinary share capital of the claimant company that is beneficially owned by the surrendering company;

(b) the percentage to which the surrendering company is beneficially entitled of any profits available for distribution to equity holders of the claimant company; and

(c) the percentage to which the surrendering company would be beneficially entitled of any assets of the claimant company available for distribution to its equity holders on a winding-up.

If any of those percentages have fluctuated in that period, the average percentage over the period shall be taken.

(4) In any case where the claimant or surrendering company is a subsidiary of a holding company which is owned by a consortium, for the references in subsection (2) or (3) above to the claimant or surrendering company there shall be substituted references to the holding company.

(5) Expressions used in this section and in section 403A have the same meanings in this section as in that section.

(6) Schedule 18 has effect for supplementing this section.".

(2) In section 406(6) of the Taxes Act 1988 (claims relating to losses etc. of consortium company or group member), for "accounting period in respect of which the member's share in the consortium" substitute "overlapping period in respect of which the relevant fraction".

(3) The following provisions shall cease to have effect—

(a) in section 402(4) of the Taxes Act 1988, the words from "if the share in the consortium" to "is nil or"; and

(b) in section 413 of that Act, subsections (8) and (9).

(4) In Schedule 18 to the Taxes Act 1988—

(a) in paragraphs 1(1), 2(1), 3(1), 4(3) and (4), 5A(3) and (4), 5C(3) and (4), 5D(3) and (4), 5E(3) and (4) and 6, for "section 413(7) to (9)" substitute "sections 403C and 413(7)"; and

(b) in paragraph 7(1)(b), for "subsection (8) of that section" substitute "section 403C".

(5) The amendments in this section shall be deemed always to have had effect.

Notional transfers within groups of companies.
1992 c. 12.

101.—(1) After section 171 of the Taxation of Chargeable Gains Act 1992 insert—

"Notional transfers within a group.

171A.—(1) This section applies where—

(a) two companies ('A' and 'B') are members of a group of companies; and

(b) A disposes of an asset to a person who is not a member of the group ('C').

(2) Subject to subsections (3) and (4) below, A and B may, by notice in writing to an officer of the Board, jointly elect that, for the purposes of corporation tax on chargeable gains—

(a) the asset, or any part of it, shall be deemed to have been transferred by A to B immediately before the disposal to C;

(b) section 171(1) shall be deemed to have applied to that transfer; and

(c) the disposal of the asset or part to C shall be deemed to have been made by B.

(3) No election may be made under subsection (2) above unless section 171(1) would have applied to an actual transfer of the asset or part from A to B.

(4) An election under that subsection must be made before the second anniversary of the end of the accounting period of A in which the disposal to C was made.

(5) Any payment by A to B, or by B to A, in pursuance of an agreement between them in connection with the election—

(a) shall not be taken into account in computing profits or losses of either company for corporation tax purposes, and

(b) shall not for any purposes of the Corporation Tax Acts be regarded as a distribution or a charge on income,

provided it does not exceed the amount of the chargeable gain or allowable loss that is treated, as a result of the disposal, as accruing to B.".

(2) This section has effect in relation to disposals made on or after 1st April 2000.

PART III
CHAPTER II

Chargeable gains: non-resident companies and groups etc.

102. Schedule 29 to this Act has effect.

In that Schedule—

1992 c. 12.

Part I makes provision with respect to the application of the Taxation of Chargeable Gains Act 1992 to companies not resident in the United Kingdom and groups of companies etc,

Part II contains minor and consequential amendments, and

Part III contains transitional provisions.

International matters

Double taxation relief.

103. Schedule 30 to this Act (double taxation relief) shall have effect.

Controlled foreign companies.

104. Schedule 31 to this Act (which makes provision in relation to controlled foreign companies) shall have effect.

Corporation tax: use of currencies other than sterling.

105.—(1) For sections 92 to 95 of the Finance Act 1993 there shall be substituted—

1993 c. 34.

"The basic rule: sterling to be used.

92.—(1) Where a company carries on a business, the profits or losses of the business for an accounting period shall for the purposes of corporation tax be computed and expressed in sterling; but this is subject to section 93 below.

(2) In this section—

'losses' includes management expenses and any allowances falling to be made under section 28 or 61(1) of the Capital Allowances Act 1990;

1990 c. 1.

'profits' includes gains, income and any charges falling to be made under section 28 or 61(1) of that Act.

Use of currency other than sterling.

93.—(1) This section applies where in an accounting period a company carries on a business and either the first condition or the second condition is fulfilled.

(2) The first condition is that—

(a) the accounts of the company as a whole are prepared in a currency other than sterling in accordance with normal accounting practice; and

(b) in the case of a company which is not resident in the United Kingdom, the company makes a return of accounts for its branch in the United Kingdom prepared in such a currency in accordance with such practice.

(3) The second condition is that—

(a) the accounts of the company as a whole are prepared in sterling but, so far as relating to the business, they are prepared, using the closing rate/net investment method, from financial statements prepared in a currency other than sterling; or

(b) in the case of a company which is not resident in the United Kingdom, the company makes a return of accounts for its branch in the United Kingdom prepared in sterling but, so far as relating to the business, it is prepared, using that method, from financial statements prepared in such a currency.

(4) The profits or losses of the business for an accounting period shall for the purposes of corporation tax be found by—

(a) taking the amount of all the profits and losses of the business for the period computed and expressed in the relevant foreign currency;

(b) taking account of any of the following which are so computed and expressed—

(i) any management expenses brought forward under section 75(3) of the Taxes Act 1988 from an earlier accounting period;

(ii) any losses of the business brought forward under section 392B or 393 of that Act from such a period; and

(iii) any non-trading deficits on loan relationships brought forward under section 83 of the Finance Act 1996 from the previous accounting period; and 1996 c. 8.

(c) taking the sterling equivalent of the amount found by applying paragraphs (a) and (b) above.

(5) In the application of section 22B, 34, 35, 38C, 38D or 79A of the Capital Allowances Act 1990 for the purposes of subsection (4)(a) or (b) above, it shall be assumed that any sterling amount mentioned in any of those sections is its equivalent expressed in the relevant foreign currency. 1990 c. 1.

(6) Where in an accounting period—

(a) a company carries on different parts of a business through different branches (whether within or outside the United Kingdom); and

(b) this section would apply differently in relation to different parts if they were separate businesses,

those parts shall be treated for the purposes of this section as if they were separate businesses for that period.

(7) In this section, unless the context otherwise requires—

'accounts', in relation to a company, means—

(a) the annual accounts of the company prepared in accordance with Part VII of the Companies Act 1985 or Part VIII of the Companies (Northern Ireland) Order 1986; or 1985 c. 6. S.I. 1986/1032 (N.I.6).

(b) if the company is not required to prepare such accounts, the accounts which it is required to keep under the law of its home State; or

(c) if the company is not so required to keep accounts, such of its accounts as most closely correspond to accounts which it would have been required to prepare if the provisions of that Part applied to it;

'branch' includes any collection of assets and liabilities;

'the closing rate/net investment method' means the method so called as described under the title 'Foreign currency translation' in the Statement of Standard Accounting Practice issued in April 1983 by the Institute of Chartered Accountants in England and Wales;

'home State', in relation to a company, means the country or territory under whose laws the company is incorporated;

'losses' has the same meaning as in section 92 above except that it does not include allowable losses within the meaning of the Taxation of Chargeable Gains Act 1992;

1992 c. 12.

'profits' has the same meaning as in section 92 above except that it does not include chargeable gains within the meaning of that Act;

'the relevant foreign currency' means the currency other than sterling or, where the first condition is fulfilled and two different such currencies are involved, the currency in which the return of accounts is prepared;

'return of accounts', in relation to a branch in the United Kingdom, means a return of such accounts of the branch as may be required by the Inland Revenue under paragraph 3 of Schedule 18 to the Finance Act 1998 (company tax returns, assessments and related matters).

1998 c. 36.

Rules for ascertaining currency equivalents.

94.—(1) Any receipt or expense which is to be taken into account in making a computation under subsection (1) of section 92 above for an accounting period, and is denominated in a currency other than sterling, shall be translated into its sterling equivalent—

(a) if either of the conditions mentioned in subsection (2) below is fulfilled, by reference to the rate used in the preparation of the accounts of the company as a whole for that period;

(b) if neither of those conditions is fulfilled, by reference to the London closing exchange rate for the relevant day.

(2) The conditions are—

(a) that the rate is an arm's length exchange rate for the relevant day;

(b) that the rate is an average arm's length exchange rate for a period ending with that day, or for a period not exceeding three months which includes that day, and the arm's length exchange rate for any day in that period (except the first) is not significantly different from that for the preceding day.

(3) Subject to subsections (5) and (7) below, any amount found by applying paragraphs (a) and (b) of subsection (4) of section 93 above shall be translated into its sterling equivalent by reference to the London closing exchange rate for the relevant day.

(4) The following—

(a) any receipt or expense which is to be taken into account in making a calculation for the purposes of subsection (4)(a) or (b) of section 93 above, and is denominated in a currency other than the relevant foreign currency; and

(b) any such sterling amount as is referred to in subsection (5) of that section,

shall be translated into its equivalent expressed in the relevant foreign currency by reference to the London closing exchange rate for the relevant day.

(5) Where section 93 above applies by virtue of the first condition mentioned in that section, then, as regards the business or part of the business, the company—

(a) may elect, by a notice given to an officer of the Board, that as from the first day of the accounting period in which the notice is given, an average arm's length exchange rate shall be used for the purposes of subsection (3) above instead of the rate there mentioned; and

(b) may withdraw such an election, by a notice so given, as from the first day of the first accounting period beginning on or after the date of the notice.

(6) Where an election under subsection (5) above is withdrawn, no further election may be made under that subsection so as to take effect before the third anniversary of the day on which the withdrawal takes effect.

(7) Where—

(a) section 93 above applies by virtue of the second condition mentioned in that section; and

(b) the accounts of the company, so far as relating to the business or part of the business, are prepared by reference to an average arm's length exchange rate,

that exchange rate shall be used for the purposes of subsection (3) above instead of the rate there mentioned.

(8) In this section—

'accounts' has the same meaning as in section 93 above;

'arm's length exchange rate' means such exchange rate as might reasonably be expected to be agreed between persons dealing at arm's length;

'average arm's length exchange rate', in relation to a period, means the rate which represents an appropriate average of arm's length exchange rates for the period;

'the relevant day' means—

(a) for the purposes of subsections (1), (2) and (4)(a) above, the day on which the company becomes entitled to the receipt or incurs (or is treated as incurring) the expense;

(b) for the purposes of subsection (3) above, the last day of the accounting period in question;

(c) for the purposes of subsection (4)(b) above, the day on which the company incurs the capital expenditure.

(9) Nothing in this section affects the operation of Chapter IV of Part VII of the Taxes Act 1988 (controlled foreign companies) or Chapter II of this Part.

1998 c. 36.

(10) Nothing in paragraph 88 of Schedule 18 to the Finance Act 1998 (company tax returns, assessments and related matters) shall be taken to prevent any amount which is taken to be conclusively determined for the purposes of the Corporation Tax Acts from being translated under this section by reference to an exchange rate which was not used to determine the amount which can no longer be altered.".

1993 c. 34.

(2) Where any of the items referred to in section 93(4)(b) of the Finance Act 1993 (as substituted by subsection (1) above) fall to be taken into account in the first accounting period in relation to which this section has effect, the amounts of those items shall be computed and expressed in the relevant currency by reference to the London closing exchange rate for the last day of the immediately preceding accounting period.

1990 c. 1.

(3) Where any of the items referred to in section 25(1) of the Capital Allowances Act 1990 which fall to be taken into account for the first accounting period in relation to which this section has effect relate to expenditure which was incurred before the beginning of that period, the amounts of those items shall be computed and expressed in the relevant currency by reference to the London closing exchange rate for the last day of the immediately preceding accounting period.

(4) Subject to subsection (5) below, this section has effect for accounting periods beginning on or after 1st January 2000 and ending on or after 21st March 2000.

(5) Any company which did not, for the accounting period immediately preceding the first accounting period falling within

subsection (4) above, make an election in respect of a trade or part of a trade under the Local Currency Elections Regulations 1994 may, by notice given to an officer of the Board on or before 31st August 2000, elect that this section shall not have effect in relation to it until the first accounting period beginning on or after 1st July 2000.

S.I. 1994/3230.

Foreign exchange gains and losses: use of local currency.
1993 c. 34.

106.—(1) In subsection (2) of section 149 of the Finance Act 1993 (local currency to be used)—

(a) for "trade or trades", in both places where they occur, there shall be substituted "business or businesses"; and

(b) for "any such trade" there shall be substituted "any such business".

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

(a) the words "the asset or contract was held, or the liability was owed, by the company solely for trading purposes and" shall cease to have effect; and

(b) for "sections 125 to 128" there shall be substituted "sections 125 to 129".

(3) In subsection (5) of that section—

(a) the words "the asset or contract was held, or the liability was owed, by the company solely for trading purposes and" shall cease to have effect;

(b) for "sections 125 to 128" there shall be substituted "sections 125 to 129"; and

(c) for "trade", in both places where it occurs, there shall be substituted "business".

(4) For subsection (6) of that section there shall be substituted—

"(6) In any other case—

(a) sections 125 to 129 above shall be applied by reference to sterling;

(b) those sections shall then be applied separately by reference to each local currency involved (other than sterling); and

(c) any exchange gain or loss of a business or part shall be ignored unless found in the currency which is the local currency of the business or part for the relevant accounting period (whether sterling or otherwise).".

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

"(7) For the purposes of this section a part of a business is any part of a business which is treated for the purposes of section 93 above as if it were a separate business for the relevant accounting period.".

(6) For subsection (9) of section 128 of the Finance Act 1993 (trading gains and losses) there shall be substituted—

"(9) For the purposes of this section a part of a trade is any part of a trade which is treated for the purposes of section 93 above as if it were a separate business for the relevant accounting period; and

the relevant accounting period is the accounting period which constitutes the accrual period concerned or in which that accrual period falls.".

(7) After section 135 of that Act there shall be inserted—

"Sterling used if avoidance of gain is the main benefit.

135A.—(1) This section applies where, as regards qualifying assets and liabilities of a company—

(a) a currency other than sterling would (apart from this section) be the local currency for the purposes of sections 125 to 129 above; and

(b) the main benefit that might be expected to accrue from that currency being the local currency is that no net exchange gain would accrue to the company for those purposes.

(2) If a net exchange gain would accrue to the company if sterling were the local currency for the purposes of sections 125 to 129 above, then, as regards the assets and liabilities concerned, sterling shall be the local currency for those purposes.

(3) For the purposes of this section a net exchange gain accrues to a company if its initial exchange gains (as determined in accordance with this Chapter) exceed its initial exchange losses (as so determined).".

(8) For subsection (12) of section 140 of that Act (deferral of unrealised gains) there shall be substituted—

"(12) For the purposes of this section a part of a trade is any part of a trade which is treated for the purposes of section 93 above as if it were a separate business for the relevant accounting period; and the relevant accounting period is the accounting period which constitutes the second accrual period or in which that accrual period falls.".

(9) For subsection (2) of section 142 of that Act (deferral non-sterling trades) there shall be substituted—

"(2) For the purposes of subsection (1) above the sterling equivalent of an amount is the sterling equivalent calculated by reference to such rate of exchange as applies by virtue of section 94 above in the case of the profits or losses for the accounting period concerned of the business or part of which the gain or loss is a gain or loss (or would be apart from section 139 above).".

(10) In subsections (3) and (5) of that section, for "trade", in each place where it occurs, there shall be substituted "business".

(11) For subsection (4) of that section there shall be substituted—

"(4) The amount the company is treated as receiving under section 128(4) or 129(2) above in respect of the accounting period and by virtue of the gain (as reduced) shall be the amount computed and expressed in that currency.".

(12) In subsection (1) of section 163 of that Act (local currency of a trade), for "trade" there shall be substituted "business".

(13) For subsections (2) and (3) of that section there shall be substituted—

"(2) Where by virtue of section 93 above the profits or losses of a business or part of a business for an accounting period are to be computed and expressed in a currency other than sterling for the purposes of corporation tax, that other currency is the local currency of the business or part for that period.".

(14) In section 164 of that Act (interpretation: miscellaneous), subsections (6) and (7) shall cease to have effect.

(15) In section 167 of that Act (orders and regulations)—

(a) in subsection (5A), for "the provisions of Chapter II of Part IV of the Finance Act 1996 (loan relationships)" there shall be substituted— 1996 c. 8.

"(a) the provisions of Chapter II of Part IV of the Finance Act 1996 (loan relationships); or

(b) the provisions of sections 105 and 106 of the Finance Act 2000 (use of local currency).";

(b) in subsection (5B), for "subsection (5A)" there shall be substituted "subsection (5A)(a)"; and

(c) after that subsection there shall be inserted—

"(5C) The power to make any such modifications as are mentioned in subsection (5A)(b) above shall be exercisable so as to apply those modifications in relation to any accounting period of a company beginning on or after 1st January 2000.".

(16) In subsection (4)(b) of section 110 of the Finance Act 1998 (determinations requiring the sanction of the Board), after "section 135," there shall be inserted "135A,". 1998 c. 36.

(17) This section has effect for accounting periods beginning on or after 1st January 2000 and ending on or after 21st March 2000.

Insurance

107.—(1) Where an amount representing the whole or any part of the technical provisions which are made by a general insurer for a period of account is taken into account in computing for tax purposes the profits of his trade for that period— General insurance reserves.

(a) subsection (2) below applies if it becomes apparent in a later period of account that the amount taken into account was excessive; and

(b) subsection (3) below applies if it becomes apparent in such a period that that amount was insufficient.

(2) For the purpose of making good to the Exchequer the loss occasioned by the excess, an amount calculated by applying, for a prescribed period, a prescribed rate of interest to the amount of the excess shall be treated as a receipt of the general insurer's trade in computing for tax purposes the profits of that trade for the later period of account.

(3) For the purpose of making good to the general insurer the loss occasioned by the deficiency, an amount calculated by applying, for a prescribed period, a prescribed rate of interest to the amount of the deficiency shall be treated as an expense of the general insurer's trade in computing for tax purposes the profits of that trade for the later period of account.

(4) A general insurer may, before the end of a prescribed period, elect that any part of the technical provisions made by him for a period of account shall not be taken into account in computing for tax purposes the profits of his trade for that period; and where he does so, the profits of his trade for the next period of account shall be adjusted accordingly for the purposes of any computation for tax purposes.

(5) The Board may by regulations make provision for giving effect to subsections (1) to (4) above.

(6) The regulations may, in particular—

(a) exclude from the operation of subsections (1) to (4) above such descriptions of general insurer as may be prescribed;

(b) make such provision as appears to the Board to be appropriate for determining for the purposes of subsections (1) to (3) above whether any amount taken into account was excessive or insufficient and, if so, the amount of the excess or deficiency, including—

(i) provision requiring discounting at a prescribed rate; and

(ii) provision allowing a prescribed margin for error;

(c) make provision for applying subsections (1) to (3) above, to such extent and with such modifications as appear to the Board to be appropriate, to cases where it becomes apparent—

(i) that any amount taken into account was or has become insufficient; or

(ii) that any amount treated as a receipt or expense of a trade was excessive;

(d) make such provision as appears to the Board to be appropriate for dealing with cases where a general insurer transfers his general business to, or enters into a qualifying contract with, another person; and

(e) in the event of any changes in the rules or practice of Lloyd's, make such amendments of this section as appear to the Board to be expedient having regard to those changes.

(7) In this section—

"closing year", in relation to a syndicate, has the same meaning as in Chapter III of Part II of the Finance Act 1993 or Chapter V of Part IV of the Finance Act 1994;

1993 c. 34.
1994 c. 9.

"general business" has the same meaning as in the Insurance Companies Act 1982;

1982 c. 50.

"general insurer" means any of the following which carries on general business—

(a) a company to which Part II of the Insurance Companies Act 1982 applies;

(b) an EC company (within the meaning of section 6(2) of that Act) which carries on general business through a branch or agency in the United Kingdom;

(c) a controlled foreign company within the meaning of Chapter IV of Part XVII of the Taxes Act 1988; and

(d) an underwriting member of Lloyd's ("an underwriting member");

"period of account"—

(a) except in relation to an underwriting member, means a period for which an account is made up;

(b) in relation to such a member, means an underwriting year in which profits or losses are declared for an earlier underwriting year;

"prescribed" means prescribed by regulations under this section;

"qualifying contract", in relation to a general insurer, means a contract for reinsuring the liabilities to which any technical provisions of his relate;

"reinsurance to close contract" means a contract where, in accordance with the rules or practice of Lloyd's and in consideration of the payment of a premium, one underwriting member agrees with another to meet liabilities arising from the latter's underwriting business for an underwriting year so that the accounts of the business for that year may be closed;

"syndicate" means a syndicate of underwriting members of Lloyd's formed for an underwriting year;

"technical provisions", except in relation to an underwriting member, means any of the following—

(a) provisions for claims outstanding;

(b) provisions for unearned premiums;

(c) provisions for unexpired risks;

and in this definition expressions which are used in Schedule 9A to the Companies Act 1985 have the same meanings as in that Schedule; 1985 c. 6.

"technical provisions", in relation to an underwriting member, means—

(a) so much of the premiums paid, or treated (in accordance with the rules or practice of Lloyd's) as paid, by him under reinsurance to close contracts; and

(b) so much of any provisions made for the unpaid liabilities of an open syndicate of which he is a member,

as may be determined by or under regulations made by the Board;

"underwriting year" means the calendar year;

and for the purposes of this section a syndicate is an open syndicate at any time after the end of its closing year if, at that time, the accounts of its business for the underwriting year for which it was formed have not been closed.

(8) Regulations under this section may—

(a) make different provision for different cases or descriptions of case, including different provision for different entitlements to participate in the general business carried on by syndicates; and

(b) make such supplementary, incidental, consequential and transitional provision as appears to the Board to be appropriate.

(9) An amount which under subsection (2) or (3) above is treated as a receipt or expense of an underwriting member's trade—

(a) shall not be included in the aggregate amount mentioned in paragraph 1 of Schedule 19 to the Finance Act 1993; but

1993 c. 34.

(b) shall be regarded as arising directly from his membership of one or more syndicates for the purposes of section 172(1)(a) of the Finance Act 1993 or section 220(2)(a) of the Finance Act 1994.

1994 c. 9.

(10) Nothing in paragraph 7 of Schedule 19 to the Finance Act 1993 shall be taken to affect the operation of subsection (2) or (3) above or the exercise of the power conferred by subsection (4) above.

(11) Section 177 of the Finance Act 1993 and section 224 of the Finance Act 1994 (which are superseded by this section) shall cease to have effect.

(12) In this section—

(a) subsections (1) to (3), subsections (5) to (8) and (10) so far as relating to those subsections and subsection (9) have effect where—

(i) the first period of account mentioned in subsection (1) begins on or after 1st January 2000; and

(ii) the later period of account mentioned in that subsection begins on or after 1st January 2001;

(b) subsection (4), and subsections (5) to (8) and (10) so far as relating to that subsection, have effect in relation to periods of account beginning on or after 1st January 2000;

(c) subsection (11) has effect in relation to profits of underwriting members' trades which are declared in periods of account beginning on or after that date.

Overseas life assurance business.

108.—(1) In subsection (1) of section 431D of the Taxes Act 1988 (meaning of "overseas life assurance business"), for "or life reinsurance business" there shall be substituted ", life reinsurance business or business of any description excluded from this section by regulations made by the Board".

(2) For subsections (2) to (8) of that section there shall be substituted—

"(2) Regulations under subsection (1) above may describe the excluded business by reference to any circumstances appearing to the Board to be relevant.

(3) The Board may by regulations—

(a) make provision as to the circumstances in which a trustee who is a policy holder or annuitant residing in the United Kingdom is to be treated for the purposes of this section as not so residing; and

(b) provide that nothing in Chapter II of Part XIII shall apply to a policy or contract which constitutes overseas life assurance business by virtue of any such provision as is mentioned in paragraph (a) above.

(4) Regulations under subsection (1) or (3) above may contain such supplementary, incidental, consequential or transitional provision as appears to the Board to be appropriate.".

(3) Where the policy or contract for any life assurance business was made before such day as the Treasury may by order appoint, the

amendments made by this section (and any regulations made under them) shall not have effect for determining whether the business is overseas life assurance business.

Insurance business: apportionment rules.

109.—(1) In subsection (4)(b) of section 432ZA of the Taxes Act 1988 (linked assets), for the words from "the proportion which" to the end there shall be substituted—

"the proportion A/B where—

A is the total of the linked liabilities of the company which are liabilities of the internal linked fund in which the asset is held and are referable to that category of business;

B is the total of the linked liabilities of the company which are liabilities of that fund.".

(2) For subsection (6) of that section there shall be substituted—

"(6) In this section—

"internal linked fund", in relation to an insurance company, means an account—

(a) to which linked assets are appropriated by the company; and

(b) which may be divided into units the value of which is determined by the company by reference to the value of those assets;

"linked liabilities" means liabilities in respect of benefits to be determined by reference to the value of linked assets.".

(3) In the subsections mentioned in subsection (4) below—

(a) in paragraph (a), after "reduced" there shall be inserted "(but not below nil)" and for "values" there shall be substituted "net values"; and

(b) for paragraph (b) there shall be substituted—

"(b) the denominator is the aggregate of—

(i) the numerator given by paragraph (a) above; and

(ii) the numerators given by that paragraph in relation to the other categories of business.".

(4) The subsections are—

(a) subsection (6) of section 432A of the Taxes Act 1988 (apportionment of income and gains);

(b) subsection (4) of section 432C of that Act (section 432B apportionment: income of non-participating funds); and

(c) subsection (3) of section 432D of that Act (section 432B apportionment: value of non-participating funds).

(5) For subsection (8) of section 432A there shall be substituted—

"(8) In subsection (6) above "appropriate part", in relation to the investment reserve, means—

(a) where none (or none but an insignificant proportion) of the liabilities of the long term business are with-profits liabilities, the part of that reserve which bears to the whole the proportion A/B where—

A is the amount of the liabilities of the category of business in question;

B is the whole amount of the liabilities of the long term business; and

(b) in any other case, the part of that reserve which bears to the whole the proportion C/D where—

C is the amount of the with-profits liabilities of the category of business in question;

D is the whole amount of the with-profits liabilities of the long term business.".

(6) After subsection (9) of that section there shall be inserted—

"(9A) In this section and sections 432C and 432D "net value", in relation to any assets, means the excess of the value of the assets over any liabilities which—

(a) represent a money debt; and

(b) are liabilities of an internal linked fund in which the assets are held;

and in this subsection "internal linked fund" has the same meaning as in section 432ZA.

(9B) In this section—

"investment reserve", in relation to an insurance company, means the excess of the value of the assets of the company's long term business over the aggregate of—

(a) the liabilities of that business; and

(b) any liabilities of the long term business fund which represent a money debt;

"money debt" has the same meaning as in Chapter II of Part IV of the Finance Act 1996.".

1996 c. 8.

(7) In subsection (5)(b) of section 432C, after "subsection (1)" there shall be inserted "or (2)".

(8) In Schedule 11 to the Finance Act 1996 (loan relationships: special provisions for insurers), after paragraph 3 there shall be inserted—

"3A.—(1) This paragraph applies where—

(a) any money debt of an insurance company is represented by a liability which is a liability of the long term business fund of the company; and

(b) any question arises for the purposes of the Corporation Tax Acts as to the extent to which any debits or credits given for the purposes of this Chapter in respect of that debt or liability are referable to any category of the company's long term business.

(2) If any debits relate to interest payable in respect of the late payment of any benefits, they are referable to the category of long term business which comprises the effecting and carrying out of the policies or contracts under which the benefits are payable.

(3) If the liability is a liability of an internal linked fund of the company, any debits or credits are referable—

(a) to the category of long term business to which the fund relates; or

(b) where the fund relates to two or more categories of such business, to those categories in the same proportion as the linked assets in the fund are apportioned to them under section 432ZA(4) of the Taxes Act 1988 (linked assets).

(4) In any case not falling within sub-paragraph (2) or (3) above, there shall be referable to any category of long term business the relevant fraction of any debits or credits.

(5) For the purpose of determining that fraction, subsections (6) and (8) of section 432A of the Taxes Act 1988 (apportionment of income and gains) shall have effect as if—

(a) the debits or credits were income not directly referable to any category of business;

(b) the reference in subsection (6)(a) to assets directly referable to a category of business were a reference to assets linked to that category of business; and

(c) subsection (9) of that section were omitted.

(6) In this paragraph "internal linked fund" has the same meaning as in section 432ZA of the Taxes Act 1988 (linked assets).".

(9) In consequence of the preceding provisions of this section—

(a) in section 431(2) of the Taxes Act 1988 (interpretative provisions in relation to insurance companies), the definition of "investment reserve" shall cease to have effect;

(b) in paragraph 4(2) of Schedule 19AA to that Act (overseas life assurance fund), after "investment reserve" there shall be inserted "(within the meaning of section 432A)"; and

(c) in paragraph 7(3) of Schedule 19AC to that Act (modification of Act in relation to overseas life insurance companies)—

(i) in paragraph (b), for "value" there shall be substituted "net value"; and

(ii) paragraph (c) shall cease to have effect.

(10) This section shall have effect in relation to accounting periods beginning on or after 1st January 2000 and ending on or after 21st March 2000.

Miscellaneous

Rent factoring.

110.—(1) At the end of Part II of the Taxes Act 1988 (provisions relating to the Schedule A charge) insert—

"Rent factoring

Finance agreement: interpretation.

43A.—(1) A transaction is a finance agreement for the purposes of sections 43B to 43F if in accordance with normal accounting practice the accounts of a company which receives money under the transaction would record a financial obligation (whether in respect of a lease creditor or otherwise) in relation to that receipt.

(2) In subsection (1) "normal accounting practice" in relation to a company means normal accounting practice

for a company incorporated in a part of the United Kingdom (irrespective of where the company is in fact incorporated).

(3) The reference to a company's accounts in subsection (1) shall be taken to include a reference to the consolidated group accounts of a group of companies of which it is a member; and—

(a) "group of companies" means a set of companies which, if each were incorporated in Great Britain, would form a group within the meaning given by section 262(1) of the Companies Act 1985, and

1985 c. 6.

(b) "consolidated group accounts" means accounts of a kind which would satisfy the requirements of section 227 of the Companies Act 1985.

(4) For the purposes of subsection (1) a company shall be treated as receiving any money which—

(a) falls to be taken into account as a receipt for the purpose of calculating the company's liability to corporation tax, or

(b) would fall to be taken into account as a receipt for that purpose if the company were resident in the United Kingdom.

Transfer of rent.

43B.—(1) This section applies to a finance agreement if it transfers a right to receive rent in respect of land in the United Kingdom from one person to another, otherwise than by means of the grant of a lease of land in the United Kingdom.

(2) A person who receives a finance amount shall be treated for the purposes of the Tax Acts as receiving it—

(a) by way of rent,

(b) in the course of a business falling within paragraph 1(1) of Schedule A, and

(c) in the chargeable period in which the agreement is made;

and the finance amount shall be taken into account in computing the profits of the Schedule A business for the chargeable period in which the agreement is made.

(3) In subsection (2) "finance amount" means a receipt in respect of which section 43A(1) is satisfied.

Transfer of rent: exceptions, &c.

43C.—(1) Section 43B shall not apply to a finance agreement if the term over which the financial obligation is to be reduced exceeds 15 years.

(2) Section 43B shall not apply to a finance agreement if—

(a) the arrangements for the reduction of the financial obligation substantially depend on a person's entitlement to an allowance under the Capital Allowances Acts, and

(b) that person is not connected to the person from whom the right to receive rent is transferred.

(3) Section 43B shall not apply to a finance agreement if—

(a) section 36(1) applies (without reference to section 36(3)), or

(b) section 36(1) would apply (without reference to section 36(3)) if the price at which an estate or interest is sold were to exceed the price at which it is to be reconveyed.

(4) If—

(a) section 36(1) would apply in relation to a finance agreement by virtue only of section 36(3), and

(b) section 43B applies in relation to the agreement,

section 36(1) shall not apply.

(5) Section 43B shall not apply to a finance agreement if section 780 applies.

(6) Section 43B(2) shall not apply to a finance amount which is brought into account in computing the profits of a trade for the purposes of Case I of Schedule D (otherwise than by virtue of section 83 of the Finance Act 1989 (life assurance)). 1989 c. 26.

Interposed lease.

43D.—(1) This section applies to a finance agreement under which—

(a) a lease is granted in respect of land in the United Kingdom,

(b) a premium is payable in respect of the lease, and

(c) section 43A(1) is satisfied by reference to the receipt of the premium.

(2) Where this section applies, the person to whom the premium is payable shall be treated for the purposes of the Tax Acts as receiving it—

(a) by way of rent,

(b) in the course of a business falling within paragraph 1(1) of Schedule A, and

(c) in the chargeable period in which the agreement is made;

and the premium shall be taken into account in computing the profits of the Schedule A business for the chargeable period in which the agreement is made.

Interposed lease: exceptions, &c.

43E.—(1) Section 43D shall not apply to a finance agreement if—

(a) the term over which the financial obligation is to be reduced exceeds 15 years, or

(b) the length of the lease does not exceed 15 years, or

(c) the length of the lease is not significantly different from the term over which the financial obligation is to be reduced.

(2) For the purpose of subsection (1) the length of a lease shall be calculated in accordance with section 38.

(3) Section 43D shall not apply to a finance agreement if—

(a) the arrangements for the reduction of the financial obligation substantially depend on a person's entitlement to an allowance under the Capital Allowances Acts, and

(b) that person is not connected to the person who grants the lease in respect of which the premium is payable.

(4) Section 43D(2) shall not apply where all or part of the premium is brought into account in computing the profits of a trade for the purposes of Case I of Schedule D (otherwise than by virtue of section 83 of the Finance Act 1989 (life assurance)).

1989 c. 26.

(5) Section 34 shall not apply in relation to a premium to which section 43D(2) applies.

Insurance business.

43F.—(1) In the application of sections 43A to 43E to companies carrying on insurance business a reference to accounts does not include a reference to accounts required to be prepared under Part II of the Insurance Companies Act 1982.

1982 c. 50.

(2) Neither section 43B(2) nor section 43D(2) shall require any amount to be brought into account in a computation of profits of life assurance business, or any category of life assurance business, carried on by a company where the computation is made in accordance with the provisions of this Act applicable to Case I of Schedule D.

(3) Section 432A shall have effect in relation to any sum which is or would be treated as received by virtue of section 43B(2) or 43D(2) of this Act.

(4) Expressions used in this section and in Chapter I of Part XII have the same meaning in this section as in that Chapter.

Interpretation.

43G.—(1) This section applies for the purposes of sections 43A to 43F.

(2) In those sections—

"connected" in relation to persons has the meaning given by section 839,

"rent" includes any sum which is chargeable to tax under Schedule A,

"lease" includes an underlease, sublease, tenancy or licence and an agreement for any of those things, but does not include a mortgage or heritable security,

"premium" has the meaning given by section 24(1) (and, in relation to Scotland, section 24(5)), and subsections (4) and (5) of section 34 shall have effect in relation to sections 43A to 43F as they have effect in relation to section 34, and

"sum" has the meaning given by section 24(4).

(3) A reference to a transfer of a right to receive rent from one person to another includes a reference to any arrangement under which rent ceases to form part of the receipts taken into account for the purposes of calculating a company's liability to corporation tax or income tax.

(4) In calculating the term over which a financial obligation is to be reduced no account shall be taken of any period during which the arrangements for reduction differ from the arrangements which apply in a previous period if—

(a) the period begins after the financial obligation has been substantially reduced, and

(b) the different arrangements for reduction are not the result of a provision for periodic review, on commercial terms, of rent under a lease.".

(2) The provisions inserted by subsection (1) have effect in relation to transactions entered into on or after 21st March 2000.

Payments under deduction of tax.

111.—(1) Chapter VIIA of Part IV of the Taxes Act 1988 (paying and collecting agents) shall cease to have effect.

(2) In section 349 of the Taxes Act 1988 (payments under deduction of tax)—

(a) in subsections (3)(c) and (3B) (payments excepted from deduction of tax), for "payment to which section 124 applies" substitute "payment of interest on a quoted Eurobond"; and

(b) in subsection (4), after the definition of "qualifying deposit right" insert—

"'quoted Eurobond' means any security that—

(i) is issued by a company,

(ii) is listed on a recognised stock exchange, and

(iii) carries a right to interest;";

and accordingly section 124 of that Act (interest on quoted Eurobonds) shall cease to have effect.

(3) In section 482 of the Taxes Act 1988 (supplementary provisions with respect to deposit-takers etc)—

(a) after subsection (2) insert—

"(2A) A declaration under section 481(5)(k)(i) must contain—

(a) in a case falling within section 481(4)(a), the name and principal residential address of the individual who is beneficially entitled to the interest or, where two or more individuals are so entitled, of each of them;

(b) in a case falling within section 481(4)(b), the name and principal residential address of each of the partners."; and

(b) subsection (11)(a) shall cease to have effect.

(4) In section 477A of the Taxes Act 1988 (building societies: regulations for deduction of tax), after subsection (2) insert—

"(2A) Without prejudice to the generality of subsection (2)(a) above, regulations under subsection (1) above may make provision with respect to the furnishing of information to or by building societies corresponding to any provision that is made by, or may be made under, section 482 with respect to the furnishing of information to or by deposit-takers.".

1997 c. 58.

(5) In section 37(11) of the Finance (No.2) Act 1997 (interest to be paid gross), for "Sections 50 and 118D(4)" substitute "Section 50".

(6) In this section—

(a) subsections (1) and (5) apply to relevant payments or receipts in relation to which the chargeable date for the purposes of Chapter VIIA of Part IV is on or after 1st April 2001;

(b) subsection (2) applies in relation to payments of interest made on or after that date;

(c) subsection (3) applies in relation to declarations under section 481(5)(k)(i) of the Taxes Act 1988 made on or after 6th April 2001.

UK public revenue dividends: deduction of tax.

112.—(1) In subsection (A1) of section 50 of the Taxes Act 1988 (Treasury directions for payment of public revenue dividends without deduction of tax), for "registered gilt-edged securities" substitute "gilt-edged securities".

(2) After subsection (3B) of section 349 of that Act (payments not out of profits or gains brought into charge to income tax, and annual interest) insert—

"(3C) Subject to any provision to the contrary in the Income Tax Acts, where any UK public revenue dividend is paid, the person by or through whom the payment is made shall, on making the payment, deduct out of it a sum representing the amount of income tax on it for the year in which the payment is made.".

(3) At the end of subsection (4) of that section insert—

"'UK public revenue dividend' means any income from securities which is paid out of the public revenue of the United Kingdom or Northern Ireland, but does not include interest on local authority stock.".

(4) After section 350 of that Act insert—

"UK public revenue dividends: deduction of tax.

350A.—(1) The Board may by regulations—

(a) make provision as to the time and manner in which persons who under section 349(3C) deduct sums representing income tax out of payments of UK public revenue dividends are to account for and pay those sums; and

(b) otherwise modify the provisions of sections 349 and 350 in their application to such dividends;

and in this section 'UK public revenue dividend' has the same meaning as in section 349.

(2) Regulations under this section may—

(a) make different provision for different descriptions of UK public revenue dividend and for different circumstances;

(b) make special provision for UK public revenue dividends which—

(i) are payable to the Bank of Ireland out of the public revenue of the United Kingdom, or

(ii) are entrusted to the Bank of Ireland for payment and distribution and are not payable by that Bank out of its principal office in Belfast;

(c) include such transitional and other supplementary provisions as appear to the Board to be necessary or expedient.

(3) No regulations under this section shall be made unless a draft of them has been laid before and approved by a resolution of the House of Commons.".

(5) This section applies to payments made on or after 1st April 2001.

Tax treatment of expenditure on production or acquisition of films.

113.—(1) In section 68 of the of the Capital Allowances Act 1990 (expenditure relating to films, tapes and discs), for subsection (1) substitute—

"(1) Expenditure incurred on the production or acquisition of a film, tape or disc shall be regarded for the purposes of the Tax Acts as expenditure of a revenue nature, subject to any election under subsection (9) below.".

1990 c. 1.

(2) For subsection (2) of that section substitute—

"(2) In this section any reference to a film, tape or disc is to the master negative, master tape or master audio disc of a film as defined in section 43 of the Finance (No.2) Act 1992.

Any such reference includes a reference to any rights in the film (or its soundtrack) that are held or acquired with the master negative, master tape or master audio disc.".

(3) In section 42 of the Finance (No.2) Act 1992 (relief for production or acquisition expenditure), for subsection (9) substitute—

1992 c. 48.

"(9) This section has effect in relation to expenditure incurred—

(a) on the production of a film completed on or after 10th March 1992, or

(b) on the acquisition of the master negative, master tape or master disc of a film completed on or after that date.".

(4) In section 43 of that Act (interpretation)—

(a) in subsection (2)(b) (treatment of acquisition of rights in film), for "any description of rights in it" substitute "any rights in the film (or its soundtrack) that are held or acquired with the master negative, master tape or master audio disc"; and

(b) in subsection (3), omit paragraph (b) and the word "or" preceding it.

(5) This section applies to expenditure on the production of a film—

(a) if the first day of principal photography is on or after 21st March 2000, or

(b) if the first day of principal photography is before that date but—

(i) the film is completed on or after that date, and

(ii) the person incurring the expenditure elects that the provisions of this section should apply.

For this purpose a film is completed at the time when it is first in a form in which it can reasonably be regarded as ready for copies of it to be made and distributed for presentation to the general public.

Any election under paragraph (b)(ii) above, once made, is irrevocable.

(6) This section applies to expenditure incurred on the acquisition of a master negative, master tape or master audio disc of a film (as defined in section 43 of the Finance (No.2) Act 1992) on or after 6th April 2000.

1992 c. 48.

PART IV

STAMP DUTY AND STAMP DUTY RESERVE TAX

Stamp duty

Rates: conveyance or transfer on sale.
1999 c. 16.

114.—(1) In Schedule 13 to the Finance Act 1999 (instruments chargeable and rates of duty), in Part I (conveyance or transfer on sale), in the third column of the table in paragraph 4—

(a) in the third entry, for "2.5%" substitute "3%"; and

(b) in the fourth entry, for "3.5%" substitute "4%".

(2) This section applies to instruments executed on or after 28th March 2000.

(3) But this section does not apply to an instrument giving effect to a contract made on or before 21st March 2000, unless—

(a) the instrument is made in consequence of the exercise after that date of any option, right of pre-emption or similar right; or

(b) the instrument transfers the property in question to, or vests it in, a person other than the purchaser under the contract, because of an assignment (or, in Scotland, assignation) or further contract made after that date.

(4) This section shall be deemed to have come into force on 28th March 2000.

Rates: duty on lease chargeable by reference to rent.

115.—(1) In Schedule 13 to the Finance Act 1999 (instruments chargeable and rates of duty), in Part II (lease)—

(a) in paragraph 11, in paragraph 1 of the table, and

(b) in paragraph 12(3), in paragraph 1(a) and (b) of the table,

1999 c. 16.

for "£500" substitute "£5,000".

(2) This section has effect in relation to instruments executed on or after 28th March 2000.

(3) This section shall be deemed to have come into force on 28th March 2000.

Rate of duty on seven year leases.

116.—(1) In paragraph 12(3) of Schedule 13 to the Finance Act 1999 (rates of stamp duty on leases where part of consideration is rent), in paragraph 1 of the table, for "less than 7 years" substitute "not more than 7 years".

(2) This section applies to instruments executed on or after 1st October 1999, subject to Schedule 32 to this Act (which makes transitional provision for instruments executed on or after 1st October 1999 but before 28th March 2000).

(3) This section shall be deemed to have come into force on 28th March 2000.

Power to vary stamp duties.

117. Schedule 33 to this Act (power to vary stamp duties) has effect.

Land transferred etc for other property.

118.—(1) Subsection (2) applies where—

(a) an instrument transferring or vesting an estate or interest in land would not, apart from this section, be or fall to be treated as a conveyance or transfer on sale for the purposes of stamp duty; but

(b) the transfer or vesting of the estate or interest is for consideration; and

(c) the consideration is or includes any property ("the other property").

(2) For the purposes of Part I of Schedule 13 to the Finance Act 1999 (stamp duty on conveyance or transfer on sale) the instrument transferring or vesting the estate or interest shall be taken to be a transfer on sale of the estate or interest.

(3) If—

(a) the other property is or includes one or more estates or interests in land, and

(b) *ad valorem* duty is chargeable on the conveyance or transfer of all or any of those estates or interests,

the amount of duty that would (apart from this subsection) be chargeable in consequence of subsection (2) on the transfer on sale there mentioned shall be reduced (but not below nil) by the total of the *ad valorem* duty chargeable as mentioned in paragraph (b).

1999 c. 16.

(4) If, for the purposes of Part I of Schedule 13 to the Finance Act 1999, the amount or value of the consideration for the transfer on sale mentioned in subsection (2) would (apart from this subsection) exceed the market value of the estate or interest immediately before the execution of the instrument transferring or vesting it, the amount or value of the consideration shall be taken for those purposes to be equal to that market value.

(5) 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.

(6) Subsection (2) has effect even though—

(a) the transfer or vesting of the estate or interest is the whole or part of the consideration for a sale of the other property; or

(b) the transaction is by way of exchange.

(7) Subsection (2) does not affect any charge to stamp duty in respect of the same or any other instrument so far as it relates to the transfer of the other property.

(8) This section is subject to subsection (5) of section 119.

1891 c. 39.

(9) This section shall be construed as one with the Stamp Act 1891.

(10) This section applies to instruments executed on or after 28th March 2000.

(11) But this section does not apply to an instrument giving effect to a contract made on or before 21st March 2000, unless—

(a) the instrument is made in consequence of the exercise after that date of any option, right of pre-emption or similar right; or

(b) the instrument transfers the property in question to, or vests it in, a person other than the purchaser under the contract, because of an assignment (or, in Scotland, assignation) or further contract made after that date.

(12) This section shall be deemed to have come into force on 28th March 2000.

Transfer of land to connected company.

119.—(1) This section applies where an estate or interest in land is transferred to or vested in a company ("A") and—

(a) the person transferring or vesting the estate or interest ("B") is connected with A; or

(b) some or all of the consideration for the transfer or vesting consists of the issue or transfer of shares in a company with which B is connected.

(2) For the purposes of Part I of Schedule 13 to the Finance Act 1999 (stamp duty on conveyance or transfer on sale) an instrument transferring or vesting the estate or interest shall be taken to be a transfer on sale of the estate or interest.

(3) If for those purposes the amount or value of the consideration for the transfer on sale of the estate or interest would, apart from this subsection, be less than the value determined under subsection (4), the consideration shall be taken for those purposes to be the value determined under subsection (4).

(4) That value is—

(a) the market value of the estate or interest immediately before the execution of the instrument transferring or vesting it; but

(b) reduced by the value of so much of any actual consideration as does not consist of property.

(5) Where—

(a) apart from this section, an instrument would be chargeable to stamp duty in accordance with section 118, and

(b) apart from that section, the instrument would be chargeable to stamp duty in accordance with this section,

the stamp duty chargeable on the instrument shall be determined in accordance with this section (instead of that section).

(6) This section applies only if, in consequence of its application, the instrument transferring or vesting the estate or interest is chargeable with a greater amount of stamp duty than it would be apart from this section and section 118.

(7) 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.

(8) In this section—

"company" means any body corporate;

"shares" includes stock and the reference to shares in a company includes a reference to securities issued by a company.

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

(10) This section shall be construed as one with the Stamp Act 1891. 1891 c. 39.

(11) This section applies to instruments executed on or after 28th March 2000.

(12) But this section does not apply to an instrument giving effect to a contract made on or before 21st March 2000, unless—

(a) the instrument is made in consequence of the exercise after that date of any option, right of pre-emption or similar right; or

(b) the instrument transfers the property in question to, or vests it in, a person other than the purchaser under the contract, because of an assignment (or, in Scotland, assignation) or further contract made after that date.

(13) This section shall be deemed to have come into force on 28th March 2000.

Exceptions from section 119.

120.—(1) Section 119 does not apply by virtue of paragraph (a) of subsection (1) of that section in any of the following cases (any reference in this section to A or B being taken as a reference to the person referred to as A or B, as the case may be, in that subsection).

(2) Case 1 is where B holds the estate or interest as nominee or bare trustee for A.

PART IV

(3) Case 2 is where A is to hold the estate or interest as nominee or bare trustee for B.

(4) Case 3 is where B holds the estate or interest as nominee or bare trustee for some other person and A is to hold it as nominee or bare trustee for that other person.

(5) Case 4 is where (in a case not falling within subsection (2) or (4) above)—

(a) the transfer or vesting is a conveyance or transfer out of a settlement in or towards satisfaction of a beneficiary's interest;

(b) the beneficiary's interest is not an interest acquired for money or money's worth; and

(c) the conveyance or transfer is a distribution of property in accordance with the provisions of the settlement.

(6) Case 5 is where (in a case not falling within subsection (3) above) A—

(a) is a person carrying on a business which consists of or includes the management of trusts; and

(b) is to hold the estate or interest as trustee acting in the course of that business.

(7) Case 6 is where (in a case not falling within subsection (3) above) A is to hold the estate or interest as trustee and, apart from section 839(3) of the Taxes Act 1988 (trustees as connected persons), would not be connected with B.

(8) Case 7 is where—

(a) B is a company;

(b) the transfer or vesting is, or is part of, a distribution of assets (whether or not in connection with the winding up of the company); and

(c) the estate or interest was acquired by B by virtue of an instrument which is duly stamped.

1891 c. 39.

(9) This section shall be construed as one with the Stamp Act 1891.

(10) This section applies to instruments executed after the day on which this Act is passed.

Grant of lease to connected company.

121.—(1) This section applies where a lease is granted to a company ("A") and—

(a) the person granting the lease ("B") is connected with A; or

(b) some or all of the consideration for the grant of the lease consists of the issue or transfer of shares in a company with which B is connected.

1999 c. 16.

(2) Subsection (3) has effect for the purposes of stamp duty chargeable under Part II of Schedule 13 to the Finance Act 1999 (stamp duty on a lease) by reference to Part I of that Schedule (conveyance or transfer on sale).

(3) If, apart from this subsection, the amount or value of the consideration for the grant would be less than the value determined under subsection (4), the consideration shall be taken to be the value determined under subsection (4).

(4) That value is—

(a) the market value, immediately before the instrument granting the lease is executed, of the lease granted; but

(b) reduced by the value of so much of any actual consideration as does not consist of property.

(5) This section applies only if, in consequence of its application, the lease is chargeable with a greater amount of stamp duty than it would be apart from this section.

(6) 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.

(7) In this section—

"company" means any body corporate;

"shares" includes stock and the reference to shares in a company includes a reference to securities issued by a company.

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

(9) This section shall be construed as one with the Stamp Act 1891. 1891 c. 39.

(10) This section applies to instruments executed on or after 28th March 2000.

(11) But this section does not apply to an instrument giving effect to a contract made on or before 21st March 2000, unless—

(a) the instrument is made in consequence of the exercise after that date of any option, right of pre-emption or similar right; or

(b) the instrument transfers the property in question to, or vests it in, a person other than the purchaser under the contract, because of an assignment (or, in Scotland, assignation) or further contract made after that date.

(12) This section shall be deemed to have come into force on 28th March 2000.

Marketable securities transferred etc for exempt property.

122.—(1) Subsection (2) applies where—

(a) an instrument transferring marketable securities would not, apart from this section, be or fall to be treated as a transfer on sale for the purposes of stamp duty; but

(b) the transfer of the marketable securities is for consideration; and

(c) the consideration is or includes any qualifying property ("the other property").

(2) For the purposes of Part I of Schedule 13 to the Finance Act 1999 (stamp duty on conveyance or transfer on sale) the instrument transferring the marketable securities shall be taken to be a transfer on sale of those securities. 1999 c. 16.

(3) If the amount or value of the consideration for that transfer on sale would (apart from this subsection) exceed the market value of the marketable securities immediately before the execution of the instrument transferring them, the amount or value of the consideration shall be taken to be equal to that market value.

For this purpose 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.

(4) Subsection (2) has effect even though—

(a) the transfer of the marketable securities is the whole or part of the consideration for a sale of the other property; or

(b) the transaction is by way of exchange.

(5) Subsection (2) does not affect any charge to stamp duty in respect of the same or any other instrument so far as it relates to the transfer of the other property.

(6) In this section "qualifying property" means any debt due, stock or securities, to the extent that the debt, stock or securities are not chargeable securities, within the meaning of Part IV of the Finance Act 1986 (stamp duty reserve tax).

1986 c. 41.

1891 c. 39.

(7) This section shall be construed as one with the Stamp Act 1891.

(8) This section applies to instruments executed on or after 28th March 2000.

(9) But this section does not apply to an instrument giving effect to a contract made on or before 21st March 2000, unless—

(a) the instrument is made in consequence of the exercise after that date of any option, right of pre-emption or similar right; or

(b) the instrument transfers the property in question to, or vests it in, a person other than the purchaser under the contract, because of an assignment (or, in Scotland, assignation) or further contract made after that date.

(10) This section shall be deemed to have come into force on 28th March 2000.

Transfer of property between associated companies: Great Britain.

123.—(1) Amend section 42 of the Finance Act 1930 as follows.

1930 c. 28.

(2) In subsection (2) (instruments on which stamp duty not chargeable) in paragraph (a) for "to another" substitute "("the transferor") to another ("the transferee")".

(3) In that subsection, after paragraph (b) insert—

"unless at the time the instrument is executed arrangements are in existence by virtue of which at that or some later time any person has or could obtain, or any persons together have or could obtain, control of the transferee but not of the transferor.".

(4) In subsection (2B) (body to be parent of another if beneficial owner of 75% of ordinary share capital) after "if at that time the first body" insert "(a)" and at the end of the subsection add—

"(b) is beneficially entitled to not less than 75 per cent of any profits available for distribution to equity holders of the second body; and

(c) would be beneficially entitled to not less than 75 per cent of any assets of the second body available for distribution to its equity holders on a winding-up.".

(5) In subsection (3)—

(a) after "The ownership referred to in" insert "paragraph (a) of"; and

(b) for "this section" substitute "that paragraph".

(6) At the end of the section add—

"(5) Schedule 18 to the Income and Corporation Taxes Act 1988 shall apply for the purposes of paragraphs (b) and (c) of subsection (2B) as it applies for the purposes of paragraphs (a) and (b) of section 413(7) of that Act; but this is subject to subsection (6). 1988 c. 1.

(6) In determining for the purposes of this section whether a body corporate is the parent of the transferor, paragraphs 5(3) and 5B to 5E of Schedule 18 to the Income and Corporation Taxes Act 1988 shall not apply for the purposes of paragraph (b) or (c) of subsection (2B).

(7) In this section, "control" shall be construed in accordance with section 840 of the Income and Corporation Taxes Act 1988.".

(7) This section has effect in relation to instruments executed after the day on which this Act is passed.

Transfer of property between associated companies: Northern Ireland. 1954 c. 23 (N.I.).

124.—(1) Amend section 11 of the Finance Act (Northern Ireland) 1954 as follows.

(2) After subsection (2) (instruments on which stamp duty not chargeable) insert—

"(2A) But this section does not apply to an instrument by virtue of subsection (2)(a) if, at the time the instrument is executed, arrangements are in existence by virtue of which at that or some later time any person has or could obtain, or any persons together have or could obtain, control of the transferee but not of the transferor.".

(3) In subsection (3AA) (body to be parent of another if beneficial owner of 75% of ordinary share capital) after "if at that time the first body" insert "(a)" and at the end of the subsection add—

"(b) is beneficially entitled to not less than 75 per cent of any profits available for distribution to equity holders of the second body; and

(c) would be beneficially entitled to not less than 75 per cent of any assets of the second body available for distribution to its equity holders on a winding-up.".

(4) In subsection (3A)—

(a) after "The ownership referred to in" insert "paragraph (a) of"; and

(b) for "this section" substitute "that paragraph".

(5) At the end of the section add—

"(6) Schedule 18 to the Income and Corporation Taxes Act 1988 shall apply for the purposes of paragraphs (b) and (c) of subsection (3AA) as it applies for the purposes of paragraphs (a) and (b) of section 413(7) of that Act; but this is subject to subsection (7).

(7) In determining for the purposes of this section whether a body corporate is the parent of the transferor, paragraphs 5(3) and 5B to

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5E of Schedule 18 to the Income and Corporation Taxes Act 1988 shall not apply for the purposes of paragraph (b) or (c) of subsection (3AA).

(8) In this section, "control" shall be construed in accordance with section 840 of the Income and Corporation Taxes Act 1988.". 1988 c. 1.

(6) This section has effect in relation to instruments executed after the day on which this Act is passed.

Grant of leases etc between associated companies. 1995 c. 4.

125.—(1) Amend section 151 of the Finance Act 1995 as follows.

(2) In subsection (1) (stamp duty not chargeable on leases etc) at the end insert the following paragraph—

"This subsection is subject to subsection (4A) below.".

(3) After subsection (4) insert—

"(4A) An instrument shall not be exempt from stamp duty by virtue of subsection (1) above if at the time the instrument is executed arrangements are in existence by virtue of which at that or some later time any person has or could obtain, or any persons together have or could obtain, control of the lessee but not of the lessor.".

(4) In subsection (8) (body to be parent of another if beneficial owner of 75% of ordinary share capital) after "if at that time the first body" insert "(a)" and at the end of the subsection add—

"(b) is beneficially entitled to not less than 75 per cent of any profits available for distribution to equity holders of the second body; and

(c) would be beneficially entitled to not less than 75 per cent of any assets of the second body available for distribution to its equity holders on a winding-up.".

(5) In subsection (10)—

(a) after "The ownership referred to in" insert "paragraph (a) of"; and

(b) for "this section" substitute "that paragraph".

(6) After subsection (10) insert—

"(10A) Schedule 18 to the Income and Corporation Taxes Act 1988 shall apply for the purposes of paragraphs (b) and (c) of subsection (8) as it applies for the purposes of paragraphs (a) and (b) of section 413(7) of that Act; but this is subject to subsection (10B).

(10B) In determining for the purposes of this section whether a body corporate is the parent of the lessor, paragraphs 5(3) and 5B to 5E of Schedule 18 to the Income and Corporation Taxes Act 1988 shall not apply for the purposes of paragraph (b) or (c) of subsection (8) above.

(10C) In this section, "control" shall be construed in accordance with section 840 of the Income and Corporation Taxes Act 1988.".

(7) This section has effect in relation to instruments executed after the day on which this Act is passed.

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Future issues of stock.
1891 c. 39.

126.—(1) Amend section 55 of the Stamp Act 1891 (calculation of ad valorem duty in respect of stock and securities) as follows.

(2) After subsection (1) insert—

"(1A) For the purposes of subsection (1), it is immaterial—

(a) whether, at the time of the execution of the conveyance on sale, the stock or marketable security is or has been issued or is to be issued; and

(b) in a case where the stock or marketable security is to be issued, when it is to be, or is, issued and whether the issue is certain or contingent.".

(3) This section has effect in relation to instruments executed after the day on which this Act is passed.

Company acquisition reliefs: redeemable shares.
1986 c. 41.

127.—(1) Amend section 75 of the Finance Act 1986 (acquisitions: reliefs) in accordance with subsections (2) and (3).

(2) In subsection (4), in paragraph (a) (which requires that the consideration for the acquisition consists of or includes the issue of shares) after "the issue of" insert "non-redeemable".

(3) In subsection (4), after paragraph (b) add—

"In paragraph (a) above, "non-redeemable shares" means shares which are not redeemable shares.".

(4) In section 76 of the Finance Act 1986 (acquisitions: further provisions about reliefs) in subsection (3)(a) (which requires that the consideration for the acquisition consists of or includes the issue of shares) for "shares" substitute "non-redeemable shares (within the meaning of section 75(4)(a) above)".

(5) This section has effect in relation to instruments executed after the day on which this Act is passed.

Surrender of leases.

128.—(1) Where a lease is or has been surrendered or, in Scotland, renounced at any time, a document evidencing the surrender or renunciation shall be treated for the purposes of stamp duty as if it were a deed executed at that time effecting the surrender or renunciation.

(2) Stamp duty shall be chargeable by virtue of subsection (1) on a document containing a statutory declaration, notwithstanding anything in rule 316(1) of the Land Registration Rules 1925 or any other provision of those Rules or of any other rules (whenever made) under section 144 of the Land Registration Act 1925.

S.R.& O. 1925/1093.
1925 c. 21.

(3) Stamp duty shall not be chargeable by virtue of subsection (1) on any lease or agreement for a lease or with respect to any letting if the lease or agreement—

(a) is made in consideration of the surrender or renunciation; and

(b) relates to the same subject matter as the lease surrendered or renounced.

(4) Stamp duty shall not be chargeable by virtue of subsection (1) on any document if a document falling within subsection (5) has been duly stamped.

(5) The documents that fall within this subsection are—

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(a) a deed effecting the surrender or renunciation;

(b) an agreement which falls to be treated for the purposes of stamp duty as if it were such a deed;

(c) any document which falls to be so treated by virtue of subsection (1); and

(d) any lease or agreement falling within subsection (3).

(6) A land registrar shall regard a document which by virtue of subsection (4) is not chargeable to stamp duty by virtue of subsection (1) as not duly stamped unless—

(a) it is stamped as if it were a deed effecting the surrender or renunciation; or

(b) it appears by some stamp impressed on it that the full and proper duty chargeable on such a deed has been paid on another document; or

(c) it appears by some stamp impressed on it that a lease or agreement falling within subsection (3) has been duly stamped; or

(d) the land registrar is aware of a document falling within subsection (5) which has been duly stamped.

(7) The documents which evidence the surrender or renunciation of a lease shall be taken to include an application, in consequence of the surrender or renunciation of the lease, for—

(a) the making in a land register, or

(b) the removal from a land register,

of an entry relating to the lease.

(8) In this section—

"land register"—

(a) in relation to England and Wales, means the register kept under section 1 of the Land Registration Act 1925; 1925 c. 21.

(b) in relation to Scotland, means the Land Register of Scotland or the General Register of Sasines;

(c) in relation to Northern Ireland, means the register maintained under section 10 of the Land Registration Act (Northern Ireland) 1970; 1970 c. 18 (N.I.).

"land registrar"—

(a) in relation to England and Wales, means the Chief Land Registrar or any other officer of Her Majesty's Land Registry exercising functions of the Chief Land Registrar;

(b) in relation to Scotland, means the Keeper of the Registers of Scotland;

(c) in relation to Northern Ireland, means the Registrar of Titles or any other official of the Land Registry exercising functions of the Registrar of Titles.

(9) This section shall be construed as one with the Stamp Act 1891. 1891 c. 39.

(10) This section applies to documents relating to the surrender or renunciation of a lease after the day on which this Act is passed.

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Abolition of duty on instruments relating to intellectual property.

129.—(1) No stamp duty is chargeable on an instrument for the sale, transfer or other disposition of intellectual property.

(2) In subsection (1) "intellectual property" means—

(a) any patent, trade mark, registered design, copyright or design right,

(b) any plant breeders' rights and rights under section 7 of the Plant Varieties Act 1997, 1997 c. 66.

(c) any licence or other right in respect of anything within paragraph (a) or (b), and

(d) any rights under the law of a country or territory outside the United Kingdom that correspond or are similar to those within paragraph (a), (b) or (c).

(3) Schedule 34 to this Act (which contains provisions supplementing this section) has effect.

(4) This section and Schedule 34 shall be construed as one with the Stamp Act 1891. 1891 c. 39.

(5) This section applies to instruments executed on or after 28th March 2000.

(6) This section shall be deemed to have come into force on that date.

Transfers to registered social landlords etc. 1999 c. 16.

130.—(1) No stamp duty shall be chargeable under Part I or II, or paragraph 16 of Part III, of Schedule 13 to the Finance Act 1999 on a conveyance or transfer of an estate or interest in land, or on a lease of land,—

(a) to a qualifying landlord controlled by its tenants;

(b) to a qualifying landlord by a qualifying transferor; or

(c) to a qualifying landlord purchasing the estate or interest, or the grant of the lease, with the assistance of a public subsidy.

(2) For the purposes of this section the cases where a qualifying landlord is controlled by its tenants are those cases where the majority of the board members of the qualifying landlord are tenants occupying properties owned or managed by the qualifying landlord.

(3) For the purposes of subsection (2) a "board member" means—

(a) in relation to a qualifying landlord which is a company, a director of the company;

(b) in relation to a qualifying landlord which is a body corporate whose affairs are managed by its members, a member;

(c) in relation to a qualifying landlord which is a body of trustees, a member of that body of trustees;

(d) in relation to a qualifying landlord not falling within any of paragraphs (a) to (c), a member of the committee of management or other body to which is entrusted the direction of the affairs of the qualifying landlord.

(4) In subsection (3), "company" has the same meaning as in the Companies Act 1985 (see section 735(1) of that Act). 1985 c. 6.

(5) In this section "qualifying landlord" means—

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(a) in relation to England and Wales, any body registered as a social landlord in a register maintained under section 1(1) of the Housing Act 1996; 1996 c. 52.

(b) in relation to Scotland—

(i) any housing association registered in the register maintained under section 3(1) of the Housing Associations Act 1985 by Scottish Homes; or 1985 c. 69.

(ii) any body corporate whose objects correspond to those of a housing association and which, pursuant to a contract with Scottish Homes, is registered in a register kept for the purpose by Scottish Homes;

(c) in relation to Northern Ireland, any housing association registered in the register maintained under Article 14 of the Housing (Northern Ireland) Order 1992. S.I. 1992/1725 (N.I. 15).

(6) In this section "qualifying transferor" means any of the following—

(a) a qualifying landlord;

(b) a housing action trust established under Part III of the Housing Act 1988; 1988 c. 50.

(c) a principal council, within the meaning of the Local Government Act 1972; 1972 c. 70.

(d) the Common Council of the City of London;

(e) a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994; 1994 c. 39.

(f) Scottish Homes;

(g) the Department for Social Development in Northern Ireland;

(h) the Northern Ireland Housing Executive.

(7) In this section "public subsidy" means any grant or other financial assistance—

(a) made or given by way of a distribution pursuant to section 25 of the National Lottery etc. Act 1993 (application of money by distributing bodies); 1993 c. 39.

(b) under section 18 of the Housing Act 1996 (social housing grants);

(c) under section 126 of the Housing Grants, Construction and Regeneration Act 1996 (financial assistance for regeneration and development); 1996 c. 53.

(d) under section 2 of the Housing (Scotland) Act 1988 (general functions of Scottish Homes); or 1988 c. 43.

(e) under Article 33 of the Housing (Northern Ireland) Order 1992 (housing association grants).

(8) Where stamp duty would be chargeable on an instrument but for paragraph (c) of subsection (1), that subsection shall only have effect in relation to the instrument if the instrument is certified to the Board by the qualifying landlord concerned as being an instrument on which stamp duty is by virtue of that paragraph not chargeable.

(9) An instrument on which stamp duty is not chargeable by virtue only of this section shall not be taken to be duly stamped unless—

(a) it is stamped with the duty to which it would be liable but for this section; or

(b) it has, in accordance with section 12 of the Stamp Act 1891, been stamped with a particular stamp denoting that it is not chargeable with any duty. 1891 c. 39.

(10) This section applies to instruments executed after the day on which this Act is passed.

Relief for certain instruments executed before this Act has effect.

131.—(1) This section applies to an instrument of any of the following descriptions executed in the period beginning with 22nd March 2000 and ending with the day on which this Act is passed—

(a) an instrument transferring or vesting an estate or interest in land in such circumstances as are mentioned in section 119 (transfer of land to connected company), in a case specified in section 120 (excepted cases);

(b) a conveyance or transfer of an estate or interest in land, or a lease of land, to a qualifying landlord within the meaning of section 130 (transfers to registered social landlords, etc.) from a qualifying transferor within subsection (6)(c), (d), (e), (f) or (h) of that section.

(2) If the instrument is not stamped until after the day on which this Act is passed, the law in force at the time of its execution shall be deemed for stamp duty purposes to be that which would have applied if it had been executed after that day.

(3) If the Commissioners are satisfied that—

(a) the instrument was stamped on or before the day on which this Act is passed,

(b) stamp duty was chargeable in respect of it, and

(c) had it been stamped after that day no stamp duty, or less stamp duty, would have been chargeable,

they shall pay to such person as they consider appropriate an amount equal to the duty (and any interest or penalty) that would not have been payable if the law in force at the time of execution of the instrument had been that which would have applied had it been executed after that day.

(4) Any such payment must be claimed before 1st April 2001.

(5) Entitlement to a payment is subject to compliance with such conditions as the Commissioners may determine with respect to the production of the instrument, to its being stamped so as to indicate that it has been produced under this section or to other matters.

(6) For the purposes of section 10 of the Exchequer and Audit Departments Act 1866 (Commissioners to deduct repayments from gross revenues) any amount paid under this section shall be treated as a repayment. 1866 c. 39.

(7) This section shall be construed as one with the Stamp Act 1891.

The Northern Ireland Assembly Commission.

132.—(1) Amend section 55 of the Finance Act 1987 (Crown exemption from stamp duty) as follows.

(2) In subsection (1) (which specifies the bodies relieved from stamp duty)— 1987 c. 16.

(a) after "agreed to be made" insert "(a)";

(b) after "Minister of the Crown or" insert "(b)"; and

(c) after "Treasury, or" insert "(c)".

(3) In subsection (1), after "National Assembly for Wales," insert "or

(d) to the Northern Ireland Assembly Commission,".

(4) Subsection (3) has effect in relation to instruments executed on or after 28th March 2000.

(5) This section shall be deemed to have come into force on 28th March 2000.

Stamp duty and Stamp duty reserve tax

Loan capital where return bears inverse relationship to results.
1986 c. 41.

133.—(1) In section 79 of the Finance Act 1986 (loan capital), after subsection (7) insert—

"(7A) Subsection (4) above shall not be prevented from applying to an instrument by virtue of subsection (6)(b) above by reason only that the loan capital concerned carries a right to interest which—

(a) reduces in the event of the results of a business or part of a business improving, or the value of any property increasing, or

(b) increases in the event of the results of a business or part of a business deteriorating, or the value of any property diminishing.".

(2) For the purposes of stamp duty, subsection (1) above has effect where the instrument is executed on or after 21st March 2000.

(3) For the purposes of stamp duty reserve tax, subsection (1) above has effect—

(a) in relation to the charge to tax under section 87 of the Finance Act 1986, where—

(i) the agreement to transfer is conditional and the condition is satisfied on or after 21st March 2000, or

(ii) the agreement is not conditional and is made on or after that date;

(b) in relation to the charge to tax under section 93(1) of that Act, where securities are transferred, issued or appropriated on or after 21st March 2000 (whenever the arrangement was made);

(c) in relation to the charge to tax under section 96(1) of that Act, where securities are transferred or issued on or after 21st March 2000 (whenever the arrangement was made);

(d) in relation to the charge to tax under section 93(10) of that Act, where securities are issued or transferred on sale, under terms there mentioned, on or after 21st March 2000;

(e) in relation to the charge to tax under section 96(8) of that Act, where securities are issued or transferred on sale, under terms there mentioned, on or after 21st March 2000.

PART IV
Transfers between depositary receipt systems and clearance systems.
1986 c. 41.

134.—(1) In Part III of the Finance Act 1986 (stamp duty), after section 72 insert—

"Transfers between depositary receipt system and clearance system

Transfers between depositary receipt system and clearance system.

72A.—(1) Where an instrument transfers relevant securities of a company incorporated in the United Kingdom between a depositary receipt system and a clearance system—

(a) the provisions of section 67(2) to (5) or, as the case may be, section 70(2) to (5) above shall not apply, and

(b) the stamp duty chargeable on the instrument is £5.

(2) A transfer between a depositary receipt system and a clearance system means a transfer—

(a) from (or to) a company that at the time of the transfer falls within section 67(6) above, and

(b) to (or from) a company that at that time falls within section 70(6) above.

(3) This section does not apply to a transfer from a clearance system (that is, from such a company as is mentioned in subsection (2)(b) above) if at the time of the transfer an election is in force under section 97A below in relation to the clearance services for the purposes of which the securities are held immediately before the transfer.".

(2) In Part IV of the Finance Act 1986 (stamp duty reserve tax), after section 97A insert—

"Transfer between depositary receipt system and clearance system.

97B.—(1) There shall be no charge to tax under section 93 or 96 above where securities are transferred between a depositary receipt system and a clearance system.

(2) A transfer between a depositary receipt system and a clearance system means a transfer—

(a) from (or to) a company which at the time of the transfer falls within section 67(6) above, and

(b) to (or from) a company which at that time falls within section 70(6) above.

(3) This section does not apply to a transfer from a clearance system (that is, from such a company as is mentioned in subsection (2)(b) above) if at the time of the transfer an election is in force under section 97A above in relation to the clearance services for the purposes of which the securities are held immediately before the transfer.".

(3) In sections 67(9), 70(9), 95(1) and 97(1) of the Finance Act 1986 (transfers between depositary receipt systems or between clearance systems), the words "and is resident in the United Kingdom" and "and is so resident" shall cease to have effect.

(4) In section 97A of that Act (clearance services: election for alternative system of charge), after subsection (12) add—

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"(13) Nothing in section 70(9) or 97(1) above has effect to prevent a charge to stamp duty or stamp duty reserve tax arising—

(a) on a transfer to which subsection (5) above applies, or

(b) on a deemed transfer under subsection (11) above.".

(5) The amendments in this section have effect as follows—

(a) subsection (1), and subsections (3) and (4) as they apply for stamp duty purposes, apply in relation to instruments executed after the day on which this Act is passed;

(b) subsection (2), and subsections (3) and (4) as they apply for the purposes of stamp duty reserve tax, apply where the securities are transferred after that day.

PART V

OTHER TAXES

Value added tax

Supplies to which reduced rate applies.
1994 c. 23.

135.—(1) Schedule 35 to this Act (which amends Schedule A1 to the Value Added Tax Act 1994 for the purpose of extending the range of supplies to which the reduced rate of value added tax applies) has effect.

(2) The amendments made by that Schedule have effect in relation to supplies made on or after 1st April 2000.

(3) Subsection (2) does not apply to the amendment made by paragraph 8(5) of that Schedule.

That amendment has effect in relation to supplies made after the day on which this Act is passed.

Disposals of assets for which a VAT repayment is claimed.

136.—(1) In section 3(2) of the Value Added Tax Act 1994 (taxable persons and registration), for "Schedules 1 to 3" there shall be substituted "Schedules 1 to 3A".

(2) In section 67 of that Act (failure to notify)—

(a) in subsection (1)(a), for "or with paragraph 3 or 8(2) of Schedule 3" there shall be substituted ", with paragraph 3 or 8(2) of Schedule 3 or paragraph 3, 4 or 7(2) or (3) of Schedule 3A";

(b) in subsection (3)(a), for "or paragraph 3 of Schedule 3" there shall be substituted ", paragraph 3 of Schedule 3 or paragraph 3 or 4 of Schedule 3A"; and

(c) in subsection (3)(b), for "or with sub-paragraph (2) of paragraph 8 of Schedule 3" there shall be substituted ", with sub-paragraph (2) of paragraph 8 of Schedule 3 or with sub-paragraph (2) or (3) of paragraph 7 of Schedule 3A".

(3) In section 69(1)(a) of that Act (breaches of regulatory provisions), for "or paragraph 5 of Schedule 3" there shall be substituted ", paragraph 5 of Schedule 3 or paragraph 5 of Schedule 3A".

(4) In section 73(3)(b) of that Act (failure to make returns etc.), for "or paragraph 6(2) or (3) of Schedule 3" there shall be substituted ", paragraph 6(2) or (3) of Schedule 3 or paragraph 6(1) or (2) of Schedule 3A".

(5) In section 74(1)(c) of that Act (interest on VAT recovered or recoverable by assessment), for "under paragraph 8 of Schedule 3" there shall be substituted ", under paragraph 8 of Schedule 3 or under paragraph 7 of Schedule 3A".

(6) In the following provisions of that Act—

(a) paragraph 1(4)(a) and (5) of Schedule 1 (registration in respect of taxable supplies); and

(b) paragraph 1(4) of Schedule 2 (registration in respect of supplies from other member States),

for "or paragraph 6(3) of Schedule 3" there shall be substituted ", paragraph 6(3) of Schedule 3 or paragraph 6(2) of Schedule 3A".

(7) In paragraph 1(3) of Schedule 3 to that Act (registration in respect of acquisitions from other member States), for "or paragraph 6(2) of Schedule 2" there shall be substituted ", paragraph 6(2) of Schedule 2 or paragraph 6(2) of Schedule 3A".

(8) After Schedule 3 to that Act there shall be inserted the Schedule 3A set out in Schedule 36 to this Act.

(9) In paragraph 5(5) of Schedule 4 to that Act (matters to be treated as a supply of goods or services), for the words from "under sections 25 and 26" to the end there shall be substituted—

"(a) under sections 25 and 26, to credit for the whole or any part of the VAT on the supply, acquisition or importation of those goods or of anything comprised in them; or

(b) under a scheme embodied in regulations made under section 39, to a repayment of VAT on the supply or importation of those goods or of anything comprised in them.".

(10) Subsections (1) to (7) and (9) above have effect in relation to supplies made on or after 21st March 2000; and subsection (8) above and Schedule 36 to this Act have effect in relation to relevant supplies (within the meaning of Schedule 3A to that Act) made on or after that date.

Gold: penalty for failure to comply with record-keeping requirements etc.

137.—(1) Part IV of the Value Added Tax Act 1994 (administration, collection and enforcement) is amended as follows.

1994 c. 23.

(2) After section 69 (breaches of regulatory provisions) insert—

1999 c. 16.

"Breach of record-keeping requirements etc. in relation to transactions in gold.

69A.—(1) This section applies where a person fails to comply with a requirement of regulations under section 13(5)(a) or (b) of the Finance Act 1999 (gold: duties to keep records or provide information).

Where this section applies, the provisions of section 69 do not apply.

(2) A person who fails to comply with any such requirement is liable to a penalty not exceeding 17.5% of the value of the transactions to which the failure relates.

(3) For the purposes of assessing the amount of any such penalty, the value of the transactions to which the failure relates shall be determined by the Commissioners to the best of their judgement and notified by them to the person liable.

(4) No assessment of a penalty under this section shall be made more than 2 years after evidence of facts sufficient in the opinion of the Commissioners to justify the making of the assessment comes to their knowledge.

(5) The reference in subsection (4) above to facts sufficient to justify the making of the assessment is to facts sufficient—

(a) to indicate that there had been a failure to comply with any such requirement as is referred to in subsection (1) above, and

(b) to determine the value of the transactions to which the failure relates.

(6) A failure by any person to comply with any such requirement as is mentioned in subsection (1) above shall not give rise to a liability to a penalty under this section if the person concerned satisfies the Commissioners or, on appeal, a tribunal, that there is a reasonable excuse for the failure.

(7) Where by reason of conduct falling within subsection (1) above a person—

(a) is assessed to a penalty under section 60, or

(b) is convicted of an offence (whether under this Act or otherwise),

that conduct shall not also give rise to a penalty under this section.".

(3) In section 70(1) of that Act (mitigation of penalties), for "or 67" substitute ", 67 or 69A".

(4) In section 76(1) of that Act (assessment of amount due by way of penalty etc.), for "to 69" (in both places) substitute "to 69A".

(5) In section 83 of that Act (appeals), in paragraph (n) for "59 to 69" substitute "59 to 69A".

Inheritance tax

Treatment of employee share ownership trusts. 1984 c. 51.

138.—(1) The Inheritance Tax Act 1984 is amended as follows.

(2) In section 13 (dispositions by close companies for benefit of employees), in subsection (4), after paragraph (b) insert ", or

(c) if the trusts are those of an employee share ownership plan approved under Schedule 8 to the Finance Act 2000, of any power to appropriate shares to, or acquire shares on behalf of, individuals under the plan.".

(3) In section 72 (property leaving employee trusts and newspaper trusts)—

(a) in subsection (2) after "subsection (4)" insert ", (4A)", and

(b) after subsection (4) insert—

"(4A) If the trusts are those of an employee share ownership plan approved under Schedule 8 to the Finance Act 2000, tax shall not be

chargeable under this section by virtue of subsection (3)(b) above on an appropriation of shares to, or acquisition of shares on behalf of, an individual under the plan.".

(4) In section 86 (trusts for benefit of employees), in subsection (3), after paragraph (b) insert ", or

(c) the trusts on which the settled property is held are those of an employee share ownership plan approved under Schedule 8 to the Finance Act 2000.".

Petroleum revenue tax

139.—(1) After section 9 of the Oil Taxation Act 1975 insert— Operating expenditure incurred while safeguard relief applies. 1975 c. 22.

"Operating expenditure incurred while section 9 applies.

9A.—(1) Subsections (2) and (3) below apply where—

(a) operating expenditure is incurred by a participator in an oil field during a chargeable period to which section 9(1) of this Act applies ('the relevant chargeable period');

(b) a claim for the allowance of the expenditure is made under Schedule 5 or 6 for the claim period which coincides with the relevant chargeable period ('the relevant claim period'); and

(c) the claim is made more than four months after the end of the relevant claim period.

(2) The Board shall not allow the expenditure except to such extent (if any) as they consider necessary to secure that the participator's overall liability to tax is no greater than it would have been if the claim had been allowed before the Board had made an assessment to tax or a determination on or in relation to the participator in respect of the field for the relevant chargeable period.

(3) Any amounts of oil allowance which, if the claim had been allowed before the Board had made an assessment to tax or a determination on or in relation to the participator in respect of the field for the relevant chargeable period, would not have been utilised by him in that period, or any subsequent chargeable period, shall be disregarded for the purposes of section 8(6) of this Act.

(4) Where—

(a) the participator transfers the whole or part of his interest in the oil field to another person; and

(b) Parts II and III of Schedule 17 to the Finance Act 1980 apply to the transfer, 1980 c. 48.

subsections (2) and (3) above shall have effect as if references to the participator included references to that other person.

(5) In this section—

'acquisition', in relation to an asset, includes acquisition of an interest in the asset;

'capital expenditure' means expenditure on the acquisition or construction of an asset which is to be used for any of the following purposes—

(a) for ascertaining the extent or characteristics of any oil-bearing area wholly or partly included in the field, or what the reserves of oil of any such oil-bearing area are;

(b) for winning oil from the field;

(c) for transporting oil won from the field, whether to a place in the United Kingdom or to a place in another country; or

(d) for the initial treatment or initial storage of oil won from the field;

'operating expenditure' means any expenditure other than capital expenditure.

(6) Where a claim period is a period of twelve months, this section shall have effect as if—

(a) that period were two separate claim periods of six months each;

(b) any claim for that period under Schedule 5 or 6 were two separate claims, one for each of those separate periods; and

(c) the operating expenditure to which that claim relates were apportioned between those separate periods and those separate claims in such manner as may be just and reasonable.".

(2) This section has effect in relation to expenditure incurred on or after 21st March 2000.

Landfill tax

Rate. 1996 c. 8.

140.—(1) In section 42 of the Finance Act 1996 (amount of landfill tax), in subsections (1)(a) and (2) for "£10" substitute "£11".

(2) This section has effect in relation to taxable disposals made, or treated as made, on or after 1st April 2000.

Disposals which are not taxable.

141.—(1) In section 62 of the Finance Act 1996 (regulations about taxable disposals) amend subsection (7) (limit on power to make regulations providing that a disposal is not taxable) as follows.

(2) For paragraph (a) substitute—

"(a) the material comprised in the disposal is held temporarily pending one or more of the following—

(i) the incineration or recycling of the material, or

(ii) the removal of the material for use elsewhere, or

(iii) the use of the material, if it is qualifying material within the meaning of section 42(3) above, for the restoration to use of the site at which the disposal takes place, or any part of that site, upon completion of waste disposal operations at the site, or as the case may be, that part of the site, or

(iv) the sorting of the material with a view to its removal elsewhere or its eventual disposal, and".

(3) In paragraph (b) for "the temporary disposal is made" substitute "the material in question is held temporarily".

Secondary liability.
1996 c. 8.

142.—(1) In section 60 of the Finance Act 1996 (which gives effect to Schedule 5 to the Act), after "penalties" insert ", secondary liability".

(2) Accordingly the sidenote to that section becomes "Information, powers, penalties, secondary liability, etc".

(3) At the end of Schedule 5 to that Act (supplementary provisions relating to landfill tax) add the Part VIII set out in Schedule 37 to this Act.

(4) Subsection (3) has effect in relation to taxable disposals made on or after the day on which this Act is passed.

PART VI

MISCELLANEOUS AND SUPPLEMENTARY PROVISIONS

Incentives for electronic communications

Power to provide incentives to use electronic communications.

143.—(1) Regulations may be made in accordance with Schedule 38 to this Act for providing incentives to use electronic communications.

(2) Anything received by way of incentive under any such regulations shall not be regarded as income for any purposes of the Tax Acts.

Compliance

Offence of fraudulent evasion of income tax

144.—(1) A person commits an offence if he is knowingly concerned in the fraudulent evasion of income tax by him or any other person.

(2) A person guilty of an offence under this section is liable—

(a) on summary conviction, to imprisonment for a term not exceeding six months or a fine not exceeding the statutory maximum, or both;

(b) on conviction on indictment, to imprisonment for a term not exceeding seven years or a fine, or both.

(3) This section applies to things done or omitted on or after 1st January 2001.

Information about interest etc paid, credited or received.
1970 c. 9.

145.—(1) In section 17 of the Taxes Management Act 1970 (interest paid or credited by banks etc without or after deduction of tax), subsections (4B) and (4C) shall cease to have effect.

(2) In subsection (5) of that section—

(a) for paragraph (c) there shall be substituted—

"(c) that if a person is required—

(i) to make and deliver a return under subsection (1) above;

(ii) to include information in such a return under any provision made under paragraph (a) above; or

(iii) to furnish information under any provision made under paragraph (b) above,

and the notice under subsection (1) above specifies the form in which the return is to be made and delivered, or the information is to be included or furnished, the person shall make and deliver the return, or include or furnish the information, in that form;"; and

(b) at the end there shall be inserted—

"The further information required as mentioned in paragraph (a) or (b) above may include, in prescribed cases, the name and address of the person beneficially entitled to the interest paid or credited.".

(3) After paragraph (a) of subsection (6) of that section there shall be inserted—

"(aa) may make provision with respect to the furnishing of information by persons required—

(i) to make and deliver a return under subsection (1) above;

(ii) to include information in such a return under any provision made under subsection (5)(a) above; or

(iii) to furnish information under any provision made under subsection (5)(b) above,

including the inspection of books, documents and other records on behalf of the Board;".

(4) In subsection (1) of section 18 of that Act (interest paid without or after deduction of tax)—

(a) for "by whom" there shall be substituted "by or through whom"; and

(b) for "who receives any such interest" there shall be substituted "by whom any such interest is received".

(5) Subsections (3) and (3AA) of that section shall cease to have effect.

(6) In subsection (3A) of that section, after "interest paid" there shall be inserted "or received".

(7) At the end of subsection (3B) of that section there shall be inserted—

"The further information required as mentioned in paragraph (a) above may include, in prescribed cases, the name and address of the person beneficially entitled to the interest paid or received.".

(8) After paragraph (a) of subsection (3C) of that section there shall be inserted—

"(aa) may make provision with respect to the furnishing of information by persons required to furnish information under subsection (1) above, or under any provision made under subsection (3B)(a) above, including the inspection of books, documents and other records on behalf of the Board;".

(9) For subsection (3D) of that section there shall be substituted—

"(3D) For the purposes of this section interest shall be treated as received by any person if it is received by another person at his direction or with his consent.

(3E) For the purposes of this section the following shall be treated as interest—

(a) any dividend in respect of a share in a building society;

(b) any amount to which a person holding a relevant discounted security is entitled on the redemption of that security; and

(c) any foreign dividend.

(3F) In subsection (3E)(b) above "relevant discounted security" has the meaning given by paragraph 3 of Schedule 13 to the Finance Act 1996. 1996 c. 8.

(3G) In subsection (3E)(c) above "foreign dividend" means any annual payment, interest or dividend payable out of, or in respect of the stocks, funds, shares or securities of—

(a) a body of persons that is not resident in the United Kingdom, or

(b) a government or public or local authority in a country outside the United Kingdom.".

(10) Section 482A of Taxes Act 1988 (audit powers in relation to non-residents) shall cease to have effect.

(11) This section has effect in relation to amounts paid, credited or received on or after 6th April 2001.

International exchange of information: general.

146.—(1) After section 815B of the Taxes Act 1988 there shall be inserted—

"Exchange of information with other countries.

815C.—(1) If Her Majesty by Order in Council declares that arrangements specified in the Order have been made with the government of any territory outside the United Kingdom with a view to the exchange of information necessary for carrying out—

(a) the domestic laws of the United Kingdom concerning income tax, capital gains tax and corporation tax in respect of income and chargeable gains; and

(b) the laws of the territory to which the arrangements relate concerning any taxes of a similar character to those taxes imposed by the laws of that territory,

and that it is expedient that those arrangements shall have effect, then those arrangements shall have effect notwithstanding anything in any enactment.

(2) Any Order in Council made under this section revoking an earlier such Order in Council may contain such transitional provisions as appear to Her Majesty to be necessary or expedient.

(3) An Order under this section shall not be submitted to Her Majesty in Council unless a draft of the Order has been laid before and approved by a resolution of the House of Commons.".

(2) In subsection (2) of section 816 of that Act (disclosure of information), after "section 788" there shall be inserted "or 815C" and after that subsection there shall be inserted—

"(2ZA) Neither the Board nor an authorised officer of the Board shall disclose any information in pursuance of any arrangements having effect by virtue of section 815C unless satisfied that the government with which the arrangements are made is bound by, or has undertaken to observe, rules of confidentiality with respect to the information which are not less strict than those applying to it in the United Kingdom.".

1970 c. 9.

(3) Subsections (1) to (8) and (8C) to (9) of section 20 of the Taxes Management Act 1970 (powers to call for information relevant to liability to income tax, corporation tax or capital gains tax) shall have effect as if the references in those provisions to tax liability included a reference to liability to a tax which—

(a) is a tax of a territory outside the United Kingdom; and

(b) is covered by arrangements having effect under section 788 or 815C of the Taxes Act 1988 and containing provision with respect to the obtaining (as well as the disclosure) of information.

(4) In their application by virtue of subsection (3) above those provisions shall have effect as if—

(a) the reference in section 20(7A) to any provision of the Taxes Acts were a reference to any provision of the law of the territory concerned;

(b) the references in subsection (2) of section 20B to an appeal relating to tax were references to an appeal, review or similar proceedings under the law of that territory relating to the tax in question; and

(c) the reference in subsection (6) of that section to believing that tax has or may have been lost to the Crown were a reference to believing that the tax in question has or may have been lost to that territory.

International exchange of information: inheritance tax.

147.—(1) After section 220 of the Inheritance Tax Act 1984 there shall be inserted—

1984 c. 51.

"Exchange of information with other countries.

220A.—(1) If Her Majesty by Order in Council declares that arrangements specified in the Order have been made with the government of any territory outside the United Kingdom with a view to the exchange of information necessary for carrying out—

(a) the domestic laws of the United Kingdom concerning inheritance tax; and

(b) the laws of the territory to which the arrangements relate concerning any taxes imposed by the laws of that territory which are

of a similar character to that tax or are chargeable on or by reference to death or gifts inter vivos,

and that it is expedient that those arrangements shall have effect, then those arrangements shall have effect notwithstanding anything in any enactment.

(2) Any Order in Council made under this section revoking an earlier such Order in Council may contain such transitional provisions as appear to Her Majesty to be necessary or expedient.

(3) An Order under this section shall not be submitted to Her Majesty in Council unless a draft of the Order has been laid before and approved by a resolution of the House of Commons.

(4) Where any arrangements have effect by virtue of this section, no obligation of secrecy shall prevent the Board or an authorised officer of the Board from disclosing to any authorised officer of the government with which the arrangements are made such information as is required to be disclosed in accordance with the arrangements.

(5) Neither the Board nor an authorised officer of the Board shall disclose any information in pursuance of any arrangements having effect by virtue of this section unless satisfied that the government with which the arrangements are made is bound by, or has undertaken to observe, rules of confidentiality with respect to the information which are not less strict than those applying to it in the United Kingdom.".

(2) Section 219 of the Inheritance Tax Act 1984 (power to obtain information for purposes of the Act) shall have effect as if the reference to that Act in subsection (1) of that section included a reference to any provision of the law of a territory outside the United Kingdom in accordance with which there is charged any tax which— 1984 c. 51.

(a) is of a character similar to that of inheritance tax or is chargeable on or by reference to death or gifts inter vivos; and

(b) is covered by arrangements having effect under section 158 or 220A of the Inheritance Tax Act 1984 and containing provision with respect to the obtaining (as well as the disclosure) of information.

Use of minimum wage information. 1998 c. 39.

148.—(1) Information obtained by an officer acting for the purposes of the National Minimum Wage Act 1998 ("the 1998 Act") by virtue of section 13(1)(a) or (b) of that Act (officers) may be supplied by or with the authority of the Secretary of State to the Board for the purpose of any of its functions.

(2) Information obtained by an officer of the Board acting in accordance with section 13(1)(b) of the 1998 Act may be used for the purpose of any functions of the Board.

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(3) Information supplied to the Secretary of State under section 16(2) of the 1998 Act (information obtained by agricultural wages officers) may be supplied by the Secretary of State to the Board for the purpose of any of its functions.

(4) For section 15(6) of the 1998 Act (restrictions on use of information) there shall be substituted—

"(6) This section—

(a) does not limit the circumstances in which information may be supplied or used apart from this section; and

(b) is subject to section 148 of the Finance Act 2000 (use of minimum wage information).".

Orders for the delivery of documents. 1970 c. 9.

149.—(1) After section 20B of the Taxes Management Act 1970 insert—

"Orders for the delivery of documents.

20BA.—(1) The appropriate judicial authority may make an order under this section if satisfied on information on oath given by an authorised officer of the Board—

(a) that there is reasonable ground for suspecting that an offence involving serious fraud in connection with, or in relation to, tax is being, has been or is about to be committed, and

(b) that documents which may be required as evidence for the purposes of any proceedings in respect of such an offence are or may be in the power or possession of any person.

(2) An order under this section is an order requiring the person who appears to the authority to have in his possession or power the documents specified or described in the order to deliver them to an officer of the Board within—

(a) ten working days after the day on which notice of the order is served on him, or

(b) such shorter or longer period as may be specified in the order.

For this purpose a 'working day' means any day other than a Saturday, Sunday or public holiday.

(3) Where in Scotland the information mentioned in subsection (1) above relates to persons residing or having places of business at addresses situated in different sheriffdoms—

(a) an application for an order may be made to the sheriff for the sheriffdom in which any of the addresses is situated, and

(b) where the sheriff makes an order in respect of a person residing or having a place of business in his own sheriffdom, he may also make orders in respect of all or any of the other persons to whom the information relates (whether or not they have an address within the sheriffdom).

(4) Schedule 1AA to this Act contains provisions supplementing this section.".

(2) After Schedule 1 to the Taxes Management Act 1970, insert the Schedule 1AA set out in Schedule 39 to this Act. 1970 c. 9.

(3) In section 20BB of that Act (falsification etc. of documents)—

(a) in subsection (1)(a), after "above" insert "or an order under section 20BA above";

(b) in subsection (3), after "notice is given" insert "or the order is made"; and

(c) after "notice", in the second place where it occurs in that subsection, insert "or order".

(4) In section 20D(1) of that Act (meaning of "appropriate judicial authority"), after "20A" insert ", 20BA".

150.—(1) Section 20C of the Taxes Management Act 1970 (search warrants) is amended as follows. Search warrants: miscellaneous amendments.

(2) After subsection (1) insert—

"(1AA) The Board shall not approve an application for a warrant under this section unless they have reasonable grounds for believing that use of the procedure under section 20BA above and Schedule 1AA to this Act (order for production of documents) might seriously prejudice the investigation.".

(3) After subsection (3) insert—

"(3A) In the case of any information contained in a computer which is information that—

(a) an officer who enters the premises as mentioned in subsection (3) above has reasonable cause to believe may be required as evidence for the purposes mentioned in paragraph (b) of that subsection, and

(b) is accessible from the premises,

the power of seizure under that subsection includes a power to require the information to be produced in a form in which it can be taken away and in which it is visible and legible.".

(4) For subsection (4) substitute—

(4) Nothing in subsection (3) above authorises the seizure and removal of items subject to legal privilege.

(4A) In subsection (4) "items subject to legal privilege" means—

(a) communications between a professional legal adviser and his client or any person representing his client made in connection with the giving of legal advice to the client;

(b) communications between a professional legal adviser and his client or any person representing his client or between such an adviser or his client or any such representative and any other person made in connection with or in contemplation of legal proceedings and for the purposes of such proceedings; and

(c) items enclosed with or referred to in such communications and made—

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(i) in connection with the giving of legal advice; or

(ii) in connection with or in contemplation of legal proceedings and for the purposes of such proceedings,

when they are in the possession of a person who is entitled to possession of them.

(4B) Items held with the intention of furthering a criminal purpose are not subject to legal privilege.".

(5) After subsection (8) insert—

"(9) Where in Scotland the information mentioned in subsection (1) above relates to premises situated in different sheriffdoms—

(a) petitions for the issue of warrants in respect of all the premises to which the information relates may be made to the sheriff for a sheriffdom in which any of the premises is situated, and

(b) where the sheriff issues a warrant in respect of premises situated in his own sheriffdom, he shall also have jurisdiction to issue warrants in respect of all or any of the other premises to which the information relates.

This does not affect any power or jurisdiction of a sheriff to issue a warrant in respect of an offence committed within his own sheriffdom.".

Provisions relating to government finance

Debt Management Account. 1968 c. 13.

151. In Schedule 5A to the National Loans Act 1968 (the Debt Management Account), in paragraph 11, after sub-paragraph (1) (excess of Account's liabilities over its assets to be liability of National Loans Fund) insert—

"(1A) The Treasury may pay from the National Loans Fund to the Debt Management Account an amount representing all or any of any excess mentioned in sub-paragraph (1) above, and if they do the liability there mentioned shall be extinguished or reduced accordingly.".

National Savings Bank. 1971 c. 29.

152.—(1) In section 4 of the National Savings Bank Act 1971 (deposits: limits and minimum balances), after subsection (3) insert—

"(4) Regulations under section 2 of this Act may include any provision that may be included in an order under this section.".

(2) In section 26 of that Act (regulations and orders etc.), for subsections (2) and (3) (parliamentary control of regulations under section 2 and orders under section 4) substitute—

"(2) A statutory instrument containing—

(a) regulations under section 2 of this Act, or

(b) an order under section 4 of this Act,

shall be subject to annulment in pursuance of a resolution of either House of Parliament.".

(3) If a draft of a statutory instrument containing an order under section 4 of that Act has been laid before Parliament, but the instrument has not been made, before the day on which this Act is passed, the instrument may be made either—

(a) as if section 26 of that Act had not been amended by this section, or

(b) in reliance on section 26(2) as substituted by this section.

The instrument shall be taken to be made as mentioned in paragraph (a) unless it states that it is made in reliance on section 26(2) as substituted by this section.

National savings certificates. 1968 c. 13.

153.—(1) This section applies to a national savings certificate issued under section 12 of the National Loans Act 1968 if—

(a) it was purchased on or before 7th October 1999, and

(b) the fifth anniversary of its purchase falls after the day on which this Act is passed.

(2) The power of the Treasury (under the prospectus under which the certificate was issued) to alter or end the extension terms for the certificate shall have effect as if it included power for the Treasury to decide before the fifth anniversary of the certificate's purchase that the extension terms for the certificate are to involve it (so far as not cashed in) undergoing automatic roll-over on that anniversary.

(3) Where a certificate undergoes automatic roll-over on any occasion, the Treasury has power to decide before the fifth anniversary of that occasion that the extension terms for the certificate are to involve it (so far as not cashed in) undergoing automatic roll-over on that anniversary.

(4) For the purposes of this section a certificate undergoes "automatic roll-over" on an occasion if during the period of 5 years beginning with that occasion the certificate (so far as not cashed in) will earn interest as though it were a national savings certificate—

(a) purchased on that occasion for a term of 5 years at a price equal to the value (rounded, if necessary, to the nearest penny) of the certificate on that occasion, and

(b) earning such interest (whether at fixed rates or at rates that give effect to index-linking or partly one and partly the other) as has been decided by the Treasury before that occasion.

(5) Subject to subsections (2) and (3), a certificate to which this section applies continues (so far as not cashed in) to be held on the terms of the prospectus under which it was issued.

However, any obligation of the Director of Savings to take steps to inform the holder of the certificate before the fifth anniversary of its purchase of what is to happen to the certificate after that anniversary extends to taking the corresponding steps in relation to the fifth anniversary of each occasion on which the certificate has undergone automatic roll-over.

(6) Nothing in this section shall be taken as prejudicing the rights of the holder of a certificate to which this section applies to apply at any time to cash in the certificate.

(7) References in this section to cashing in a certificate include reinvesting it.

PART VI

Exchange Equalisation Account.

1979 c. 30.

154.—(1) For section 4 of the Exchange Equalisation Account Act 1979 (examination and certification of the Account) substitute—

"Annual accounts.

4.—(1) For each financial year in which the Account operates the Treasury shall prepare, in such form and on such basis as they may prescribe, accounts in relation to the transactions, assets and liabilities of the Account.

(2) The Treasury shall send the accounts to the Comptroller and Auditor General not later than 30th November of the financial year following that to which the accounts relate.

(3) The Comptroller and Auditor General shall examine and certify the accounts, issue a report on them and send the certified accounts and the report to the Treasury not later than 15th January of that year.

(4) The Treasury shall lay the certified accounts and the report before each House of Parliament not later than 31st January of that year.

(5) In certifying accounts under subsection (3) above the Comptroller and Auditor General shall state whether or not it is his opinion, having regard to his examination of the accounts, that—

(a) the resources of the Account have been used in accordance with the provisions of this Act;

(b) the transactions of the Account are in accordance with any relevant authority; and

(c) the accounts have been prepared in the form, and on the basis, prescribed under subsection (1) above.

(6) The Treasury may by order made by statutory instrument amend the date for the time being specified in any of subsections (2) to (4) above.

(7) Before making an order under subsection (6) above the Treasury shall consult the Comptroller and Auditor General.

(8) A statutory instrument containing an order under subsection (6) above shall be subject to annulment in pursuance of a resolution of the House of Commons.

(9) In this section a reference to the use of resources is a reference to their expenditure, consumption or reduction in value.".

(2) This section applies in relation to the operation of the Exchange Equalisation Account in the financial year ending 31st March 2001 and subsequent financial years.

Supplementary provisions

Interpretation.

1988 c. 1.

155. In this Act "the Taxes Act 1988" means the Income and Corporation Taxes Act 1988.

PART VI

Repeals.

156.—(1) The enactments mentioned in Schedule 40 to this Act (which include provisions that are spent or of no practical utility) are repealed to the extent specified in the third column of that Schedule.

(2) The repeals specified in that Schedule have effect subject to the commencement provisions and savings contained or referred to in the notes set out in that Schedule.

Short title.

157. This Act may be cited as the Finance Act 2000.

SCHEDULES

Section 6.

SCHEDULE 1

MIXING OF REBATED LIGHT OILS

Converting unleaded petrol into leaded petrol

1979 c. 5.

1.—(1) In paragraph 1(1) of Schedule 2A to the Hydrocarbon Oil Duties Act 1979 (converting unleaded petrol into leaded petrol), before paragraph (a) insert—

"(aa) adding lead to unleaded petrol in respect of which duty has been charged at the rate specified in section 6(1A)(a);".

(2) In paragraph 8 of that Schedule (rate for mixtures of light oil), for sub-paragraph (2) substitute—

"(2) In the case of a mixture produced in contravention of paragraph 1 above, the rate is the rate in force under section 6(1A)(b) at the time the mixture is produced.".

Converting unleaded petrol into higher octane unleaded petrol

2.—(1) In that Schedule, for paragraph 2 substitute—

"Converting unleaded petrol into higher octane unleaded petrol

2.—(1) A mixture which is higher octane unleaded petrol is produced in contravention of this paragraph if it is produced by adding an octane enhancer to—

(a) unleaded petrol in respect of which duty has been charged at the rate specified in section 6(1A)(a),

(b) unleaded petrol in respect of which a rebate has been allowed under section 13A(1A)(b), or

(c) a mixture of petrol within paragraph (a) or (b),

or by mixing higher octane unleaded petrol with any such petrol as is mentioned in paragraph (a), (b) or (c).

(2) This paragraph is subject to any direction given under paragraph 3.".

(2) In paragraph 8 of that Schedule (rate for mixtures of light oil), for sub-paragraph (3) substitute—

"(3) In the case of a mixture produced in contravention of paragraph 2 above, the rate is the rate produced by deducting from the rate referred to in sub-paragraph (2) the rate of rebate which at that time is in force under section 13A(1A)(a) of this Act.".

Mixing different kinds of unleaded petrol

3.—(1) After paragraph 2 of that Schedule insert—

"Mixing different kinds of unleaded petrol

2A.—(1) A mixture which is unleaded petrol is produced in contravention of this paragraph if the mixture is produced by mixing unleaded petrol of any two or more of the following descriptions—

(a) petrol on which duty has been paid at the rate specified in section 6(1A)(a),

(b) petrol in respect of which a rebate has been allowed under section 13A(1A)(b),

(c) petrol in respect of which a rebate has been allowed under section 13A(1A)(a),

where the mixture produced is petrol of a description subject to a higher effective rate of duty than one or more of the ingredients of the mixture.

(2) The comparison required by sub-paragraph (1) shall be made by reference to the effective rates of duty in force at the time the mixture is produced.

(3) This paragraph is subject to any direction given under paragraph 3.".

(2) In paragraph 3 of that Schedule, for "paragraph 1 above or (as the case may be) paragraph 2 above" substitute "paragraph 1, 2 or 2A above".

(3) In paragraph 8 of that Schedule, after sub-paragraph (3) insert—

"(3A) In the case of a mixture produced in contravention of paragraph 2A above, the rate is—

(a) in the case of a mixture that is higher octane unleaded petrol, the rate produced by deducting from the rate in force under section 6(1A)(b) at the time the mixture is produced the rebate which at that time is in force under section 13A(1A)(a);

(b) in the case of a mixture that is neither higher octane unleaded petrol nor ultra low sulphur petrol, the rate produced by deducting from the rate in force under section 6(1A)(b) at the time the mixture is produced the rebate which at that time is in force under section 13A(1A)(b).".

(4) In paragraph 10 of that Schedule, make the existing provision sub-paragraph (1), at the beginning insert "Subject to sub-paragraph (2)," and after it insert—

"(2) Sub-paragraph (1) does not apply in the case of any such mixture as is mentioned in paragraph 8(3A)(b) as regards the duty paid in respect of any ingredient in the mixture that is subject to a higher effective rate of duty than the resulting mixture.".

Interpretation

4. In paragraph 11 of that Schedule, make the existing provision sub-paragraph (1) and after it insert—

"(2) References in this Schedule to the effective rate of duty, in relation to petrol of any description, are to the rate of duty in force reduced by any applicable rebate.".

SCHEDULE 2

Section 17.

AMUSEMENT MACHINE LICENCE DUTY

Introduction

1. The Betting and Gaming Duties Act 1981 is amended as follows. 1981 c. 63.

Exceptions from requirement to be licensed

2. In section 21(3A) (types of amusement machine excepted from requirement to be licensed) in paragraph (b) (five-penny machine which is a small-prize machine) for "five-penny machine" substitute "ten-penny machine".

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Amusement machine licence duty

3.—(1) In section 22(2) (definition of small-prize machines)—

(a) after "Act" insert "(a)";

(b) for "£15" substitute "£8"; and

(c) at the end insert—

"(b) an amusement machine is a medium-prize machine if it is a prize machine and the value or aggregate value of the benefits in money or money's worth, which any player who is successful in a single game played by means of the machine may receive, can exceed £8 but cannot exceed £15.".

(2) In section 22(3) (power of Commissioners to amend the sum mentioned in the definition of prize machines), for "the sum" substitute "a sum".

Amount of duty

4.—(1) In section 23(2) (amount of duty)—

(a) in paragraph (b) for "column 2, column 3 or column 4 of the Table" substitute "Category A, Category B, Category C, Category D or Category E";

(b) for "the rate in column 2, the rate in column 3, or the rate in column 4" substitute "the rate for the category of machine in question in column 2, 3, 4, 5 or 6 of the Table";

(c) for the Table substitute—

TABLE

(1) Period (in months) for which licence granted	(2) Category A	(3) Category B	(4) Category C	(5) Category D	(6) Category E
	£	£	£	£	£
1	30	80	80	165	220
2	50	150	160	320	425
3	75	220	230	470	615
4	95	285	300	605	800
5	120	345	360	735	970
6	140	400	420	855	1,125
7	160	450	475	965	1,270
8	185	500	525	1,065	1,405
9	205	540	570	1,155	1,525
10	225	580	610	1,240	1,635
11	240	615	650	1,310	1,730
12	250	645	680	1,375	1,815

(2) At the end of section 23 insert—

"(3) The machines comprised in each category referred to in this section are as follows—

Category A: any machine which is not a gaming machine;

Category B: any gaming machine which is a small-prize machine or five-penny machine;

Category C: any gaming machine which is a medium-prize machine, unless it is also a five-penny machine;

Category D: any gaming machine which is a ten-penny machine, unless it is also—

(a) a five-penny machine,

(b) a small-prize machine, or

(c) a medium-prize machine;

Category E: any machine which is not in any other category.".

Meaning of amusement machine

5.—(1) In section 25 (meaning of amusement machine), in paragraph (b) of subsection (1B) (meaning of video machine) omit ", other than one consisting only in a blank surface onto which light is projected".

(2) In that section, in subsection (7) (application of provisions to a machine that falls to be treated as more than one machine) omit the word "or" at the end of paragraph (c) and after that paragraph insert—

"(cc) medium-prize machines,

(cd) ten-penny machines, or".

Supplementary provisions

6. In section 26(2) (definitions), after the definition of "five-penny machine" insert—

""ten-penny machine" means an amusement machine which can only be played by the insertion into the machine of coins of a denomination, or aggregate denomination, not exceeding 10p;".

Paragraphs 2 to 6: commencement

7.—(1) Paragraphs 2 to 4, 5(2) and 6 shall have effect in relation to any amusement machine licence for which an application is received by the Commissioners of Customs and Excise after 4th August 2000.

(2) Paragraph 5(1) shall have effect on and after the day on which this Act is passed.

Seasonal licences: duration

8.—(1) Amend paragraph 4 of Schedule 4 as follows.

(2) In sub-paragraph (2) (which provides for a seasonal licence to remain in force during October of the year for which it is granted) for the words from "during October of that year" to the end substitute "the provision of that number of relevant machines on the premises during the period in that year—

(a) beginning with 1st October; and

(b) ending with the Sunday before the first Monday in November.".

(3) In sub-paragraph (8) (meaning of "winter period") for "November to February" substitute "the period beginning with the first Monday in November and ending with the last day of February".

(4) Sub-paragraph (2) applies in relation to any licence expressed to be granted for a period beginning with 1st April in 2000 or any subsequent year.

(5) Sub-paragraph (3) has effect for determining what was comprised in the winter period beginning in 1999, and for determining what is comprised in any subsequent winter period.

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Unlicensed amusement machines: duty chargeable

9. After section 24 insert—

"Unlicensed machines: duty chargeable.

24A. Schedule 4A to this Act (which provides for the recovery of amusement machine licence duty in relation to unlawfully unlicensed machines) shall have effect.".

10.—(1) After Schedule 4 insert—

"SCHEDULE 4A

UNLICENSED AMUSEMENT MACHINES

Application

1. This Schedule applies where it appears to the Commissioners that an amusement machine is or was provided for play on premises in contravention of section 21(1) or 24(3) or (4) of this Act.

Default notice requesting production of licence

2.—(1) The Commissioners may give a notice which complies with the requirements of sub-paragraphs (3) and (4) below.

(2) In this Schedule such a notice is referred to as a "default notice".

(3) The notice shall state that one or more amusement machines appear to have been provided for play on specified premises ("relevant premises") during a specified period (the "alleged default period")—

(a) the first day of which falls not more than three years before the date of the notice, and

(b) the last day of which falls on or before the date of the notice.

(4) The notice shall request the production to the Commissioners on or before a specified date (the "due date") of every relevant amusement machine licence.

(5) For the purposes of sub-paragraph (4) above an amusement machine licence is a relevant licence if, at any time during the alleged default period, it was in force in relation to an amusement machine provided for play on the relevant premises at that time.

(6) A single default notice may relate to—

(a) different alleged default periods, or

(b) different relevant premises.

(7) A default notice shall be deemed to have been given if it is—

(a) left at, or posted to, the relevant premises, or

(b) given to, or posted to or left at the proper address of one or more persons falling within sub-paragraph (8) below.

(8) Those persons are—

(a) one or more of the persons who are or appear to be, or who at any time during the alleged default period were or appear to have been, responsible persons in relation to the relevant premises or an amusement machine provided for play on those premises, or

(b) any person who is the representative of such a person.

Failure to produce a licence: grant of default licence

3.—(1) In any case where—

(a) the Commissioners give a default notice,

(b) the due date specified in the notice passes, and

(c) it appears to the Commissioners that at some time during the alleged default period specified in the notice one or more amusement machines were provided for play on the relevant premises so specified without an amusement machine licence being in force in relation to the machines,

the Commissioners may grant, in accordance with this paragraph, one or more licences in relation to each of the machines.

(2) In this Schedule—

"default licence" means a licence granted by the Commissioners under sub-paragraph (1) above;

"unlicensed machine" means a machine in relation to which a default licence is granted by the Commissioners.

(3) The Commissioners may grant a separate default licence for each period of consecutive days—

(a) which falls within the alleged default period, and

(b) for which no amusement machine licence in force in relation to the unlicensed machine was produced.

(4) The Commissioners may grant a default licence in relation to an unlicensed machine even though the period of that licence would include a day or days when the unlicensed machine was provided for play in contravention of section 21(1) or 24(3) or (4) of this Act on premises other than the relevant premises specified in the applicable default notice.

(5) In a case where the Commissioners grant a default licence in accordance with sub-paragraph (4) above, references in this Schedule to the relevant premises shall be construed in relation to any particular time as references to the premises on which the machine was provided for play at that time.

(6) The Commissioners may grant a default licence even though no application has been made for it.

(7) A default licence may be granted for a period of any length (whether or not a licence under Schedule 4 to this Act could be granted for a period of that length).

Assessment of amount equivalent to duty

4.—(1) This paragraph applies where a default licence is granted in relation to an unlicensed machine.

(2) The Commissioners may, subject to the following provisions of this paragraph, assess to the best of their judgement the amount which would have been payable under this Act as amusement machine licence duty if the default licence had been an amusement machine licence granted under Schedule 4 to this Act.

(3) The Commissioners shall make the assessment using the rates of amusement machine licence duty which apply in relation to amusement machine licences granted in consequence of applications received by the Commissioners on the due date.

(4) If the period of the licence is 12 months or less, the assessment shall be made as if an amusement machine licence had been granted in relation to the unlicensed machine for that period.

(5) If the period of the licence is longer than 12 months, the assessment shall be made as if—

(a) a separate amusement machine licence had been granted in relation to the unlicensed machine for each complete period of 12 months falling wholly within the period of the licence, and

(b) a further amusement machine licence had been granted in relation to the unlicensed machine for any remaining part of the period of the licence.

(6) Sub-paragraphs (7) and (8) below shall apply in relation to an assessment to be made in any case where—

(a) the period of a licence mentioned in sub-paragraph (4) above, or

(b) the part of the period mentioned in sub-paragraph (5)(b) above,

is not a period of complete months.

(7) Any period of less than a month comprised in the period or the part of the period shall be treated as a complete month; and accordingly the period or the part of the period in question shall be treated as if it consisted of a complete month or, as the case may be, complete months.

(8) The amusement machine licence treated as granted for such a period, or for such a part of a period, shall be treated as having been—

(a) granted for that period, or that part of the period, as extended in accordance with sub-paragraph (7) above, and

(b) surrendered at the end of the last day of the period mentioned in sub-paragraph (4) above or, as the case may be, of the part of the period mentioned in sub-paragraph (5)(b) above.

Liability to pay

5.—(1) Where an amount has been assessed under paragraph 4 above and notified to a responsible person or his representative, that amount—

(a) shall be deemed to be an amount of duty charged in accordance with section 22 of this Act on an amusement machine licence within the meaning of section 21 of this Act,

(b) shall be due from the responsible person, and

(c) may be recovered accordingly unless, or except to the extent that, the assessment has subsequently been withdrawn or reduced.

(2) The responsible persons to whom an assessment may be notified are any one or more of the persons who are or appear to be, or at any time during the period to which the assessment relates were or appear to have been, responsible persons in relation to the unlicensed machine or the relevant premises.

(3) An assessment shall be deemed to have been notified to a person if it is—

(a) given to him, or

(b) left at or posted to his proper address.

(4) But an assessment shall not be deemed to have been notified to a person unless and until—

(a) the default licence in relation to which the assessment has been made, or

(b) a copy of that licence,

has been given to him, or left at or posted to his proper address.

(5) Where an amount has been assessed and notified to more than one responsible person (or his representative), that amount shall be recoverable jointly and severally from any or all of the responsible persons.

(6) Arrangements made in accordance with paragraph 7A of Schedule 4 to this Act do not apply in relation to an amount assessed and notified in accordance with this paragraph.

Reviews and time limits on recovery

6.—(1) Section 14 of the Finance Act 1994 (reviews of decisions) shall apply to so much of any decision by the Commissioners as is of any of the kinds mentioned in sub-paragraph (2) below, as it applies to the decisions mentioned in subsection (1) of that section. 1994 c. 9.

(2) Those decisions are—

(a) any decision that a default licence should be granted,

(b) any decision contained in an assessment under paragraph 4 above that a person is liable to pay an amount of duty, and

(c) any decision contained in an assessment under paragraph 4 above as to the amount of a person's liability.

(3) Sub-paragraph (4) below applies where the Commissioners—

(a) have given a default notice, and

(b) in consequence of so doing have granted a default licence.

(4) An assessment made under paragraph 4 above in relation to the default licence may not be notified to a responsible person (or his representative) at any time after the end of the period of one year beginning with the due date specified in the default notice.

(5) The reference to three years in paragraph 2(3)(a) above shall have effect as if it were a reference to twenty years in any case where sub-paragraph (6) or (7) below applies.

(6) This sub-paragraph applies where an amusement machine has been provided for play in circumstances where a person—

(a) has, by virtue of conduct engaged in for the purpose of evading any amount of amusement machine licence duty, become liable to a penalty under section 8 of the Finance Act 1994, or

(b) has been convicted of an offence under section 24(6) of this Act.

(7) This sub-paragraph applies where an amusement machine has been provided for play in circumstances where proceedings for an offence under section 24(6) of this Act would have been commenced or continued against a person (whether or not the person assessed), but for their having been compounded under section 152(a) of the Customs and Excise Management Act 1979. 1979 c. 2.

General interpretation

7.—(1) The following provisions of this paragraph apply for the purposes of this Schedule.

(2) A person is a responsible person in relation to an amusement machine at a particular time if, at that time, he is or was—

(a) the owner or hirer of the machine, or

(b) a party to any contract under which the machine may be, or may have been, or is or was required to be, on the relevant premises at that time.

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(3) A person is a responsible person in relation to relevant premises at a particular time if, at that time, he is or was—

(a) the owner, lessee or occupier of the premises, or

(b) responsible to the owner, lessee or occupier for the management of the premises, or

(c) responsible for issuing or exchanging coins or tokens for use in playing any amusement machine on the premises, or otherwise for controlling the use of any such machine, or

(d) responsible for controlling the admission of persons to the premises or for providing persons resorting to the premises with any goods or services.

(4) A person's representative is—

(a) his personal representative,

(b) his trustee in bankruptcy,

(c) any receiver or liquidator appointed in relation to him or any of his property, or

(d) any other person acting in a representative capacity in relation to him.

(5) The proper address of a person is—

(a) in the case of a body corporate, its registered office or principal office, and

(b) in any other case—

(i) his last known place of abode or business, or

(ii) any vessel or aircraft to which he may belong or have lately belonged.

(6) An item is only to be treated as posted to an address or place if it has been sent there by registered post or the recorded delivery service.

Saving for liability

8. The grant of a default licence in relation to an unlicensed machine shall be without prejudice to any liability arising under section 24 of this Act in relation to the machine.".

(2) This paragraph has effect in relation to amusement machines which appear to the Commissioners of Customs and Excise to have been provided for play on premises in contravention of section 21(1) or 24(3) or (4) of the Betting and Gaming Duties Act 1981 on or after the day falling three years before the day on which this Act is passed.

1981 c. 63.

SCHEDULE 3

Section 22.

VEHICLE EXCISE DUTY ON NEW CARS AND VANS

After Part I of Schedule 1 to the Vehicle Excise and Registration Act 1994, insert— 1994 c. 22.

"PART IA

LIGHT PASSENGER VEHICLES: GRADUATED RATES OF DUTY

Vehicles to which this Part applies

1A.—(1) This Part of this Schedule applies to a vehicle which—

(a) is first registered on or after 1st March 2001, and

(b) is so registered on the basis of an EC certificate of conformity or UK approval certificate that—

(i) identifies the vehicle as having been approved as a light passenger vehicle, and

(ii) specifies a CO_2 emissions figure in terms of grams per kilometre driven.

(2) In sub-paragraph (1)(b)(i) a "light passenger vehicle" means a vehicle within Category M1 of Annex II to Council Directive 70/156/EEC (vehicle with at least four wheels used for carriage of passengers and comprising no more than 8 seats in addition to the driver's seat).

(3) For the purposes of this Part of this Schedule "the applicable CO_2 emissions figure" is—

(a) where the EC certificate of conformity or UK approval certificate specifies only one CO_2 emissions figure, that figure, and

(b) where it specifies more than one, the figure specified as the CO_2 emissions (combined) figure.

(4) Where the car is registered on the basis of an EC certificate of conformity, or UK approval certificate, that specifies separate CO_2 emissions figures in terms of grams per kilometre driven for different fuels, "the applicable CO_2 emissions figure" is the lowest figure specified or, in a case within sub-paragraph (3)(b), the lowest CO_2 emissions (combined) figure specified.

(5) If a vehicle is on first registration a vehicle to which this Part of this Schedule applies—

(a) its status as such a vehicle, and

(b) the applicable CO_2 emissions figure,

are not affected by any subsequent modification of the vehicle.

Graduated rates of duty

1B. The annual rate of vehicle excise duty applicable to a vehicle to which this Part of this Schedule applies shall be determined in accordance with the following table by reference to—

(a) the applicable CO_2 emissions figure, and

(b) whether the vehicle qualifies for the reduced rate of duty, or is liable to the standard rate or the premium rate of duty.

CO_2 emissions figure		Rate		
(1) Exceeding	(2) Not Exceeding	(3) Reduced rate	(4) Standard rate	(5) Premium rate
g/km	g/km	£	£	£
—	150	90	100	110
150	165	110	120	130
165	185	130	140	150
185	—	150	155	160

The reduced rate

1C.—(1) A vehicle qualifies for the reduced rate of duty if condition A, B or C below is met.

(2) Condition A is that the vehicle is constructed or modified—

(a) so as to be propelled by a prescribed type of fuel, or

(b) so as to be capable of being propelled by any of a number of prescribed types of fuel,

and complies with any other requirements prescribed for the purposes of this condition.

(3) Condition B is that the vehicle—

(a) incorporates before its first registration equipment enabling it to meet such vehicle emission standards as may be prescribed for the purposes of this condition, and

(b) has incorporated such equipment since its first registration.

(4) Condition C is that the vehicle is of a description certified by the Secretary of State, before the vehicle's first registration, as meeting such vehicle emission standards as may be prescribed for the purposes of this condition.

(5) The Secretary of State may make provision by regulations—

(a) for the making of an application to the Secretary of State for the issue of a certificate under sub-paragraph (4);

(b) for the manner in which any determination of whether to issue such a certificate on such an application is to be made;

(c) for the examination of one or more vehicles of the description to which the application relates, for the purposes of the determination mentioned in paragraph (b), by such persons, and in such manner, as may be prescribed;

(d) for a fee to be paid for such an examination;

(e) for the form and content of such a certificate;

(f) for the revocation, cancellation or surrender of such a certificate;

(g) for the fact that such a certificate is, or is not, in force in respect of a description of vehicle to be treated as having conclusive effect for the purposes of this Act as to such matters as may be prescribed; and

(h) for appeals against any determination not to issue such a certificate.

The standard rate

1D. A vehicle is liable to the standard rate of duty if it does not qualify for the reduced rate and is not liable to the premium rate.

The premium rate

1E.—(1) A vehicle is liable to the premium rate of duty if—

(a) it is constructed or modified so as to be propelled solely by diesel, and

(b) it is not of a prescribed description.

(2) In sub-paragraph (1)(a) "diesel" means any diesel fuel within the definition in Article 2 of Directive 98/70/EC of the European Parliament and of the Council.

Meaning of "prescribed"

1F. In this Part of this Schedule "prescribed" means prescribed by regulations made by the Secretary of State with the consent of the Treasury.

Meaning of "EC certificate of conformity" and "UK approval certificate"

1G.—(1) References in this Part of this Schedule to an "EC certificate of conformity" are to a certificate of conformity issued by a manufacturer under any provision of the law of a Member State implementing Article 6 of Council Directive 70/156/EEC, as amended.

(2) References in this Part of this Schedule to a "UK approval certificate" are to a certificate issued under—

(a) section 58(1) or (4) of the Road Traffic Act 1988, or — 1988 c. 52.

(b) Article 31A(4) or (5) of the Road Traffic (Northern Ireland) Order 1981. — S.I. 1981/154 (N.I. 1).

PART IB

LIGHT GOODS VEHICLES

Vehicles to which this Part applies

1H.—(1) This Part of this Schedule applies to a vehicle which—

(a) is first registered on or after 1st March 2001, and

(b) is so registered on the basis of an EC certificate of conformity or UK approval certificate that identifies the vehicle as having been approved as a light goods vehicle.

(2) In sub-paragraph (1)(b) a "light goods vehicle" means a vehicle within Category N1 of Annex II to Council Directive 70/156/EEC (vehicle with four or more wheels used for carriage of goods and having a maximum mass not exceeding 3.5 tonnes).

(3) If a vehicle is on first registration a vehicle to which this Part of this Schedule applies its status as such a vehicle is not affected by a subsequent modification of the vehicle.

(4) In this paragraph "EC certificate of conformity" and "UK approval certificate" have the same meaning as in Part IA of this Schedule.

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Annual rate of duty

1J. The annual rate of vehicle excise duty applicable to a vehicle to which this Part of this Schedule applies is £160.".

Section 23.

SCHEDULE 4

VEHICLE EXCISE DUTY: ENFORCEMENT PROVISIONS FOR GRADUATED RATES

Introduction

1.—(1) This Schedule applies to vehicles in respect of which different rates of vehicle excise duty are, under the provisions listed below, chargeable in respect of vehicles by reference to characteristics of the vehicle.

(2) The provisions referred to in sub-paragraph (1) are—

1994 c. 22.

Part I of Schedule 1 to the Vehicle Excise and Registration Act 1994 (the general rate),

Part IA of that Schedule (graduated rates for light passenger vehicles first registered on or after 1st March 2001), or

Part II of that Schedule (motorcycles).

Particulars to be furnished on application for licence

2.—(1) The Secretary of State may make provision by regulations as to the particulars to be furnished on an application for a vehicle licence in respect of a vehicle to which this Schedule applies.

(2) The regulations may make different provision for different descriptions of vehicle and different descriptions of licence.

(3) The prescribed particulars may include—

(a) particulars other than those required for the purposes of vehicle excise duty, and

(b) particulars other than with respect to the vehicle in respect of which the licence is to be taken out.

(4) Every person making an application with respect to which regulations under this paragraph are in force shall—

(a) furnish such particulars as may be prescribed by the regulations, and

(b) make such a declaration as may be specified by the Secretary of State.

(5) A person applying for a licence need not make the declaration specified for the purposes of sub-paragraph (4)(b) if he agrees to comply with such conditions as may be specified in relation to him by the Secretary of State.

The conditions which may be specified include—

(a) a condition that the prescribed particulars are furnished by being transmitted to the Secretary of State by such electronic means as he may specify; and

(b) a condition requiring such payments as may be specified by the Secretary of State to be made to him in respect of—

(i) steps taken by him for facilitating compliance by any person with any condition falling within paragraph (a); and

(ii) in such circumstances as may be so specified, the processing of applications for vehicle licences where particulars are transmitted in accordance with that paragraph.

(6) In relation to applications with respect to which regulations under this paragraph are in force, the preceding provisions of this paragraph have effect in place of the provisions of subsections (1) to (3B) of section 7 of the Vehicle Excise and Registration Act 1994. 1994 c. 22.

Power to require evidence in support of application

3. The Secretary of State may make provision by regulations—

(a) requiring an application for a vehicle licence in respect of a vehicle to which this Schedule applies to be supported by such documentary or other evidence as may be specified in the regulations, and

(b) authorising him to refuse to issue the licence applied for if such evidence is not provided.

Powers exercisable where licence issued on basis of incorrect application

4. The powers conferred by paragraphs 5 to 11 below are exercisable in a case where—

(a) a vehicle licence is issued to a person on the basis of an application stating that the vehicle—

(i) is a vehicle to which this Schedule applies, or

(ii) is a vehicle to which this Schedule applies in respect of which a particular amount of vehicle excise duty falls to be paid, and

(b) the vehicle is not such a vehicle or, as the case may be, is one in respect of which duty falls to be paid at a higher rate.

Power to declare licence void

5. The Secretary of State may by notice sent by post to the person inform him that the licence is void as from the time when it was granted.

If he does so, the licence shall be void as from the time when it was granted.

Power to require payment of balance of duty

6.—(1) The Secretary of State may by notice sent by post to the person require him to secure that the additional duty payable is paid within such reasonable period as is specified in the notice.

(2) If that requirement is not complied with, the Secretary of State may by notice sent by post to the person inform him that the licence is void as from the time when it was granted.

If he does so, the licence shall be void as from the time when it was granted.

Power to require delivery up of licence

7. The Secretary of State may in a notice under paragraph 5 or 6(2) require the person to whom it is sent to deliver up the licence within such reasonable period as is specified in the notice.

Power to require delivery up of licence and payment in respect of duty

8.—(1) The Secretary of State may in a notice under paragraph 5 or 6(2) require the person to whom it is sent—

(a) to deliver up the licence within such reasonable period as is specified in the notice, and

(b) on doing so to pay an amount equal to the monthly duty shortfall for each month, or part of a month, in the relevant period.

(2) The "monthly duty shortfall" means one-twelfth of the difference between—

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(a) the duty that would have been payable for a licence for a period of twelve months if the vehicle had been correctly described in the application, and

(b) that duty payable in respect of such a licence on the basis of the description in the application as made.

For this purpose the amount of the duty payable shall be ascertained by reference to the rates in force at the beginning of the relevant period.

Failure to deliver up licence

9.—(1) A person who—

(a) is required by notice under paragraph 7 or 8(1)(a) above to deliver up a licence, and

(b) fails to comply with the requirement contained in the notice,

commits an offence.

(2) A person committing such an offence is liable on summary conviction to a penalty not exceeding whichever is the greater of—

(a) level 3 on the standard scale, and

(b) five times the annual duty shortfall.

(3) The "annual duty shortfall" means the difference between—

(a) the duty that would have been payable for a licence for a period of twelve months if the vehicle had been correctly described in the application, and

(b) that duty payable in respect of a licence for a period of twelve months in respect of the vehicle as described in the application.

For this purpose the amount of the duty payable shall be ascertained by reference to the rates in force at the beginning of the relevant period.

Failure to deliver up licence: additional liability

10.—(1) Where a person has been convicted of an offence under paragraph 9, the court shall (in addition to any penalty which it may impose under that paragraph) order him to pay an amount equal to the monthly duty shortfall for each month, or part of a month, in the relevant period (or so much of the relevant period as falls before the making of the order).

(2) In sub-paragraph (1) the "monthly duty shortfall" has the meaning given by paragraph 8(2).

(3) Where—

(a) a person has been convicted of an offence under paragraph 9, and

(b) a requirement to pay an amount with respect to that licence has been imposed on that person by virtue of paragraph 8(1)(b),

the order to pay an amount under this paragraph has effect instead of that requirement and the amount to be paid under the order shall be reduced by any amount actually paid in pursuance of the requirement.

Meaning of the "relevant period"

11. References in this Schedule to the "relevant period" are to the period—

(a) beginning with the first day of the period for which the licence was applied for or, if later, the day on which the licence first was to have effect, and

(b) ending with whichever is the earliest of the following times—

(i) the end of the month during which the licence was required to be delivered up;

(ii) the end of the month during which the licence was actually delivered up;

(iii) the date on which the licence was due to expire;

(iv) the end of the month preceding that in which there first had effect a new vehicle licence for the vehicle in question.

Construction and effect

12.—(1) This Schedule and the Vehicle and Excise Registration Act 1994 shall be construed and have effect as if this Schedule were contained in that Act. 1994 c. 22.

(2) References in any other enactment to that Act shall be construed and have effect accordingly as including references to this Schedule.

SCHEDULE 5

Section 24.

RATES OF VEHICLE EXCISE DUTY ON GOODS VEHICLES

1. Part VIII of Schedule 1 to the Vehicle Excise and Registration Act 1994 (annual rates of vehicle excise duty: goods vehicles) is amended as follows.

2. For the Table in paragraph 9(1) (rigid goods vehicles not satisfying reduced pollution requirements and with a revenue weight exceeding 3,500 kilograms but not exceeding 44,000 kilograms) substitute—

Revenue weight of vehicle		Rate		
(1) Exceeding	(2) Not Exceeding	(3) Two axle vehicle	(4) Three axle vehicle	(5) Four or more axle vehicle
kgs	kgs	£	£	£
3,500	7,500	165	165	165
7,500	12,000	300	300	300
12,000	13,000	470	490	350
13,000	14,000	650	490	350
14,000	15,000	840	490	350
15,000	17,000	1,320	490	350
17,000	19,000	1,600	850	350
19,000	21,000	1,600	1,020	350
21,000	23,000	1,600	1,470	510
23,000	25,000	1,600	2,230	830
25,000	27,000	1,600	2,340	1,470
27,000	29,000	1,600	2,340	2,320
29,000	31,000	1,600	2,340	3,360
31,000	44,000	1,600	2,340	4,400

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3. For the Table in paragraph 9B (rigid goods vehicles satisfying reduced pollution requirements and with a revenue weight exceeding 3,500 kilograms but not exceeding 44,000 kilograms) substitute—

Revenue weight of vehicle		Rate		
(1) Exceeding	(2) Not Exceeding	(3) Two axle vehicle	(4) Three axle vehicle	(5) Four or more axle vehicle
kgs	kgs	£	£	£
3,500	7,500	160	160	160
7,500	12,000	160	160	160
12,000	13,000	160	160	160
13,000	14,000	160	160	160
14,000	15,000	160	160	160
15,000	17,000	320	160	160
17,000	19,000	600	160	160
19,000	21,000	600	160	160
21,000	23,000	600	470	160
23,000	25,000	600	1,230	160
25,000	27,000	600	1,340	470
27,000	29,000	600	1,340	1,320
29,000	31,000	600	1,340	2,360
31,000	44,000	600	1,340	3,400

4. For the Table in paragraph 11(1) (tractive units not satisfying reduced pollution requirements and with a revenue weight exceeding 3,500 kilograms but not exceeding 44,000 kilograms) substitute—

Revenue weight of tractive unit		Rate for tractive unit with two axles			Rate for tractive unit with three or more axles		
(1) Exceeding	(2) Not exceeding	(3) Any no. of semi-trailer axles	(4) 2 or more semi-trailer axles	(5) 3 or more semi-trailer axles	(6) Any no. of semi-trailer axles	(7) 2 or more semi-trailer axles	(8) 3 or more semi-trailer axles
kgs	kgs	£	£	£	£	£	£
3,500	7,500	165	165	165	165	165	165
7,500	12,000	300	300	300	300	300	300
12,000	16,000	460	460	460	460	460	460
16,000	20,000	520	460	460	460	460	460
20,000	23,000	810	460	460	460	460	460
23,000	26,000	1,190	590	460	590	460	460
26,000	28,000	1,190	1,130	460	1,130	460	460
28,000	31,000	1,740	1,740	1,090	1,740	660	460
31,000	33,000	2,530	2,530	1,740	2,530	1,000	460
33,000	34,000	5,170	5,170	1,740	2,530	1,470	570
34,000	35,000	5,170	5,170	2,340	2,530	2,100	860
35,000	36,000	6,750	6,750	2,340	2,530	2,100	860
36,000	38,000	9,250	9,250	2,710	2,820	2,820	1,280
38,000	41,000	9,250	9,250	3,950	3,750	4,250	2,500
41,000	44,000	9,250	9,250	3,950	7,250	7,250	2,950

5. For the Table in paragraph 11B (tractive units satisfying reduced pollution requirements and with a revenue weight exceeding 3,500 kilograms but not exceeding 44,000 kilograms) substitute—

Revenue weight of tractive unit		Rate for tractive unit with two axles			Rate for tractive unit with three or more axles		
(1) Exceeding	(2) Not exceeding	(3) Any no. of semi-trailer axles	(4) 2 or more semi-trailer axles	(5) 3 or more semi-trailer axles	(6) Any no. of semi-trailer axles	(7) 2 or more semi-trailer axles	(8) 3 or more semi-trailer axles
kgs	kgs	£	£	£	£	£	£
3,500	7,500	160	160	160	160	160	160
7,500	12,000	160	160	160	160	160	160
12,000	16,000	160	160	160	160	160	160
16,000	20,000	160	160	160	160	160	160
20,000	23,000	160	160	160	160	160	160
23,000	26,000	190	160	160	160	160	160
26,000	28,000	190	160	160	160	160	160
28,000	31,000	740	740	160	740	160	160
31,000	33,000	1,530	1,530	740	1,530	160	160
33,000	34,000	4,170	4,170	740	1,530	470	160
34,000	35,000	4,170	4,170	1,340	1,530	1,100	160
35,000	36,000	5,750	5,750	1,340	1,530	1,100	160
36,000	38,000	8,250	8,250	1,710	1,820	1,820	280
38,000	41,000	8,250	8,250	2,950	2,750	3,250	1,500
41,000	44,000	8,250	8,250	2,950	6,250	6,250	1,950

6.—(1) In the following provisions—

(a) in paragraph 11(1), after "Subject to sub-paragraphs (2) and (3)", and

(b) in paragraph 11A(2), after "Subject to sub-paragraph (3)",

insert "and paragraph 11C".

(2) After paragraph 11B insert—

"11C.—(1) This paragraph applies to a tractive unit that—

(a) has a revenue weight exceeding 41,000 kilograms but not exceeding 44,000 kilograms,

(b) has 3 or more axles and is used exclusively for the conveyance of semi-trailers with 3 or more axles,

(c) is of a type that could lawfully be used on a public road immediately before 21st March 2000, and

(d) complies with the requirements in force immediately before that date for use on a public road.

(2) The annual rate of vehicle excise duty applicable to a vehicle to which this paragraph applies is—

(a) in the case of a vehicle with respect to which the reduced pollution requirements are not satisfied, £1,280;

(b) in the case of a vehicle with respect to which those requirements are satisfied, £280.".

Section 30.

SCHEDULE 6

CLIMATE CHANGE LEVY

PART I

THE LEVY

Climate change levy

1.—(1) A tax to be known as climate change levy ("the levy") shall be charged in accordance with this Schedule.

(2) The levy is under the care and management of the Commissioners of Customs and Excise.

Levy charged on taxable supplies

2.—(1) The levy is charged on taxable supplies.

(2) Any supply of a taxable commodity is a taxable supply, subject to the provisions of Part II of this Schedule.

Meaning of "taxable commodity"

3.—(1) The following are taxable commodities for the purposes of this Schedule, subject to sub-paragraph (2) and to any regulations under sub-paragraph (3)—

(a) electricity;

(b) any gas in a gaseous state that is of a kind supplied by a gas utility;

(c) any petroleum gas, or other gaseous hydrocarbon, in a liquid state;

(d) coal and lignite;

(e) coke, and semi-coke, of coal or lignite;

(f) petroleum coke.

(2) The following are not taxable commodities—

(a) hydrocarbon oil or road fuel gas within the meaning of the Hydrocarbon Oil Duties Act 1979;

1979 c. 5.

1990 c. 25.
S.I. 1997/2778 (N.I. 19).

(b) waste within the meaning of Part II of the Environmental Protection Act 1990 or the meaning given by Article 2(2) of the Waste and Contaminated Land (Northern Ireland) Order 1997.

(3) The Treasury may by regulations provide that a commodity of a description specified in the regulations is, or is not, a taxable commodity for the purposes of this Schedule.

PART II

TAXABLE SUPPLIES

Introduction

4.—(1) A supply of a taxable commodity (or part of such a supply) is a taxable supply for the purposes of the levy if levy is chargeable on the supply under—

paragraph 5 (supplies of electricity),

paragraph 6 (supplies of gas), or

paragraph 7 (other supplies in course or furtherance of business),

and the supply (or part) is not excluded under paragraphs 8 to 10 or exempt under paragraphs 11 to 22.

(2) In this Schedule—

(a) references to a supply of a taxable commodity include a supply that is deemed to be made under paragraph 23, and

(b) references to a taxable supply include a supply that is deemed to be made under paragraph 24,

but paragraphs 23 and 24 have effect subject to any exceptions provided for under paragraph 21.

Supplies of electricity

5.—(1) Levy is chargeable on a supply of electricity if—

(a) the supply is made by an electricity utility, and

(b) the person to whom the supply is made—

(i) is not an electricity utility, or

(ii) is the utility itself.

(2) Levy is chargeable on a supply made from a combined heat and power station of electricity produced in the station if—

(a) the station is a partly exempt combined heat and power station,

(b) the supply is not one that is deemed to be made under paragraph 23(3) (self-supply by producer), and

(c) the person to whom the supply is made is not an electricity utility.

(3) Levy is chargeable on a supply of electricity that is deemed to be made under paragraph 23(3).

(4) Except as provided by sub-paragraphs (1) to (3), levy is not chargeable on a supply of electricity.

Supplies of gas

6.—(1) Levy is chargeable on a supply of any gas if—

(a) the supply is made by a gas utility, and

(b) the person to whom the supply is made—

(i) is not a gas utility, or

(ii) is the utility itself.

(2) Levy is chargeable on a supply of gas that is deemed to be made under paragraph 23(3) (self-supply by producer) if the gas—

(a) is held in a gaseous state immediately prior to being released for burning, and

(b) is of a kind supplied by a gas utility.

(3) Except as provided by sub-paragraphs (1) and (2), levy is not chargeable on a supply of any gas that is supplied in a gaseous state.

Other supplies made in course or furtherance of business

7.—(1) This paragraph applies to a supply of a taxable commodity other than—

(a) electricity, or

(b) gas in a gaseous state.

(2) Levy is chargeable on any such supply if the supply is made in the course or furtherance of a business.

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Excluded supplies: supply for domestic or charity use

8.—(1) A supply is excluded from the levy if it is—

(a) for domestic use (see paragraph 9), or

(b) for charity use.

(2) For the purposes of this paragraph, a supply is for charity use if the commodity supplied is for use by a charity otherwise than in the course or furtherance of a business.

(3) If a supply is partly for domestic or charity use and partly not, the part of the supply that is for domestic or charity use is excluded from the levy.

(4) Where a supply of a commodity is partly for domestic or charity use and partly not—

(a) if at least 60 per cent. of the commodity is supplied for domestic or charity use, the whole supply is treated as a supply for domestic or charity use, and

(b) in any other case, an apportionment shall be made to determine the extent to which the supply is for domestic or charity use.

Excluded supplies: meaning of "for domestic use"

9.—(1) For the purposes of paragraph 8 the following supplies are always for domestic use—

(a) a supply of not more than one tonne of coal or coke held out for sale as domestic fuel;

(b) a supply to a person at any premises of—

(i) any gas in a gaseous state that is provided through pipes and is of a kind supplied by a gas utility, or

(ii) petroleum gas in a gaseous state provided through pipes,

where the gas or petroleum gas (together with any other gas or petroleum gas provided through pipes to him at the premises by the same supplier) was not provided at a rate exceeding 4397 kilowatt hours a month;

(c) a supply of petroleum gas in a liquid state where the petroleum gas is supplied in cylinders the net weight of each of which is less than 50 kilogrammes and either the number of cylinders supplied is 20 or fewer or the petroleum gas is not intended for sale by the recipient;

(d) a supply of petroleum gas in a liquid state, otherwise than in cylinders, to a person at any premises at which he is not able to store more than two tonnes of such petroleum gas;

(e) a metered supply of electricity to a person at any premises where the electricity (together with any other electricity provided to him at the premises by the same supplier) was not provided at a rate exceeding 1000 kilowatt hours a month;

(f) an unmetered supply of electricity to a person where the electricity (together with any other unmetered electricity provided to him by the same supplier) was not provided at a rate exceeding 1000 kilowatt hours a month.

(2) For the purposes of paragraph 8, supplies not within sub-paragraph (1) are for domestic use if and only if the commodity supplied is for use in—

(a) a building, or part of a building, which consists of a dwelling or number of dwellings,

(b) a building, or part of a building, used for a relevant residential purpose,

(c) self-catering holiday accommodation (including any accommodation advertised or held out as such),

(d) a caravan,

(e) a houseboat (that is to say, a boat or other floating decked structure designed or adapted for use solely as a place of permanent habitation and not having means of, or capable of being readily adapted for, self-propulsion), or

(f) an appliance that—

(i) is not part of a combined heat and power station,

(ii) is located otherwise than in premises of a description mentioned in any of paragraphs (a) to (e), and

(iii) is used to heat air or water that, when heated, is supplied to premises of, or each of, such a description.

(3) For the purposes of this paragraph use for a relevant residential purpose means use as—

(a) a home or other institution providing residential accommodation for children,

(b) a home or other institution providing residential accommodation with personal care for persons in need of personal care by reason of old age, disablement, past or present dependence on alcohol or drugs or past or present mental disorder,

(c) a hospice,

(d) residential accommodation for students or school pupils,

(e) residential accommodation for members of any of the armed forces,

(f) a monastery, nunnery or similar establishment, or

(g) an institution which is the sole or main residence of at least 90 per cent. of its residents,

except use as a hospital, a prison or similar institution or an hotel or inn or similar establishment.

(4) The power to make provision by order under section 2(1C) of the Value Added Tax Act 1994 varying, or varying any provision contained in, Schedule A1 to that Act (supplies for domestic use and non-business use by a charity that attract reduced VAT rate) includes power to make provision for any appropriate corresponding variation of, or of any provision contained in, this paragraph. 1994 c. 23.

Excluded supplies: supply before 1st April 2001

10. Any supply made before 1st April 2001 is excluded from the levy.

Exemption: supply not for burning in the UK

11.—(1) A supply of a taxable commodity to which this sub-paragraph applies is exempt from the levy if the person to whom the supply is made has, before the supply is made, notified the supplier—

(a) that he intends to use the commodity in making supplies of it to any other person, or

(b) that he intends to cause the commodity to be exported from the United Kingdom and has no intention to cause it to be thereafter brought back into the United Kingdom.

(2) Sub-paragraph (1) applies to supplies of a taxable commodity other than—

(a) electricity, or

(b) any gas in a gaseous state.

(3) A supply of electricity, or of gas in a gaseous state, is exempt from the levy if the person to whom the supply is made has, before the supply is made, notified the supplier that—

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(a) he intends to cause the commodity to be exported from the United Kingdom, and

(b) has no intention to cause it to be thereafter brought back into the United Kingdom.

(4) Regulations under paragraph 22 may, in particular, include provision as to the application of sub-paragraph (3) in cases where a person who is both an exporter and an importer of a commodity intends to be a net exporter of the commodity.

Exemption: supply used in transport

12.—(1) A supply of a taxable commodity is exempt from levy if the commodity is to be burned (or, in the case of electricity, consumed)—

(a) in order to propel a train,

(b) in order to propel a non-railway vehicle while it is being used for, or for purposes connected with, transporting passengers,

(c) in a railway vehicle, or a non-railway vehicle, while it is being used for, or for purposes connected with, transporting passengers,

(d) in a railway vehicle while it is being used for, or for purposes connected with, transporting goods, or

(e) in a ship while it is engaged on a journey any part of which is beyond the seaward limit of the territorial sea.

Paragraphs (a) to (c) are subject to the exception in sub-paragraph (3).

(2) In this paragraph—

"railway vehicle" and "train" have the meaning given by section 83 of the Railways Act 1993; 1993 c. 43.

"non-railway vehicle" means—

(a) any vehicle other than a railway vehicle, or

(b) any ship,

that is designed or adapted to carry not less than 12 passengers.

(3) Sub-paragraph (1)(a) to (c) does not apply in relation to the transporting of passengers to, from or within—

(a) a place of entertainment, recreation or amusement, or

(b) a place of cultural, scientific, historical or similar interest,

that is a place to which rights of admission, or where rights to use facilities at it, are supplied by the person to whom the commodity is supplied or by a person connected with him within the meaning of section 839 of the Taxes Act 1988.

Exemption: supplies to producers of commodities other than electricity

13. A supply of a taxable commodity to a person is exempt from the levy if—

(a) the supply is not a supply of electricity that is deemed to be made under paragraph 23(3), and

(b) the commodity is to be used by that person—

(i) in producing taxable commodities other than electricity,

(ii) in producing hydrocarbon oil or road fuel gas,

(iii) in producing, for chargeable use within the meaning of section 6A of the Hydrocarbon Oil Duties Act 1979 (fuel substitutes), liquids that are not hydrocarbon oil, or 1979 c. 5.

(iv) in producing uranium for use in an electricity generating station.

For this purpose "hydrocarbon oil" and "road fuel gas" have the same meaning as in the Hydrocarbon Oil Duties Act 1979 and "liquid" has the same meaning as in section 6A of that Act. 1979 c. 5.

Exemption: supplies (other than self-supplies) to electricity producers

14.—(1) A supply of a taxable commodity to a person is exempt from the levy if—

(a) the commodity is to be used by that person in producing electricity in a generating station that is neither—

(i) a fully exempt combined heat and power station, nor

(ii) a partly exempt combined heat and power station,

and

(b) the supply is not a supply of electricity that is deemed to be made under paragraph 23(3).

(2) Sub-paragraph (1) does not exempt a supply where the person to whom the supply is made—

(a) is an exempt unlicensed electricity supplier of a description prescribed by regulations made by the Treasury, and

(b) uses the commodity supplied in producing electricity.

(3) Sub-paragraph (1) does not exempt a supply where the person to whom the supply is made—

(a) is an auto-generator,

(b) uses the commodity supplied in producing electricity, and

(c) uses the electricity produced otherwise than in making supplies that are excluded under paragraphs 8 to 10 or exempt under any of paragraphs 11, 12 and 18.

(4) In this paragraph "exempt unlicensed electricity supplier" means a person—

(a) to whom an exemption from section 4(1)(c) of the Electricity Act 1989 (persons supplying electricity to premises) has been granted by an order under section 5 of that Act, or 1989 c. 29.

(b) to whom an exemption from Article 8(1)(c) of the Electricity Supply (Northern Ireland) Order 1992 has been granted by an order under Article 9 of that Order, S.I. 1992/231 (N.I. 1).

except where he is acting otherwise than for purposes connected with the carrying on of activities authorised by the exemption.

(5) Sub-paragraph (4) applies subject to—

(a) any direction under paragraph 151(1), and

(b) any regulations under paragraph 151(2).

Exemption: supplies (other than self-supplies) to combined heat and power stations

15.—(1) A supply of a taxable commodity to a person is exempt from the levy if—

(a) the commodity is to be used by that person in—

(i) a fully exempt combined heat and power station, or

(ii) a partly exempt combined heat and power station,

in producing any outputs of the station, and

(b) the supply is not a supply of electricity that is deemed to be made under paragraph 23(3).

For this purpose "outputs" has the meaning given by paragraph 148(9).

(2) Where—

(a) a supply of a taxable commodity to a person would (apart from this sub-paragraph) be exempted in full by sub-paragraph (1), and

(b) at the time the supply is made, the efficiency percentage for the combined heat and power station in which the commodity is to be used by that person is less than the threshold efficiency percentage for the station,

sub-paragraph (1) only exempts the relevant fraction of the supply.

(3) For the purposes of sub-paragraph (2), the "relevant fraction" of a supply of a taxable commodity that is to be used in a combined heat and power station is the fraction—

(a) whose numerator is the efficiency percentage for the station at the time the supply is made, and

(b) whose denominator is the threshold efficiency percentage for the station at that time.

(4) For the purposes of this paragraph—

(a) the "threshold efficiency percentage" for a combined heat and power station is the percentage set as the threshold efficiency percentage for the station by regulations made by the Treasury;

(b) the "efficiency percentage" for a combined heat and power station is the percentage stated as the efficiency percentage for the station in a certificate in force in respect of the station under paragraph 148 (certificate given by Secretary of State that station is fully or partly exempt).

(5) Paragraph 149 confers power to make provision by regulations for determining the efficiency percentage to be stated in a certificate under paragraph 148.

Exemption: supplies (other than self-supplies) of electricity from partly exempt combined heat and power stations

16.—(1) This paragraph applies to a supply that—

(a) is a supply made from a partly exempt combined heat and power station of electricity produced in the station, and

(b) is not a supply that is deemed to be made under paragraph 23(3).

(2) The supply is exempt from the levy if the quantity of electricity supplied by the supply is not such as causes the exceeding of any specified limit that, by virtue of regulations made by the Treasury, applies in relation to the station for any specified period.

(3) In this paragraph "specified" means prescribed by, or determined in accordance with, regulations made by the Treasury.

Exemption: self-supplies by electricity producers

17.—(1) This paragraph applies to a supply of electricity that is deemed to be made under paragraph 23(3) by a person ("the producer") to himself.

(2) If the producer is an auto-generator, the supply is exempt from the levy unless—

(a) it is a supply from a partly-exempt combined heat and power station of electricity produced in the station, and

(b) the quantity of electricity supplied by the supply is such as causes the exceeding of any such limit as is mentioned in paragraph 16(2) that applies in relation to the station.

(3) If the producer is not an auto-generator, the supply is exempt from the levy if it is a supply made from a fully exempt combined heat and power station of electricity produced in the station.

(4) If the producer is not an auto-generator, the supply is exempt from the levy if—

(a) it is a supply from a partly-exempt combined heat and power station of electricity produced in the station, and

(b) the quantity of electricity supplied by the supply is not such as causes the exceeding of any such limit as is mentioned in paragraph 16(2) that applies in relation to the station.

Exemption: supply not used as fuel

18.—(1) A supply of a taxable commodity is exempt from the levy if the person to whom the supply is made intends to cause the commodity to be used otherwise than as fuel.

(2) The Treasury may by regulations specify, in relation to any commodity, uses of that commodity that, for the purposes of sub-paragraph (1), are to be taken as being, or as not being, uses of that commodity as fuel.

(3) The uses of a commodity that may be specified under sub-paragraph (2) as being uses of that commodity as, or otherwise than as, fuel include uses ("mixed uses") of the commodity that involve it being used partly as fuel and partly not; but the Treasury must have regard to the object of securing that a mixed use is not specified as being a use of the commodity otherwise than as fuel if it involves the use of the commodity otherwise than as fuel in a way that is merely incidental to its use as fuel.

Exemption: electricity from renewable sources

19.—(1) A supply of electricity is exempt from the levy if—

(a) the supply is not one that is deemed to be made under paragraph 23(3),

(b) the supply is made under a contract that contains a renewable source declaration given by the supplier,

(c) prescribed conditions are fulfilled, and

(d) the supplier, and each other person (if any) who is a generator of any renewable source electricity allocated by the supplier to supplies under the contract, has in a written notice given to the Commissioners agreed that he will fulfil those conditions so far as they may apply to him.

(2) In this paragraph "renewable source declaration" means a declaration that, in each averaging period, the amount of electricity supplied by exempt renewable supplies made by the supplier in the period will not exceed the difference between—

(a) the total amount of renewable source electricity that during that period is either acquired or generated by the supplier, and

(b) so much of that total amount as is allocated by the supplier otherwise than to exempt renewable supplies made by him in the period.

In this sub-paragraph "averaging period" has the same meaning as in paragraph 20 and "exempt renewable supplies" means supplies made on the basis that they are exempt under this paragraph.

(3) For the purposes of this paragraph and paragraph 20, electricity is "renewable source electricity" if—

(a) it is generated in a prescribed manner, and

(b) prescribed conditions are fulfilled.

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A manner of generating electricity may be prescribed by reference to the means by which the electricity is generated or the materials from which it is generated (or both).

(4) In prescribing a manner of generating electricity under sub-paragraph (3), the Commissioners must have regard to the object of securing that exemption under this paragraph is only available for supplies of electricity that has a renewable source.

(5) The conditions that may be prescribed under sub-paragraph (1)(c) include, in particular, conditions in connection with—

(a) the giving of effect to renewable source declarations;

(b) the supply of information;

(c) the inspection of records and, for that purpose, the production of records in legible form and entry into premises;

(d) monitoring by the Gas and Electricity Markets Authority, or the Director General of Electricity Supply for Northern Ireland, of the application of provisions of, or made under, this paragraph;

(e) the doing of things to or by a person authorised by the Authority or the Director General (as well as to or by the Authority or the Director General);

(f) things being done at times or in ways specified by the Authority, the Director General or such an authorised person.

(6) A condition prescribed under sub-paragraph (1)(c) may be one that is required to be fulfilled throughout a period, including a period ending after the time when a supply whose exemption turns on the fulfilment of the condition is treated as being made.

(7) The conditions that may be prescribed under sub-paragraph (3)(b) include, in particular, conditions in connection with—

(a) the generation of the electricity;

(b) the materials from which the electricity is generated;

(c) any of the matters mentioned in paragraphs (b) to (f) of sub-paragraph (5).

(8) Each of—

(a) the Gas and Electricity Markets Authority, and

(b) the Director General of Electricity Supply for Northern Ireland,

shall supply the Commissioners with such information (whether or not obtained under this paragraph), and otherwise give the Commissioners such co-operation, as the Commissioners may require in connection with the application (whether generally or in relation to any particular case) of any relevant provisions.

(9) In sub-paragraph (8) "relevant provisions" means provisions of or made under—

(a) this paragraph or paragraph 20, or

(b) paragraph 23(3) so far as relating to electricity, or paragraph 23(4).

(10) None of—

1989 c. 29. (a) section 57(1) of the Electricity Act 1989,

1986 c. 44. (b) section 42(1) of the Gas Act 1986, and

S.I. 1992/231 (N.I. 1). (c) Article 61(1) of the Electricity (Northern Ireland) Order 1992,

(provisions restricting disclosure of information) applies to any disclosure of information made in pursuance of sub-paragraph (8).

Exemption under paragraph 19: averaging periods

20.—(1) This paragraph applies where a person ("the supplier") makes supplies of electricity on the basis that they are exempt under paragraph 19 ("exempt renewable supplies").

(2) The rules about balancing and averaging periods are—

(a) a balancing period is a period of 3 months;

(b) when a balancing period ends, a new one begins;

(c) the first balancing period and the first averaging period begin at the same time;

(d) unless the supplier specifies an earlier time, that time is the time when he is treated as making the first of the exempt renewable supplies;

(e) when an averaging period ends, a new one begins;

(f) an averaging period ends once it has run for 2 years (but may end sooner under paragraph (g) or sub-paragraph (4)(a) or (5)(a));

(g) if the supplier stops making exempt renewable supplies, the end of the balancing period in which he makes the last exempt renewable supply is also the end of the averaging period in which that balancing period falls.

(3) At the end of each balancing period calculate—

(a) the total of—

(i) the quantity of renewable source electricity that the supplier acquired or generated in that period, and

(ii) any balancing credit carried forward to that balancing period; and

(b) the total of—

(i) the quantity of electricity supplied by exempt renewable supplies made by him in that period, and

(ii) any balancing debit carried forward to that balancing period.

(4) If the total mentioned in sub-paragraph (3)(a) exceeds that mentioned in sub-paragraph (3)(b)—

(a) the averaging period within which the balancing period fell ends at the end of the balancing period, and

(b) a balancing credit equal to the difference between the two totals is carried forward to the next balancing period.

(5) If the totals mentioned in paragraphs (a) and (b) of sub-paragraph (3) are the same—

(a) the averaging period within which the balancing period fell ends at the end of the balancing period, and

(b) no balancing credit or debit is carried forward to the next balancing period.

(6) Sub-paragraphs (7) and (8) apply if the total mentioned in sub-paragraph (3)(b) exceeds that mentioned in sub-paragraph (3)(a).

(7) Where the end of the balancing period is by virtue of sub-paragraph (2)(c) (averaging period ends after 2 years) the end of an averaging period, the supplier is liable to account to the Commissioners for an amount equal to the amount that would be payable by way of levy on a taxable supply that—

(a) is made at the end of the balancing period,

(b) is a supply of a quantity of electricity equal to the difference between the two totals, and

(c) is treated as a reduced-rate supply to the extent (if any) that the exempt renewable supplies made by the supplier in the averaging period would have been reduced-rate supplies if they had not been made on the basis that they were exempt.

For the purposes of this Schedule, the amount for which the supplier is liable to account shall be treated as an amount of levy for which he is liable to account for an accounting period ending at the end of the balancing period.

(8) Where sub-paragraph (7) does not apply, a balancing debit equal to the difference between the two totals is carried forward to the next balancing period.

Regulations to avoid double charges to levy

21.—(1) The Commissioners may by regulations make provision for avoiding, counteracting or mitigating double charges to levy.

(2) For the purposes of this paragraph there is a double charge to levy where—

(a) a supply of a taxable commodity ("the produced commodity") is a taxable supply, and

(b) a taxable commodity used directly or indirectly in producing the produced commodity has been the subject of a taxable supply.

(3) Regulations under this paragraph may, in particular, make provision for a supply of a taxable commodity to be wholly or to any extent—

(a) exempt from the levy, or

(b) deemed not a supply of the commodity.

(4) The provision mentioned in sub-paragraph (3) includes provision for exceptions to any of sub-paragraphs (1) to (3) of paragraph 23 or paragraph 24(3).

(5) The powers conferred by this paragraph are in addition to the powers to make provision by tax credit regulations in relation to any such case as is mentioned in paragraph 62(1)(g).

Regulations giving effect to exemptions

22.—(1) The Commissioners may by regulations make provision for giving effect to the exclusions and exemptions provided for by paragraphs 8 to 21.

(2) Regulations under this paragraph may, in particular, include provision for—

(a) determining the extent to which a supply of a taxable commodity is, or is to be treated as being, a taxable supply;

(b) authorising a person making supplies of a taxable commodity to another person to treat the supplies to that other person as being taxable supplies only to an extent certified by the Commissioners.

Deemed supply: use of commodities by utilities and producers

23.—(1) Where an electricity utility—

(a) has electricity available to it, and

(b) as regards a quantity of the electricity, makes no supply of that quantity to another person but causes it to be consumed in the United Kingdom,

the utility is for the purposes of this Schedule deemed to make a supply to itself of that quantity of the electricity.

(2) Where a gas utility—

(a) holds gas in a gaseous state, and

(b) as regards a quantity of the gas, makes no supply of that quantity to another person but causes it to be burned in the United Kingdom,

the utility is for the purposes of this Schedule deemed to make a supply to itself of that quantity of the gas.

(3) Where—

(a) a person has produced a taxable commodity,

(b) the commodity is either—

(i) a taxable commodity other than electricity, or

(ii) electricity that has been produced from taxable commodities, and

(c) as regards a quantity of the commodity, the person makes no supply of that quantity to another person but causes it to be burned (or, in the case of electricity, consumed) in the United Kingdom,

the person is for the purposes of this Schedule deemed to make a supply to himself of that quantity of the commodity.

(4) The Commissioners may by regulations make provision for electricity to be treated for the purposes of sub-paragraph (3)(b)(ii)—

(a) as produced from taxable commodities unless prescribed conditions are fulfilled, or

(b) as produced otherwise than from taxable commodities only where prescribed conditions are fulfilled.

(5) The conditions that may be prescribed under sub-paragraph (4) include, in particular, conditions in connection with the materials from which the electricity is produced.

Deemed supply: change of circumstances or intentions

24.—(1) This paragraph applies where—

(a) a supply of a taxable commodity has been made to a person on or after 1st April 2001,

(b) the supply was not a taxable supply, and

(c) there is such a change in circumstances or any person's intentions that, if the changed circumstances or intentions had existed at the time the supply was made, the supply would have been a taxable supply.

(2) This paragraph does not apply where the supply was not a taxable supply by reason of being exempt from the levy under paragraph 19 (exemption for supply of electricity from renewable sources, but see paragraph 20).

(3) The person to whom the supply was made is for the purposes of this Schedule deemed to make a taxable supply of the commodity to himself.

(4) Where—

(a) a supply of a taxable commodity was not a taxable supply by virtue of being supplied for use in premises of a description mentioned in any of paragraphs (a) to (f) of paragraph 9(2), and

(b) those premises cease to be premises of any of those descriptions,

sub-paragraph (3) only applies to so much (if any) of the commodity supplied as was not used in the premises before they ceased to be premises of any of those descriptions.

(5) The Commissioners may by regulations make provision specifying descriptions of occurrences and non-occurrences that are to be taken as being, or as not being, changes of circumstances or intentions for the purposes of sub-paragraph (1)(c).

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PART III

TIME OF SUPPLY

Introduction

25. This Part of this Schedule applies to determine when a supply of a taxable commodity is treated as taking place.

Electricity or gas: supply when climate change levy accounting document issued

26.—(1) This paragraph applies—

(a) to supplies of electricity, and

(b) to supplies of gas where the gas is supplied in a gaseous state and is of a kind supplied by a gas utility.

(2) Where this paragraph applies, a supply is treated as taking place each time a climate change levy accounting document in respect of a supply is issued by the person making the supply.

(3) A supply that is treated as taking place under this paragraph is a supply of the electricity or gas covered by the accounting document.

(4) Nothing in this paragraph applies to any electricity or gas that is covered by a special utility scheme (see paragraph 29).

Electricity or gas: duty to issue climate change levy accounting document

27.—(1) This paragraph applies where on any day—

(a) electricity, or gas that is in a gaseous state and is of a kind supplied by a gas utility, is actually supplied to a person ("the consumer"),

(b) the supply by which the electricity or gas is supplied is a taxable supply, and

(c) the person liable to account for the levy on that supply is the person making the supply ("the supplier").

(2) A climate change levy accounting document covering the electricity or gas actually supplied on that day must be issued by the supplier no later than—

(a) the end of the period of 15 weeks beginning with that day, if on that day the consumer is a small-scale user of the commodity supplied;

(b) the end of the period of 6 weeks beginning with that day, if on that day the consumer is not a small-scale user of the commodity supplied.

(3) A climate change levy accounting document issued under this paragraph that covers the electricity, or the gas of any kind, actually supplied on any day must also cover any electricity or (as the case may be) any gas of that kind that—

(a) has been actually supplied by the supplier to the consumer on any earlier day, and

(b) has not been covered by a previous climate change levy accounting document.

(4) For the purposes of this paragraph—

(a) an accounting document shall be taken to cover the electricity or gas actually supplied on a day if it covers the electricity or gas actually supplied during a period that includes that day; and

(b) an accounting document shall be taken to cover the electricity or gas actually supplied on a day or during a period if it is an accounting document for a quantity of electricity or gas that is a reasonable estimate of the quantity actually supplied.

(5) A climate change levy accounting document issued under this paragraph must contain a statement of—

(a) the quantity of electricity or gas that it covers,

(b) the period during which, or during which it is estimated that, that quantity was actually supplied,

(c) the supplier's name and address,

(d) the customer's name and address, and

(e) the reference number used by the supplier for the customer.

(6) For the purposes of this paragraph a person is, on any day, a small-scale user of a commodity if the rate at which he is taken to be supplied with that commodity on that day does not exceed the prescribed rate.

(7) The Commissioners may make provision by regulations as to the rate at which a person is, for the purposes of sub-paragraph (6), taken to be supplied with a commodity on any day.

(8) Regulations under sub-paragraph (7) may, in particular, include provision for—

(a) rates to be determined or estimated in accordance with the regulations;

(b) rates to be so determined or estimated by reference to the quantity of a commodity actually supplied, or estimated to have been actually supplied, during a period ending with, or at any time before or after, the day in question;

(c) cases where a person is supplied with a commodity of any kind by two or more suppliers.

(9) Nothing in this paragraph applies to any electricity or gas—

(a) that is covered by a special utility scheme (see paragraph 29), or

(b) that is actually supplied before 1st April 2001.

(10) This paragraph applies subject to paragraph 36(5).

Electricity or gas: actual supply not followed by climate change levy accounting document

28.—(1) This paragraph applies where on any day—

(a) electricity, or gas that is in a gaseous state and is of a kind supplied by a gas utility, is actually supplied to a person ("the consumer"),

(b) the supply by which the electricity or gas is supplied is a taxable supply,

(c) the person liable to account for the levy on that supply is the person making the supply ("the supplier"), and

(d) the supplier does not within the period applicable under sub-paragraph (2) of paragraph 27 issue a climate change levy accounting document under that paragraph covering the electricity or gas.

(2) Where this paragraph applies, a supply is treated as taking place at the end of that period.

(3) A supply that is treated as taking place under this paragraph is a supply of all the electricity or (as the case may be) gas of the same kind that—

(a) has been actually supplied by the supplier to the consumer before the end of that period, and

(b) has not been covered by a climate change levy accounting document.

(4) Sub-paragraph (4) of paragraph 27 (interpretation of "covered by an accounting document") applies for the purposes of this paragraph as for those of that paragraph.

(5) Nothing in this paragraph applies to any electricity or gas—

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(a) that is covered by a special utility scheme (see paragraph 29),

(b) that is actually supplied before 1st April 2001, or

(c) that is treated under paragraph 36(3) as supplied on that day.

Electricity or gas: special utility schemes

29.—(1) For the purposes of this Schedule a "special utility scheme" is a scheme for determining when—

(a) a supply of electricity, or

(b) a supply of gas that is in a gaseous state and is of a kind supplied by a gas utility,

is treated as taking place in cases where the electricity or gas is covered by the scheme.

(2) If in the opinion of the Commissioners it is reasonable to do so, they may in accordance with the provisions of this paragraph prepare a special utility scheme for a utility or for two or more utilities.

In this paragraph "utility" includes a person who makes supplies on which levy is chargeable by virtue of paragraph 5(2) (partly exempt combined heat and power stations).

(3) A special utility scheme shall specify the period for which it is to have effect.

(4) No special utility scheme shall be of any effect in relation to any electricity or gas supplied by a utility unless the utility elects in writing to be bound by it for the specified period.

(5) If a utility makes such an election—

(a) the scheme shall have effect for the specified period in relation to such electricity or gas supplied by the utility as is covered by the scheme, and

(b) during the specified period the scheme applies to determine when a supply of a taxable commodity is treated as taking place if the commodity is electricity or gas covered by the scheme.

(6) A special utility scheme may—

(a) cover all or any of the electricity or gas supplied by a utility for which the scheme is prepared;

(b) provide for paragraph 36 or 37 not to apply, or to apply with modifications, to electricity or gas covered by the scheme.

(7) The Commissioners may by regulations make further provision with respect to special utility schemes, including (in particular) provision amending this paragraph.

Other commodities: general rules for supply by UK residents

30.—(1) This paragraph applies to supplies that are not of either of the descriptions mentioned in paragraphs (a) and (b) of paragraph 26(1) (electricity and gas in a gaseous state).

(2) The general rules as to when such supplies are taken to be made are, in cases where the supply is made by a person resident in the United Kingdom, as follows—

(a) if the commodity is to be removed, the supply takes place at the time of the removal;

(b) if the commodity is not to be removed, the supply takes place when the commodity is made available to the person to whom it is supplied;

(c) if the commodity (being sent or taken on approval or sale or return or similar terms) is removed before it is known whether a supply will take place, the supply takes place when it becomes certain that the supply has taken place or, if sooner, 12 months after the removal.

(3) These general rules are subject to—

paragraph 31 (earlier invoice),

paragraph 32 (later invoice),

paragraph 34 (deemed supplies), and

paragraph 36 (directions by Commissioners).

Other commodities: earlier invoice

31.—(1) If before the time applicable under paragraph 30(2) the person making the supply—

(a) issues an invoice in respect of the supply, or

(b) receives a payment in respect of it,

the supply is treated, to the extent that it is covered by the invoice or payment, as taking place when the invoice is issued or the payment is received.

(2) Sub-paragraph (1) does not apply where the commodity (being sent or taken on approval or sale or return or similar terms) is removed before it is known whether a supply will take place.

(3) Sub-paragraph (1) applies subject to any direction under paragraph 35(3).

Other commodities: later invoice

32.—(1) If within 14 days after the time applicable under paragraph 30(2) the person making the supply issues an invoice in respect of it, the supply is treated as taking place at the time the invoice is issued.

(2) This does not apply—

(a) to the extent that the supply is treated as taking place at the time mentioned in paragraph 31(1) (earlier invoice), or

(b) if the person liable to account for any levy charged on the supply has notified the Commissioners in writing that he elects not to avail himself of sub-paragraph (1).

(3) The Commissioners may, at the request of a person liable to account for any levy charged on any supplies, direct that sub-paragraph (1) shall apply—

(a) in relation to those supplies, or

(b) in relation to such of those supplies as may be specified in the direction,

with the substitution for the period of 14 days of such longer period as may be specified in the direction.

(4) Sub-paragraphs (1) to (3) apply subject to any direction under paragraph 35.

Other commodities: supply by non-UK residents

33.—(1) This paragraph applies to supplies that—

(a) are not of either of the descriptions mentioned in paragraphs (a) and (b) of paragraph 26(1) (electricity and gas in a gaseous state), and

(b) are made by a person who is not resident in the United Kingdom.

(2) The supply is treated as taking place—

(a) when the commodity is delivered to the person to whom it is supplied, or

(b) if earlier, when it is made available in the United Kingdom to that person.

(3) Sub-paragraph (2) applies subject to—

(a) sub-paragraph (4),

(b) paragraph 34 (deemed supplies), and

(c) any direction under paragraph 35.

(4) If within 14 days after the time applicable under sub-paragraph (2) the person to whom the supply is made elects in writing for the supply to be treated as taking place at the time the election is made, the supply is treated as taking place at the time the election is made.

Other commodities: deemed supplies

34.—(1) This paragraph applies to supplies that—

(a) are not of either of the descriptions mentioned in paragraphs (a) and (b) of paragraph 26(1) (electricity and gas in a gaseous state), and

(b) are deemed to be made under paragraph 23 or 24.

(2) A supply that is deemed to be made under paragraph 23 is treated as taking place when the commodity is burned (or, in the case of electricity, consumed).

(3) A supply that is deemed to be made under paragraph 24 is treated as taking place upon the occurrence of the change in circumstances or intentions.

Other commodities: directions by Commissioners

35.—(1) This paragraph applies to supplies that are not of either of the descriptions mentioned in paragraphs (a) and (b) of paragraph 26(1) (electricity and gas in a gaseous state).

(2) The Commissioners may, at the request of the person liable to account for any levy charged on any supplies to which this paragraph applies, make a direction under sub-paragraph (3) or (4) altering the time at which those supplies (or such of those supplies as may be specified in the direction) are to be treated as taking place.

(3) The Commissioners may direct that the supplies shall be treated as taking place—

(a) at times or on dates determined by or by reference to the occurrence of some event described in the direction, or

(b) at times or on dates determined by or by reference to the time when some event so described would in the ordinary course of events occur,

provided the resulting times or dates are in every case earlier than would otherwise apply.

(4) The Commissioners may direct that the supplies shall be treated as taking place—

(a) at the beginning of the relevant working period (as defined in the case of the person making the request in and for the purposes of the direction), or

(b) at the end of the relevant working period (as so defined).

(5) A direction under sub-paragraph (4) shall not apply to the extent that the time when the supplies in question are made is determined by paragraph 31(1).

Supplies invoiced or paid for before 1st April 2001

36.—(1) This paragraph applies where—

(a) the taxable commodities covered by an invoice issued, or payment received, before 1st April 2001 are to any extent commodities that have not been burned (or, in the case of electricity, consumed) before the invoice is issued or payment is received, and

(b) the advance invoicing or payment is not acceptable normal practice.

It does not matter whether the invoice mentioned in paragraph (a) is, or is not, a climate change levy accounting document.

(2) A fair apportionment shall be made to determine the quantity of the taxable commodities covered by the invoice or payment that will not be, or was not, burned (or consumed) before 1st April 2001.

(3) Where this paragraph applies, a supply is treated as taking place on 1st April 2001.

That supply is a supply of the quantity of the taxable commodities that is mentioned in, and determined under, sub-paragraph (2).

(4) For the purposes of this paragraph advance invoicing or payment is "acceptable normal practice" if—

(a) the supply is of a kind in the case of which it is normal practice for invoices to be issued, or payments made, in respect of taxable commodities not already burned (or consumed),

(b) that practice does not involve issuing invoices, or making payments, more than 15 weeks in advance of the burning (or consumption) of any of the taxable commodities in respect of which the invoice is issued or payment is made, and

(c) the advance invoicing or payment is in accordance with the practice.

(5) Nothing in paragraph 27 requires a climate change levy accounting document to be issued to cover any commodities that are supplied by a supply that, under sub-paragraph (3), is treated as made on 1st April 2001.

(6) This paragraph applies to invoices issued, and payments received, before the passing of this Act (as well as to those issued or received after its passing).

Supplies of electricity or gas spanning change of rate etc.

37.—(1) This paragraph applies in the case of a supply of electricity, or of gas that is in a gaseous state and is of a kind supplied by a gas utility, affected by—

(a) a change in the descriptions of supplies that are taxable supplies,

(b) a change in any rate of levy in force,

(c) a change consisting in the rate of levy applicable to the supply ceasing to be, or becoming, the rate that is applicable to half-rate supplies or reduced-rate supplies, or

(d) the change consisting in the transition from 31st March 2001 to 1st April 2001.

(2) For the purposes of this paragraph a supply is affected by a change if the electricity or gas of which it is a supply ("the supplied commodity") is actually supplied partly before the change and partly after.

However, this paragraph does not apply in the case of a supply that, under paragraph 36(3), is treated as made on 1st April 2001.

(3) If the person liable to account for any levy on the supply so elects—

(a) the rate at which levy is chargeable on any part of the supply, or

(b) any question whether, or to what extent, the supply is a taxable supply,

shall be determined in accordance with sub-paragraph (5) or (6).

(4) An election for determination in accordance with sub-paragraph (6) may be made only where—

(a) there is such a change as is mentioned in sub-paragraph (1)(c), and

(b) all the supplied commodity is actually supplied before the supply is treated as taking place.

(5) Where the election is for determination in accordance with this sub-paragraph, the rules are—

A. Treat the fraction of the supplied commodity actually supplied before the change ("the pre-change fraction") as supplied by a supply made before the change and treat the fraction of the supplied commodity actually supplied after the change ("the post-change fraction") as supplied by a supply made after the change.

B. Where the pre-change and post-change fractions are not known (because, for example, there are no relevant meter readings available)—

"the pre-change fraction" is calculated by dividing—

(a) the number of days in the period over which the supply is actually made that fall before the change, by

(b) the number of days in that period; and

"the post-change fraction" is the difference between 1 and the pre-change fraction.

C. If use of the fractions given by rule B would produce an inequitable result, the pre-change and post-change fractions may be derived from a reasonable estimate of the fractions of the supplied commodity actually supplied before and after the change.

(6) Where the election is for determination in accordance with this sub-paragraph, treat the change as taking place immediately after the time at which the last of the supplied commodity was actually supplied.

Other supplies spanning change of rate etc.

38.—(1) This paragraph applies where there is—

(a) a change in the descriptions of supplies that are taxable supplies,

(b) a change in the rate of levy in force,

(c) a change consisting in the rate of levy applicable to any supply ceasing to be, or becoming, the rate that is applicable to half-rate supplies or reduced-rate supplies, or

(d) the change consisting in the transition from 31st March 2001 to 1st April 2001.

(2) Where—

(a) a supply affected by the change would apart from special provisions be treated under paragraph 30(2) or 33(2) as made wholly or partly at a time when it would not have been affected by the change, or

(b) a supply not so affected would apart from special provisions be treated under paragraph 30(2) or 33(2) as made wholly or partly at a time when it would have been so affected,

the rate at which levy is chargeable on the supply, or any question whether it is a taxable supply, shall, if the person liable to account for any levy on the supply so elects, be determined without regard to the special provisions.

(3) In this paragraph "special provisions" means the provisions of paragraphs 31, 32, 33(4) and 35.

Regulations as to time of supply

39.—(1) The Commissioners may make provision by regulations as to the time at which a supply is to be treated as taking place—

(a) in cases where the supply is for a consideration and the whole or part of the consideration—

(i) is determined or payable periodically, or from time to time, or at the end of any period, or

(ii) is determined at the time when the commodity is appropriated for any purpose;

(b) in the case of a supply otherwise than for consideration;

(c) in the case of any supply that is deemed to be made under paragraph 23 or 24.

(2) In any such case as is mentioned in sub-paragraph (1) the regulations may provide that a taxable commodity shall be treated as separately and successively supplied at prescribed times or intervals.

(3) Paragraphs 26 to 36 (main rules as to time of supply) have effect subject to any regulations under this paragraph.

(4) The power to make regulations under this paragraph includes power to provide for specified provisions of the regulations to be treated as special provisions for the purposes of paragraph 38 (supplies spanning change of rate etc.).

PART IV

PAYMENT AND RATE OF LEVY

Persons liable to account for levy

40.—(1) The person liable to account for the levy charged on a taxable supply is, except in a case where sub-paragraph (2) applies, the person making the supply.

(2) In the case of a taxable supply made by a person who—

(a) is not resident in the United Kingdom, and

(b) is not a utility,

the person liable to account for the levy charged on the supply is the person to whom the supply is made.

Returns and payment of levy

41.—(1) The Commissioners may by regulations make provision—

(a) for persons liable to account for levy to do so by reference to such periods ("accounting periods") as may be determined by or under the regulations;

(b) for persons who are or are required to be registered for the purposes of the levy to be subject to such obligations to make returns for those purposes for such periods, at such times and in such form as may be so determined; and

(c) for persons who are required to account for levy for any period to become liable to pay the amounts due from them at such times and in such manner as may be so determined.

(2) Without prejudice to the generality of the powers conferred by sub-paragraph (1), regulations under this paragraph may contain provision—

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(a) for levy falling in accordance with the regulations to be accounted for by reference to one accounting period to be treated in prescribed circumstances, and for prescribed purposes, as levy due for a different period;

(b) for the correction of errors made when accounting for levy by reference to any period;

(c) for the entries to be made in any accounts in connection with the correction of any such errors and for the financial adjustments to be made in that connection;

(d) for a person, for purposes connected with the making of any such entry or financial adjustment, to be required to provide to any prescribed person, or to retain, a document in the prescribed form containing prescribed particulars of the matters to which the entry or adjustment relates;

(e) for enabling the Commissioners, in such cases as they may think fit, to dispense with or relax a requirement imposed by regulations made by virtue of paragraph (d);

(f) for the amount of levy which, in accordance with the regulations, is treated as due for a later period than that by reference to which it should have been accounted for to be treated as increased by an amount representing interest at the rate applicable under section 197 of the Finance Act 1996 for such period as may be determined in accordance with the regulations.

1996 c. 8.

(3) Subject to the following provisions of this paragraph, if any person ("the taxpayer") fails—

(a) to comply with so much of any regulations under this paragraph as requires him, at or before a particular time, to make a return for any accounting period, or

(b) to comply with so much of any regulations under this paragraph as requires him, at or before a particular time, to pay an amount of levy due from him,

he shall be liable to a penalty of £250.

(4) Liability to a penalty under sub-paragraph (3) shall not arise if the taxpayer satisfies the Commissioners or, on appeal, an appeal tribunal—

(a) that there is a reasonable excuse for the failure to make the return or to pay the levy in accordance with the regulations; and

(b) that there is not an occasion after the last day on which the return or payment was required by the regulations to be made when there was a failure without a reasonable excuse to make it.

(5) Where, by reason of any failure falling within paragraph (a) or (b) of sub-paragraph (3)—

(a) a person is convicted of an offence (whether under this Schedule or otherwise), or

(b) a person is assessed to a penalty under paragraph 98 (penalty for evasion),

that person shall not, by reason of that failure, be liable also to a penalty under that sub-paragraph (3).

Amount payable by way of levy

42.—(1) The amount payable by way of levy on a taxable supply is—

(a) if the supply is neither a half-rate supply nor a reduced-rate supply, the amount ascertained from the Table in accordance with sub-paragraph (2);

(b) if the supply is a half-rate supply, 50 per cent. of the amount that would be payable if the supply were neither a half-rate supply nor a reduced-rate supply;

(c) if the supply is a reduced-rate supply, 20 per cent. of the amount that would be payable if the supply were neither a half-rate supply nor a reduced-rate supply.

TABLE

Taxable commodity supplied	*Rate at which levy payable if supply is neither a half-rate supply nor a reduced-rate supply*
Electricity … … … … … …	£0.0043 per kilowatt hour
Gas supplied by a gas utility or any gas supplied in a gaseous state that is of a kind supplied by a gas utility… … …	£0.0015 per kilowatt hour
Any petroleum gas, or other gaseous hydrocarbon, supplied in a liquid state	£0.0096 per kilogram
Any other taxable commodity … …	£0.0117 per kilogram

(2) The levy payable on a fraction of a quantity of a commodity is that fraction of the levy payable on that quantity of the commodity.

Half-rate for supplies to horticultural producers

43.—(1) For the purposes of this Schedule a half-rate supply is a taxable supply in respect of which the following conditions are satisfied—

(a) the first condition is that the person to whom the supply is made is a horticultural producer;

(b) the second condition is that the horticultural producer intends to use the taxable commodity supplied—

(i) in the heating, for the growth of horticultural produce primarily with a view to the production of horticultural produce for sale, of any building or structure, or of the earth or other growing medium in it,

(ii) in the lighting, for the growth of horticultural produce primarily with a view to the production of horticultural produce for sale, of any building or structure, or

(iii) in the sterilisation of the earth or other growing medium to be used for the growth of horticultural produce as mentioned in sub-paragraph (i) in any building or structure.

(2) In this paragraph "horticultural producer" means a person growing horticultural produce primarily for sale.

(3) In this paragraph "horticultural produce" means—

(a) fruit;

(b) vegetables of a kind grown for human consumption, including fungi, but not including maincrop potatoes or peas grown for seed, for harvesting dry or for vining;

(c) flowers, pot plants and decorative foliage;

(d) herbs;

(e) seeds other than pea seeds, and bulbs and other material, being seeds, bulbs or material for sowing or planting for the production of—

(i) fruit,

(ii) vegetables falling within paragraph (b),

(iii) flowers, plants or foliage falling within paragraph (c), or

(iv) herbs,

or for reproduction of the seeds, bulbs or other material planted; or

(f) trees and shrubs, other than trees grown for the purpose of afforestation;

but does not include hops.

(4) The Commissioners may by regulations make provision for facilitating the enjoyment of the reduced rate of levy payable on half-rate supplies.

(5) Regulations under sub-paragraph (4) may, in particular, include provision—

(a) for determining the extent to which a taxable supply is, or is to be treated as being, a half-rate supply;

(b) for authorising a person making taxable supplies to another person to treat the supplies to that other person as being half-rate supplies only to an extent certified by the Commissioners;

(c) for a person making half-rate supplies ("the supplier") to account for levy on those supplies as if the supplies were neither half-rate supplies nor reduced-rate supplies.

(6) Provision such as is mentioned in sub-paragraph (5)(c) may be made only where tax credit regulations provide for a horticultural producer to be entitled to a tax credit in respect of 50 per cent. of the levy accounted for by the supplier on any half-rate supplies—

(a) that are made by the supplier to the horticultural producer, and

(b) on which the supplier has accounted for levy on the basis mentioned in sub-paragraph (5)(c).

Reduced-rate for supplies covered by climate change agreement

44.—(1) Where the Secretary of State gives a certificate to the Commissioners stating that, for a period specified in the certificate, a facility is to be taken as being covered by a climate change agreement, the Commissioners shall publish a notice in respect of the facility.

(2) Such a notice shall—

(a) state the day on which it is published,

(b) identify the facility or facilities in respect of which it is published,

(c) for each facility—

(i) set out the first and last days of the period specified for the facility in the Secretary of State's certificate, and

(ii) indicate the effect of sub-paragraph (3),

and

(d) indicate that the notice may be varied by later notices.

(3) For the purposes of this Schedule, a reduced-rate supply is a taxable supply in respect of which the following conditions are satisfied—

(a) the first condition is that the taxable commodity supplied by the supply is supplied to a facility identified in a notice published under sub-paragraph (1);

(b) the second condition is that the supply is made at a time falling in the period that begins with the later of—

(i) the first day set out for the facility under sub-paragraph (2)(c), and

(ii) the day on which the notice is published,

and ends with the last day set out for the facility under sub-paragraph (2)(c).

(4) Sub-paragraph (3) has effect subject to paragraph 45.

(5) The Commissioners may, for the purposes of sub-paragraph (3), by regulations make provision for determining whether any taxable commodity is supplied to a facility.

(6) The provision that may be made by regulations under sub-paragraph (5) includes, in particular, provision for a taxable commodity of any description specified in the regulations to be taken as supplied to a facility only if the commodity is delivered to the facility.

Reduced-rate supplies: variation of notices under paragraph 44

45.—(1) This paragraph applies where the Secretary of State, after having given in respect of a facility such a certificate as is mentioned in paragraph 44(1) ("the original certificate"), gives a certificate (a "variation certificate") to the Commissioners stating—

(a) that, throughout the period ("the original period") specified for the facility in the original certificate, the facility is to be taken as not being covered by a climate change agreement; or

(b) that, for so much of the original period as falls on or after a day specified in the variation certificate (being a day falling within the original period), the facility is to be taken as no longer being covered by a climate change agreement.

(2) Where the Commissioners receive a variation certificate in respect of a facility before they have published a notice under paragraph 44(1) in response to the original certificate so far as relating to the facility, their obligation to publish a notice under paragraph 44(1) in respect of the facility shall have effect as an obligation to publish such a notice in response to the original certificate as varied by the variation certificate.

(3) Where the Commissioners receive a variation certificate but sub-paragraph (2) does not apply, they shall publish a notice (a "variation notice") that—

(a) states the day on which it is published,

(b) identifies the facility or facilities in respect of which it is published,

(c) sets out, for each facility in respect of which the statement in the variation certificate is of the type described in sub-paragraph (1)(b), the date specified for the facility in the variation certificate, and

(d) for each facility, indicates the effect of sub-paragraphs (4) to (7) as they apply in the case of the facility.

(4) Sub-paragraphs (5) to (7) set out the effect of a variation notice being published in respect of a facility.

(5) If—

(a) the statement in the variation certificate in respect of the facility is of the type described in sub-paragraph (1)(a), and

(b) the day on which the variation notice is published falls before the beginning of the original period,

the notice ("the original notice") published under paragraph 44(1) in response to the original certificate has effect as if the facility had never been identified in it.

(6) If—

(a) the statement in the variation certificate in respect of the facility is of the type described in sub-paragraph (1)(a), and

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(b) the day on which the variation notice is published falls during the original period,

the original notice has effect as if the last day set out for the facility under paragraph 44(2)(c) were the day on which the variation notice is published.

(7) If the statement in the variation certificate in respect of the facility is of the type described in sub-paragraph (1)(b), the original notice has effect as if the last day set out for the facility under paragraph 44(2)(c) were the later of—

(a) the day on which the variation notice is published, and

(b) the day set out in the variation notice for the facility under sub-paragraph (3)(c).

Climate change agreements

46. In this Schedule "climate change agreement" means—

(a) an agreement that falls within paragraph 47, or

(b) a combination of agreements that falls within paragraph 48.

Climate change agreements: direct agreement with Secretary of State

47.—(1) An agreement (including one entered into before the passing of this Act) falls within this paragraph if it is an agreement—

(a) entered into with the Secretary of State,

(b) expressed to be entered into for the purposes of the reduced rate of climate change levy,

(c) identifying the facilities to which it applies,

(d) to which a representative of each facility to which it applies is a party,

(e) setting, or providing for the setting of, targets for the facilities to which it applies,

(f) specifying certification periods (as to which see paragraph 49(1)) for the facilities to which it applies, and

(g) providing for five-yearly (or more frequent) reviews by the Secretary of State of targets set by or under the agreement for those facilities and for giving effect to outcomes of such reviews.

(2) In this paragraph and paragraph 48 "representative", in relation to a facility to which an agreement applies, means—

(a) the person who is the operator of the facility at—

(i) the time the agreement is entered into, or

(ii) if later, the time the facility last became a facility to which the agreement applies,

or

(b) a person authorised by that operator to agree to the facility being a facility to which the agreement applies.

Climate change agreement: combination of umbrella and underlying agreements

48.—(1) A combination of agreements falls within this paragraph if the following conditions are satisfied.

(2) The first condition is that the combination is a combination of—

(a) an umbrella agreement (including one entered into before the passing of this Act), and

(b) an agreement (including one entered into before the passing of this Act) that, in relation to the umbrella agreement, is an underlying agreement.

(3) The second condition is that between them the two agreements—

(a) set, or provide for the setting of, targets for the facilities to which the underlying agreement applies,

(b) specify certification periods (as to which see paragraph 49(1)) for the facilities to which the underlying agreement applies, and

(c) provide for five-yearly (or more frequent) reviews by the Secretary of State of targets set by or under the agreements for those facilities and for giving effect to outcomes of such reviews.

(4) For the purposes of this paragraph an "umbrella agreement" is an agreement—

(a) entered into with the Secretary of State,

(b) expressed to be entered into for the purposes of the reduced rate of climate change levy,

(c) identifying the facilities to which it applies, and

(d) to which a representative of each facility to which it applies is a party.

(5) For the purposes of this paragraph an agreement is an "underlying agreement" in relation to an umbrella agreement if it is an agreement—

(a) expressed to be entered into for the purposes of the umbrella agreement,

(b) entered into—

(i) with the Secretary of State, or

(ii) with a party to the umbrella agreement other than the Secretary of State,

(c) approved by the Secretary of State if he is not a party to it,

(d) identifying which of the facilities to which the umbrella agreement applies are the facilities to which it applies, and

(e) to which a representative of each facility to which it applies is a party.

(6) In the case of a climate change agreement that is a combination of agreements that falls within this paragraph, references to the facilities to which the climate change agreement applies are references to the facilities to which the underlying agreement applies.

Climate change agreement: supplemental provisions

49.—(1) The first certification period specified by a climate change agreement for a facility to which it applies shall begin with the later of—

(a) the date on which the agreement, so far as relating to the facility, is expressed to take effect, and

(b) 1st April 2001;

and each subsequent certification period so specified shall begin immediately after the end of a previous certification period.

(2) Where a climate change agreement (the "new agreement") applies to a facility to which another climate change agreement previously applied, the first certification period specified by the new agreement for the facility shall be—

(a) a period beginning as provided by sub-paragraph (1), or

(b) a period that—

(i) begins earlier than that, and

(ii) is a period that was a certification period specified for the facility by any climate change agreement that previously applied to the facility.

A period such as is mentioned in paragraph (b) includes a period beginning, or beginning and ending, before the date on which the new agreement, so far as relating to the facility, is expressed to take effect.

(3) For the purposes of giving certificates such as are mentioned in paragraphs 44(1) and 45(1), the Secretary of State may take a facility as being covered by a climate change agreement for a period if the facility is one to which the agreement applies and either—

(a) that period is the first certification period specified by the agreement for the facility, or

(b) that period is a subsequent certification period for the facility and it appears to the Secretary of State that progress made in the immediately preceding certification period towards meeting targets set for the facility by the agreement or by a climate change agreement that previously applied to the facility is, or is likely to be, such as under the provisions of the agreement in question is to be taken as being satisfactory.

(4) For the purposes of sub-paragraph (3)(b) a climate change agreement may (in particular) provide that progress towards meeting any targets for a facility is to be taken as being satisfactory if, in the absence (or partial absence) of any such progress required under the agreement, alternative requirements provided for by the agreement are satisfied.

(5) For the purposes of sub-paragraphs (2) and (3), the circumstances in which a facility to which a climate change agreement applies is one to which another such agreement previously applied include those where the facility is—

(a) a part, or a combination of parts, of a facility to which another such agreement previously applied,

(b) a combination of two or more such facilities,

(c) any combination of parts of such facilities, or

(d) any combination of such facilities and parts of such facilities.

(6) Paragraphs 47 and 48 and sub-paragraph (4) above are not to be taken as meaning that an agreement, or combination of agreements, containing provision in addition to any mentioned in those paragraphs and that sub-paragraph is not a climate change agreement.

(7) For the purposes of paragraphs 47 and 48 and this paragraph "target", in relation to a facility to which a climate change agreement applies, means a target relating to—

(a) energy, or energy derived from a source of any description, used in the facility or an identifiable group of facilities within which the facility falls, or

(b) emissions, or emissions of any description, from the facility or such a group of facilities;

and for this purpose "identifiable group" means a group that is identified in the agreement or that at any relevant time can be identified under the agreement.

(8) Nothing in this Schedule is to be taken as requiring the Secretary of State to—

(a) enter into any climate change agreement,

(b) enter into a climate change agreement with any particular person or persons, in respect of any particular facility or facilities or on any particular terms, or

(c) approve any, or any particular, proposed climate change agreement.

Facilities to which climate change agreements can apply

50.—(1) This paragraph applies where, in connection with concluding or varying a climate change agreement, it falls to be determined whether a facility is to be, or is to continue to be, identified in the agreement as a facility to which the agreement applies.

(2) For the purposes of such a determination "facility" is (subject to any regulations under sub-paragraph (3) or (4)) to be taken as meaning—

(a) an installation covered by paragraph 51; or

(b) a site on which there is or are—

(i) such an installation or two or more such installations,

(ii) a part, or parts, of such an installation,

(iii) a part, or parts, of each of two or more such installations, or

(iv) any combination of such installations and parts of such installations.

(3) The Secretary of State may by regulations make provision for an installation covered by paragraph 51 to be taken to be a facility for those purposes only if—

(a) the taxable commodities supplied to the installation by taxable supplies are intended to be burned (or, in the case of electricity, consumed)—

(i) in the installation, or

(ii) on the site where the installation is situated but not in the installation,

and

(b) the amounts of taxable commodities, and of any other commodities specified in the regulations, subject to each of those intentions are such that any conditions specified in the regulations are satisfied.

(4) The Secretary of State may by regulations make provision for a site to be taken to be a facility for those purposes only if—

(a) the taxable commodities supplied to the site by taxable supplies are intended to be burned (or, in the case of electricity, consumed)—

(i) in installations on the site that are covered by paragraph 51 (or in parts of such installations), or

(ii) on the site but not in any such installation (or part of such an installation),

and

(b) the amounts of taxable commodities, and of any other commodities specified in the regulations, subject to each of those intentions are such that any conditions specified in the regulations are satisfied.

(5) Regulations under sub-paragraph (3) or (4) may make provision for deeming, for the purposes of the regulations, commodities to be intended to be burned (or, in the case of electricity, consumed) in circumstances specified in the regulations.

(6) In this paragraph and paragraph 51 "installation" means a stationary technical unit.

Energy-intensive installations

51.—(1) An installation is covered by this paragraph if it falls within any one or more of the descriptions of installation set out in the Table.

(2) An installation is also covered by this paragraph if it is on the same site as, and ancillary to, an installation falling within any one or more of those descriptions.

(3) Sub-paragraphs (1) and (2) are subject to any regulations under paragraph 52.

(4) For the purposes of sub-paragraph (2), one installation ("the ancillary installation") is ancillary to another ("the primary installation") if—

(a) the ancillary installation does not fall within any of those descriptions,

(b) activities ("the ancillary activities") are carried out at the ancillary installation that are directly associated with any of the primary activities carried out at the primary installation, and

(c) the ancillary activities—

(i) have a technical connection with those primary activities, and

(ii) could have an effect on environmental pollution or emissions capable of causing such pollution.

(5) However, an installation (or part of an installation) used for research, development and testing of new products and processes does not fall within any of those descriptions.

(6) In sub-paragraph (4)—

1999 c. 24.

"environmental pollution" has the same meaning as in the Pollution Prevention and Control Act 1999;

"primary activity", in relation to an installation falling within any one or more of the descriptions of installation set out in the Table, means an activity the carrying out of which at the installation results in the installation falling within one or more of those descriptions.

TABLE

DESCRIPTIONS OF ENERGY-INTENSIVE INSTALLATIONS

Energy industries

1.—(1) Combustion installations with a rated thermal input exceeding 50 MW.

(2) Combustion installations operated by the same operator on the same site with a combined rated thermal input exceeding 50 MW.

2. Mineral oil and gas refineries.

3. Coke ovens.

4. Coal gasification and liquefaction plants.

Production and processing of metals

5. Metal ore (including sulphide ore) roasting or sintering installations.

6. Installations for the production of pig iron or steel (primary or secondary fusion) including continuous casting.

7.—(1) The following installations for the processing of ferrous metals—

(a) hot-rolling mills;

(b) smitheries with hammers.

(2) Installations for the processing of ferrous metals by the application of protective fused metal coats.

8. Ferrous metal foundries.

9. Installations—

(a) for the production of non-ferrous crude metals from ore, concentrates or secondary raw materials by metallurgical, chemical or electrolytic processes;

(b) for the smelting, including the alloyage, of non-ferrous metals, including recovered products (refining, foundry casting, etc.).

10. Installations for surface treatment of metals and plastic materials using an electrolytic or chemical process.

Mineral industry

11. Installations for the production of—

(a) cement clinker in rotary kilns, or

(b) lime in rotary kilns or other furnaces.

12. Installations for the production of asbestos and the manufacture of asbestos-based products.

13. Installations for the manufacture of glass including glass fibre.

14. Installations for melting mineral substances including the production of mineral fibres.

15. Installations for the manufacture of ceramic products by firing, in particular roofing tiles, bricks, refractory bricks, tiles, stoneware, stoneware or porcelain.

Chemical industry

16. Installations for the production, on an industrial scale by chemical processing, of basic organic chemicals such as—

(a) simple hydrocarbons (linear or cyclic, saturated or unsaturated, aliphatic or aromatic);

(b) oxygen-containing hydrocarbons such as alcohols, aldehydes, ketones, carboxylic acids, esters, acetates, ethers, peroxides, epoxy resins;

(c) sulphurous hydrocarbons;

(d) nitrogenous hydrocarbons such as amines, amides, nitrous compounds, nitro compounds or nitrate compounds, nitriles, cyanates, isocyanates;

(e) phosphorus-containing hydrocarbons;

(f) halogenic hydrocarbons;

(g) organometallic compounds;

(h) basic plastic materials (polymers, synthetic fibres and cellulose-based fibres);

(i) synthetic rubbers;

(j) dyes and pigments;

(k) surface-active agents and surfactants.

17. Installations for the production, on an industrial scale by chemical processing, of basic inorganic chemicals such as—

(a) gases, such as ammonia, chlorine or hydrogen chloride, fluorine or hydrogen fluoride, carbon oxides, sulphur compounds, nitrogen oxides, hydrogen, sulphur dioxide, carbonyl chloride;

(b) acids, such as chromic acid, hydrofluoric acid, phosphoric acid, nitric acid, hydrochloric acid, sulphuric acid, oleum, sulphurous acids;

(c) bases, such as ammonium hydroxide, potassium hydroxide, sodium hydroxide;

(d) salts, such as ammonium chloride, potassium chlorate, potassium carbonate, sodium carbonate, perborate, silver nitrate;

(e) non-metals, metal oxides or other inorganic compounds such as calcium carbide, silicon, silicon carbide.

18. Installations for the production, on an industrial scale by chemical processing, of phosphorous-based, nitrogen-based or potassium-based fertilizers (whether simple or compound).

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19. Installations for the production, on an industrial scale by chemical processing, of basic plant health products and of biocides.

20. Installations using a chemical or biological process for the production, on an industrial scale, of basic pharmaceutical products.

21. Installations for the production, on an industrial scale by chemical processing, of explosives.

Waste management

22. Installations for the disposal or recovery of hazardous waste as defined in—

(a) the list referred to in Article 1(4) of Council Directive 91/689/EEC,

(b) Annex IIA, and headings R1, R5, R6, R8 and R9 of Annex IIB, to Council Directive 75/442/EEC, and

(c) Council Directive 75/439/EEC.

23. Installations for the incineration of municipal waste as defined in—

(a) Council Directive 89/369/EEC, and

(b) Council Directive 89/429/EEC.

24. Installations for the disposal of non-hazardous waste as defined in headings D8 and D9 of Annex IIA to Council Directive 75/442/EEC.

25. Landfills other than landfills of inert waste.

Other activities

26. Industrial plants for the production of—

(a) pulp from timber or other fibrous materials;

(b) paper and board.

27. Plants for the pre-treatment (operations such as washing, bleaching, mercerisation) or dyeing of fibres or textiles.

28. Plants for the tanning of hides and skins.

29.—(1) Slaughterhouses.

(2) Installations for—

(a) the production of food products by the treatment and processing of—

(i) animal raw materials (other than milk), or

(ii) vegetable raw materials;

(b) the treatment and processing of milk.

30. Installations for the disposal or recycling of animal carcases and animal waste.

31. Installations for the intensive rearing of poultry or pigs.

32. Installations for the surface treatment of substances, objects or products using organic solvents, in particular for dressing, printing, coating, degreasing, waterproofing, sizing, painting, cleaning or impregnating.

33. Installations for the production of carbon (hard-burnt coal) or electrographite by means of incineration or graphitization.

Power to vary the installations covered by paragraph 51

52.—(1) The Treasury may make provision by regulations for varying the installations covered by paragraph 51.

(2) The provision that may be made by regulations under this paragraph includes, in particular, provision—

(a) for the installations covered by paragraph 51 to include, or not to include, any installation of a description specified in the regulations;

(b) amending the Table in paragraph 51 by adding a description of installation to the Table, removing a description of installation from the Table or altering a description of installation set out in the Table;

(c) amending paragraph 51.

PART V

REGISTRATION

Requirement to be registered

53.—(1) A person is required to be registered with the Commissioners for the purposes of the levy if a taxable supply is made in respect of which he is the person liable to account for the levy charged.

(2) The Commissioners shall, for the purposes of sub-paragraph (1) and in accordance with the provisions of this Part of this Schedule, establish and maintain a register of persons liable to account for levy.

(3) The Commissioners shall keep such information in the register as they consider appropriate for the care and management of the levy.

Interpretation of Part V

54. In this Part of this Schedule—

(a) references to the register are references to the register maintained under paragraph 53(2);

(b) references to registering a person are references to registering him in that register; and

(c) references to a person's registration are references to his registration in that register.

Notification of registrability etc.

55.—(1) A person who—

(a) intends to make, or have made to him, any taxable supply in respect of which (if made) he will be the person liable to account for the levy charged, or

(b) is required to be registered for the purposes of the levy,

shall (if he is not so registered) notify the Commissioners of that fact.

(2) Subject to sub-paragraphs (5) and (6), a person who fails to comply with sub-paragraph (1) shall be liable to a penalty.

(3) The amount of the penalty shall be—

(a) the amount equal to 5 per cent. of the relevant levy; or

(b) if it is greater or the circumstances are such that there is no relevant levy, £250.

(4) In sub-paragraph (3) "relevant levy" means the levy (if any) for which the person in question is liable to account in respect of taxable supplies made in the period which—

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(a) begins with the date with effect from which he is required to be registered for the purposes of the levy; and

(b) ends with the date on which the Commissioners received notification of, or otherwise first became aware of, the fact that he was required to be registered.

(5) A failure to comply with sub-paragraph (1) shall not give rise to any liability to a penalty under this paragraph if the person concerned satisfies the Commissioners or, on appeal, an appeal tribunal that there is a reasonable excuse for the failure.

(6) Where, by reason of any conduct falling within sub-paragraph (2)—

(a) a person is convicted of an offence (whether under this Act or otherwise), or

(b) a person is assessed to a penalty under paragraph 98 (penalty for evasion),

that person shall not by reason of that conduct be liable also to a penalty under this paragraph.

Form of registration

56.—(1) The Commissioners shall register a person if—

(a) they receive from him a notification given in pursuance of paragraph 55, or

(b) although they have not received from him such a notification, it appears to them that he is required to be registered.

Where the Commissioners register a person who is required to be registered, they shall register him with effect from the time when the requirement arose.

(2) Where any two or more bodies corporate are members of the same group they shall be registered together as one person in the name of the representative member.

(3) The registration of a body corporate carrying on a business in several divisions may, if the body corporate so requests and the Commissioners see fit, be in the names of those divisions.

(4) The registration of—

(a) any two or more persons carrying on a business in partnership, or

(b) an unincorporated body,

may be in the name of the firm or body concerned.

Notification of loss or prospective loss of registrability

57.—(1) Where a person who has become liable to give a notification by virtue of paragraph 55 ceases (whether before or after being registered for the purposes of the levy) to intend to make, or to intend to have made to him, taxable supplies in respect of which (if made) he would be the person liable to account for the levy charged, he shall notify the Commissioners of that fact.

(2) A person who fails to comply with sub-paragraph (1) shall be liable to a penalty of £250.

Cancellation of registration

58.—(1) If the Commissioners are satisfied that a registered person—

(a) has ceased to make, or have made to him, taxable supplies on which he is liable to account for the levy charged, and

(b) does not intend to make, or have made to him, any such supplies,

they may cancel his registration with effect from such time after he last made, or had made to him, taxable supplies as appears to them to be appropriate.

(2) Sub-paragraph (1) applies whether or not the registered person has notified the Commissioners under paragraph 57.

(3) The Commissioners shall be under a duty to exercise the power conferred by sub-paragraph (1) with effect from any time if, where the power is exercisable, they are satisfied that the conditions specified in sub-paragraph (4) are satisfied and were or will be satisfied at that time.

(4) Those conditions are—

(a) that the person in question has given a notification under paragraph 57;

(b) that no levy due from that person, and no amount recoverable as if it were levy, remains unpaid;

(c) that no tax credit to which that person is entitled by virtue of any tax credit regulations is outstanding; and

(d) that that person is not subject to any outstanding liability to make a return for the purposes of the levy.

(5) Where—

(a) a registered person notifies the Commissioners under paragraph 57, and

(b) they are satisfied that (if he had not been registered) he would not have been required to be registered at any time since the time when he was registered,

they shall cancel his registration with effect from the date of his registration.

Correction of the register etc.

59.—(1) The Commissioners may by regulations make provision for and with respect to the correction of entries in the register.

(2) Regulations under this paragraph may, to such extent as appears to the Commissioners appropriate for keeping the register up to date, make provision requiring—

(a) registered persons, and

(b) persons who are required to be registered,

to notify the Commissioners of changes in circumstances relating to themselves, their businesses or any other matter with respect to which particulars are contained in the register (or would be, were the person registered).

Supplemental regulations about notifications

60.—(1) For the purposes of any provision made by or under this Part of this Schedule for any matter to be notified to the Commissioners, regulations made by the Commissioners may make provision—

(a) as to the time within which the notification is to be given;

(b) as to the form and manner in which the notification is to be given; and

(c) as to the information and other particulars to be contained in or provided with any notification.

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(2) For those purposes the Commissioners may also by regulations impose obligations requiring a person who has given a notification to notify the Commissioners if any information contained in or provided in connection with that notification is or becomes inaccurate.

(3) The power under this paragraph to make regulations as to the time within which any notification is to be given shall include power to authorise the Commissioners to extend the time for the giving of a notification.

Publication of information on the register

61.—(1) The Commissioners may publish, by such means as they think fit, any information which—

(a) is derived from the register; and

(b) falls within any of the descriptions set out below.

(2) The descriptions are—

(a) the names of registered persons;

(b) the fact (where it is the case) that the registered person is a body corporate which is a member of a group;

(c) the names of the other bodies corporate which are members of the group.

(3) Information may be published in accordance with this paragraph notwithstanding any obligation not to disclose the information that would otherwise apply.

PART VI

CREDITS AND REPAYMENTS

Tax credits

62.—(1) The Commissioners may, in accordance with the following provisions of this paragraph, by regulations make provision in relation to cases where—

(a) after a taxable supply has been made, there is such a change in circumstances or any person's intentions that, if the changed circumstances or intentions had existed at the time the supply was made, the supply would not have been a taxable supply;

(b) after a supply of a taxable commodity is made on the basis that it is a taxable supply, it is determined that the supply was not (to any extent) a taxable supply;

(c) after a taxable supply has been made on the basis that it was neither a half-rate supply nor a reduced-rate supply, it is determined that the supply was (to any extent) a half-rate or reduced-rate supply;

(d) levy is accounted for on a half-rate supply as if the supply were neither a half-rate supply nor a reduced-rate supply;

(e) after a charge to levy has arisen on a supply of a taxable commodity ("the original commodity") to a person who uses the commodity supplied in producing taxable commodities primarily for his own consumption, that person makes supplies of any of the commodities in whose production he has used the original commodity;

(f) after a person has become entitled to a debt as a result of making a taxable supply, the debt turns out to be bad (in whole or in part);

(g) the making of a taxable supply gives rise to a double charge to levy within the meaning of paragraph 21.

(2) The provision that may be made in relation to any such case as is mentioned in sub-paragraph (1) is provision—

(a) for such person as may be specified in the regulations to be entitled to a tax credit in respect of any levy charged on the supply (or, in such a case as is mentioned in sub-paragraph (1)(g), one of the supplies) in question;

(b) for a tax credit to which any person is entitled under the regulations to be brought into account when he is accounting for levy due from him for such accounting period or periods as may be determined in accordance with the regulations; and

(c) for a person entitled to a tax credit to be entitled, in any prescribed case where he cannot bring the tax credit into account so as to set it against a liability to levy, to a repayment of levy of an amount so determined.

(3) Regulations under this paragraph may contain any or all of the following provisions—

(a) provision making any entitlement to a tax credit conditional on the making of a claim by such person, within such period and in such manner as may be prescribed;

(b) provision making entitlement to bring a tax credit into account, or to receive a repayment in respect of such a credit, conditional on compliance with such requirements (including the making of a claim) as may be determined in accordance with the regulations;

(c) provision requiring a claim for a tax credit to be evidenced and quantified by reference to such records and other documents as may be so determined;

(d) provision requiring a person claiming any entitlement to a tax credit to keep, for such period and in such form and manner as may be so determined, those records and documents and a record of such information relating to the claim as may be so determined;

(e) provision for the withdrawal of a tax credit where any requirement of the regulations is not complied with;

(f) provision for interest at the rate applicable under section 197 of the Finance Act 1996 to be treated as added, for such period and for such purposes as may be prescribed, to the amount of any tax credit; 1996 c. 8.

(g) provision for determining whether, and to what extent, a debt is to be taken as bad;

(h) provision for the withdrawal of a tax credit to which a person has become entitled in a case within sub-paragraph (1)(f) where any part of the debt that has been taken to be bad falls to be regarded as not having been bad;

(i) provision for determining whether, and to what extent, any part of a debt that has been taken to be bad should be regarded as not having been bad;

(j) provision for anything falling to be determined in accordance with the regulations to be determined by reference to a general or specific direction given in accordance with the regulations by the Commissioners.

(4) Regulations made under this paragraph shall have effect subject to the provisions of paragraph 64.

Repayments of overpaid levy

63.—(1) Where a person has paid an amount to the Commissioners by way of levy which was not levy due to them, they shall be liable to repay the amount to him.

(2) The Commissioners shall not be liable to repay an amount under this paragraph if, or to the extent that, any person has become entitled to a tax credit in respect of that amount by virtue of tax credit regulations.

(3) The Commissioners shall not be liable to repay an amount under this paragraph except on the making of a claim for that purpose.

(4) A claim under this paragraph must be made in such form and manner, and must be supported by such documentary evidence, as may be required by regulations made by the Commissioners.

(5) The preceding provisions of this paragraph are subject to the provisions of paragraph 64.

(6) Except as provided by this paragraph or tax credit regulations, the Commissioners shall not, by virtue of the fact that it was not levy due to them, be liable to repay any amount paid to them by way of levy.

Supplemental provisions about repayments etc.

64.—(1) The Commissioners shall not be liable, on any claim for a repayment of levy, to repay any amount paid to them more than three years before the making of the claim.

(2) It shall be a defence to any claim for a repayment of an amount of levy that the repayment of that amount would unjustly enrich the claimant.

(3) Sub-paragraph (4) applies for the purposes of sub-paragraph (2) where—

(a) there is an amount paid by way of levy which (apart from sub-paragraph (2)) would fall to be the subject of a repayment of levy to any person ("person A"); and

(b) the whole or a part of the cost of the payment of that amount to the Commissioners has, for practical purposes, been borne by a person other than person A.

(4) Where, in a case to which this sub-paragraph applies, loss or damage has been or may be incurred by person A as a result of mistaken assumptions made in his case about the operation of any provisions relating to levy, that loss or damage shall be disregarded, except to the extent of the quantified amount, in the making of any determination as to—

(a) whether or to what extent the repayment of an amount to person A would enrich him; or

(b) whether or to what extent any enrichment of person A would be unjust.

(5) In sub-paragraph (4) "the quantified amount" means the amount (if any) which is shown by person A to constitute the amount that would appropriately compensate him for loss or damage shown by him to have resulted, for any business carried on by him, from the making of the mistaken assumptions.

(6) The reference in sub-paragraph (4) to provisions relating to levy is a reference to any provisions of—

(a) any enactment or subordinate legislation (whether or not still in force) which relates to the levy or to any matter connected with it; or

(b) any notice published by the Commissioners under or for the purposes of any enactment or subordinate legislation relating to the levy.

Reimbursement arrangements

65.—(1) The Commissioners may by regulations make provision for reimbursement arrangements made by any person to be disregarded for the purposes of paragraph 64(2) except where the arrangements—

(a) contain such provision as may be required by the regulations; and

(b) are supported by such undertakings to comply with the provisions of the arrangements as may be required by the regulations to be given to the Commissioners.

(2) In this paragraph "reimbursement arrangements" means any arrangements for the purposes of a claim to a repayment of levy which—

(a) are made by any person for the purpose of securing that he is not unjustly enriched by the repayment of any amount in pursuance of the claim; and

(b) provide for the reimbursement of persons who have for practical purposes borne the whole or any part of the cost of the original payment of that amount to the Commissioners.

(3) Without prejudice to the generality of sub-paragraph (1), the provision that may be required by regulations under this paragraph to be contained in reimbursement arrangements includes—

(a) provision requiring a reimbursement for which the arrangements provide to be made within such period after the repayment to which it relates as may be specified in the regulations;

(b) provision for the repayment of amounts to the Commissioners where those amounts are not reimbursed in accordance with the arrangements;

(c) provision requiring interest paid by the Commissioners on any amount repaid by them to be treated in the same way as that amount for the purposes of any requirement under the arrangements to make reimbursement or to repay the Commissioners;

(d) provision requiring such records relating to the carrying out of the arrangements as may be described in the regulations to be kept and produced to the Commissioners, or to an officer of theirs.

(4) Regulations under this paragraph may impose obligations on such persons as may be specified in the regulations—

(a) to make the repayments to the Commissioners that they are required to make in pursuance of any provisions contained in any reimbursement arrangements by virtue of sub-paragraph (3)(b) or (c);

(b) to comply with any requirements contained in any such arrangements by virtue of sub-paragraph (3)(d).

(5) Regulations under this paragraph may make provision for the form and manner in which, and the times at which, undertakings are to be given to the Commissioners in accordance with the regulations; and any such provision may allow for those matters to be determined by the Commissioners in accordance with the regulations.

Interest payable by the Commissioners

66.—(1) Where, due to an error on the part of the Commissioners, a person—

(a) has paid to them by way of levy an amount which was not levy due and which they are in consequence liable to repay to him,

(b) has failed to claim a repayment of levy to which he was entitled, under any tax credit regulations, in respect of any tax credits, or

(c) has suffered delay in receiving payment of an amount due to him from them in connection with levy,

then, if and to the extent that they would not be liable to do so apart from this paragraph, they shall (subject to the following provisions of this paragraph) pay interest to him on that amount for the applicable period.

(2) In sub-paragraph (1), the reference in paragraph (a) to an amount which the Commissioners are liable to repay in consequence of the making of a payment that was not due is a reference to only so much of that amount as is the subject of a claim that the Commissioners are required to satisfy or have satisfied.

(3) In that sub-paragraph the amounts referred to in paragraph (c)—

(a) do not include any amount payable under this paragraph;

(b) do not include the amount of any interest for which provision is made by virtue of paragraph 62(3)(f); but

(c) do include any amount due (in respect of an adjustment of overpaid interest) by way of a repayment under paragraph 87(3) or 110(3).

(4) The applicable period, in a case falling within sub-paragraph (1)(a), is the period—

(a) beginning with the date on which the payment is received by the Commissioners; and

(b) ending with the date on which they authorise payment of the amount on which the interest is payable.

(5) The applicable period, in a case falling within sub-paragraph (1)(b) or (c), is the period—

(a) beginning with the date on which, apart from the error, the Commissioners might reasonably have been expected to authorise payment of the amount on which the interest is payable; and

(b) ending with the date on which they in fact authorise payment of that amount.

(6) In determining the applicable period for the purposes of this paragraph there shall be left out of account any period by which the Commissioners' authorisation of the payment of interest is delayed by circumstances beyond their control.

(7) The reference in sub-paragraph (6) to a period by which the Commissioners' authorisation of the payment of interest is delayed by circumstances beyond their control includes, in particular, any period which is referable to—

(a) any unreasonable delay in the making of any claim for the payment or repayment of the amount on which interest is claimed;

(b) any failure by any person to provide the Commissioners—

(i) at or before the time of the making of a claim, or

(ii) subsequently in response to a request for information by the Commissioners,

with all the information required by them to enable the existence and amount of the claimant's entitlement to a payment or repayment, and to interest on that payment or repayment, to be determined; and

(c) the making, as part of or in association with any claim for the payment or repayment of the amount on which interest is claimed, of a claim to anything to which the claimant was not entitled.

(8) In determining for the purposes of sub-paragraph (7) whether any period of delay is referable to a failure by any person to provide information in response to a request by the Commissioners, there shall be taken to be so referable, except so far as may be provided for by regulations, any period which—

(a) begins with the date on which the Commissioners require that person to provide information which they reasonably consider relevant to the matter to be determined; and

(b) ends with the earliest date on which it would be reasonable for the Commissioners to conclude—

(i) that they have received a complete answer to their request for information;

(ii) that they have received all that they need in answer to that request; or

(iii) that it is unnecessary for them to be provided with any information in answer to that request.

(9) The Commissioners shall not be liable to pay interest under this paragraph except on the making of a claim for that purpose.

(10) A claim under this paragraph must be in writing and must be made not more than three years after the end of the applicable period to which it relates.

(11) References in this paragraph—

(a) to receiving payment of any amount from the Commissioners, or

(b) to the authorisation by the Commissioners of the payment of any amount,

include references to the discharge by way of set-off (whether in accordance with regulations under paragraph 73 or 74 or otherwise) of the Commissioners' liability to pay that amount.

(12) Interest under this paragraph shall be payable at the rate applicable under section 197 of the Finance Act 1996. 1996 c. 8.

Assessment for excessive repayment

67.—(1) Where—

(a) any amount has been paid at any time to any person by way of a repayment of levy, and

(b) the amount paid exceeded the amount which the Commissioners were liable at that time to repay to that person,

the Commissioners may, to the best of their judgement, assess the excess paid to that person and notify it to him.

(2) Where—

(a) any amount has been paid to any person by way of repayment of levy,

(b) the repayment is in respect of a tax credit the entitlement to which arose in a case falling within paragraph 62(1)(f) (tax credit where all or part of a debt is bad),

(c) the whole or any part of the credit is withdrawn on account of any part of the debt taken as bad falling to be regarded as not having been bad, and

(d) the amount paid exceeded the amount which the Commissioners would have been liable to repay to that person had that withdrawal been taken into account,

the Commissioners may, to the best of their judgement, assess the excess paid to that person and notify it to him.

(3) Where any person is liable to pay any amount to the Commissioners in pursuance of an obligation imposed by virtue of paragraph 65(4)(a), the Commissioners may, to the best of their judgement, assess the amount due from that person and notify it to him.

(4) Subject to sub-paragraph (5), where—

(a) an assessment is made on any person under this paragraph in respect of a repayment of levy made in relation to any accounting period, and

(b) the Commissioners have power under Part VII of this Schedule to make an assessment on that person to an amount of levy due from that person for that period,

the assessments may be combined and notified to him as one assessment.

(5) A notice of a combined assessment under sub-paragraph (4) must separately identify the amount being assessed in respect of repayments of levy.

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Assessment for overpayments of interest

68. Where—

(a) any amount has been paid to any person by way of interest under paragraph 66, but

(b) that person was not entitled to that amount under that paragraph,

the Commissioners may, to the best of their judgement, assess the amount so paid to which that person was not entitled and notify it to him.

Assessments under paragraphs 67 and 68

69.—(1) An assessment under paragraph 67 or 68 shall not be made more than two years after the time when evidence of facts sufficient in the opinion of the Commissioners to justify the making of the assessment comes to the knowledge of the Commissioners.

(2) Where an amount has been assessed and notified to any person under paragraph 67 or 68, it shall be recoverable as if it were levy due from him.

(3) Sub-paragraph (2) does not have effect if, or to the extent that, the assessment in question has been withdrawn or reduced.

Interest on amounts assessed

70.—(1) Where an assessment is made under paragraph 67 or 68, the whole of the amount assessed shall carry interest, for the period specified in sub-paragraph (2), as follows—

(a) so much of that amount as represents the amount of a tax credit claimed by a person who was not entitled to it (but not any amount assessed under paragraph 67(2)) shall carry penalty interest;

(b) so much of that amount as does not carry penalty interest under paragraph (a) shall carry interest at the rate applicable under section 197 of the Finance Act 1996.

1996 c. 8.

(2) That period is the period which—

(a) begins with the day after that on which the person is notified of the assessment; and

(b) ends with the day before that on which payment is made of the amount assessed.

(3) Interest under this paragraph shall be paid without any deduction of income tax.

(4) Penalty interest under this paragraph shall be compound interest calculated—

(a) at the penalty rate, and

(b) with monthly rests.

(5) For this purpose the penalty rate is the rate found by—

(a) taking the rate applicable under section 197 of the Finance Act 1996 for the purposes of sub-paragraph (1)(b); and

(b) adding 10 percentage points to that rate.

(6) Where a person is liable under this paragraph to pay any penalty interest, the Commissioners or, on appeal, an appeal tribunal may reduce the amount payable to such amount (including nil) as they think proper.

(7) Subject to sub-paragraph (8), where the person concerned satisfies the Commissioners or, on appeal, an appeal tribunal that there is a reasonable excuse for the conduct giving rise to the liability to pay penalty interest, that is a matter which (among other things) may be taken into account under sub-paragraph (6).

(8) In determining whether there is a reasonable excuse for the purposes of sub-paragraph (7), no account shall be taken of any of the following matters, that is to say—

(a) the insufficiency of the funds available to any person for paying any levy due or for paying the amount of the interest;

(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 levy;

(c) the fact that the person liable to pay the interest or a person acting on his behalf has acted in good faith.

(9) In the case of interest reduced by the Commissioners under sub-paragraph (6) an appeal tribunal, on an appeal relating to the interest, may cancel the whole or any part of the reduction made by the Commissioners.

Assessments to interest under paragraph 70

71.—(1) Where any person is liable to interest under paragraph 70 the Commissioners may assess the amount due by way of interest and notify it to him accordingly.

(2) Without prejudice to the power to make assessments under this paragraph for later periods, the interest to which an assessment under this paragraph may relate shall be confined to interest for a period of no more than two years ending with the time when the assessment under this paragraph is made.

(3) Where an amount has been assessed and notified to any person under this paragraph it shall be recoverable as if it were levy due from him.

(4) Sub-paragraph (3) does not have effect if, or to the extent that, the assessment in question has been withdrawn or reduced.

(5) Where an assessment is made under this paragraph to an amount of interest under paragraph 70—

(a) the notice of assessment shall specify a date, not later than the date of the notice of assessment, to which the amount of interest which is assessed is calculated; and

(b) if the interest continues to accrue after that date, a further assessment or further assessments may be made under this paragraph in respect of the amounts so accruing.

(6) Where—

(a) an assessment to interest is made specifying a date for the purposes of sub-paragraph (5)(a), and

(b) within such period as may for the purposes of this sub-paragraph have been notified by the Commissioners to the person liable for the interest, the amount on which the interest is payable is paid,

that amount shall be deemed for the purposes of any further liability to interest to have been paid on the specified date.

Supplementary assessments

72. If it appears to the Commissioners that the amount which ought to have been assessed in an assessment under paragraph 67, 68 or 71 exceeds the amount which was so assessed, then—

(a) under the same paragraph as that assessment was made, and

(b) on or before the last day on which that assessment could have been made,

the Commissioners may make a supplementary assessment of the amount of the excess and notify the person concerned accordingly.

Set-off of or against amounts due under this Schedule

73.—(1) The Commissioners may by regulations make provision in relation to any case where—

(a) a person is under a duty to pay to the Commissioners at any time an amount or amounts in respect of levy; and

(b) the Commissioners are under a duty to pay to that person at the same time an amount or amounts in respect of levy or any of the other taxes under their care and management.

(2) Regulations under this paragraph may provide that if the total of the amount or amounts mentioned in sub-paragraph (1)(a) exceeds the total of the amount or amounts mentioned in sub-paragraph (1)(b), the latter shall be set off against the former.

(3) Regulations under this paragraph may provide that if the total of the amount or amounts mentioned in sub-paragraph (1)(b) exceeds the total of the amount or amounts mentioned in sub-paragraph (1)(a), the Commissioners may set off the latter in paying the former.

(4) Regulations under this paragraph may provide that if the total of the amount or amounts mentioned in sub-paragraph (1)(a) is the same as the total of the amount or amounts mentioned in sub-paragraph (1)(b) no payment need be made in respect of the former or the latter.

(5) Regulations under this paragraph may provide for any limitation on the time within which the Commissioners are entitled to take steps for recovering any amount due to them in respect of levy to be disregarded, in such cases as may be described in the regulations, in determining whether any person is under such a duty to pay as is mentioned in sub-paragraph (1)(a).

(6) Regulations under this paragraph may include provision treating any duty to pay mentioned in sub-paragraph (1) as discharged accordingly.

(7) References in sub-paragraph (1) to an amount in respect of a particular tax include references not only to an amount of tax itself but also to other amounts such as interest and penalties that are or may be recovered as if they were amounts of tax.

(8) In this paragraph "tax" includes duty.

Set-off of or against other taxes and duties

74.—(1) The Commissioners may by regulations make provision in relation to any case where—

(a) a person is under a duty to pay to the Commissioners at any time an amount or amounts in respect of any tax (or taxes) under their care and management other than levy; and

(b) the Commissioners are under a duty, at the same time, to make any repayment of levy to that person or to make any other payment to him of any amount or amounts in respect of levy.

(2) Regulations under this paragraph may provide that if the total of the amount or amounts mentioned in sub-paragraph (1)(a) exceeds the total of the amount or amounts mentioned in sub-paragraph (1)(b), the latter shall be set off against the former.

(3) Regulations under this paragraph may provide that if the total of the amount or amounts mentioned in sub-paragraph (1)(b) exceeds the total of the amount or amounts mentioned in sub-paragraph (1)(a), the Commissioners may set off the latter in paying the former.

(4) Regulations under this paragraph may provide that if the total of the amount or amounts mentioned in sub-paragraph (1)(a) is the same as the total of the amount or amounts mentioned in sub-paragraph (1)(b) no payment need be made in respect of the former or the latter.

(5) Regulations under this paragraph may provide for any limitation on the time within which the Commissioners are entitled to take steps for recovering any amount due to them in respect of any of the taxes under their care and management to be disregarded, in such cases as may be described in the regulations, in determining whether any person is under such a duty to pay as is mentioned in sub-paragraph (1)(a).

(6) Regulations under this paragraph may include provision treating any duty to pay mentioned in sub-paragraph (1) as discharged accordingly.

(7) References in sub-paragraph (1) to an amount in respect of a particular tax include references not only to an amount of tax itself but also to other amounts such as interest and penalties that are or may be recovered as if they were amounts of tax.

(8) In this paragraph "tax" includes duty.

Restriction on powers to provide for set-off

75.—(1) Regulations made under paragraph 73 or 74 shall not require any such amount or amounts as are mentioned in sub-paragraph (1)(b) of that paragraph ("the credit") to be set against any such amount or amounts as are mentioned in sub-paragraph (1)(a) of that paragraph ("the debit") in any case where—

(a) an insolvency procedure has been applied to the person entitled to the credit;

(b) the credit became due after that procedure was so applied; and

(c) the liability to pay the debit either arose before that procedure was so applied or (having arisen afterwards) relates to, or to matters occurring in the course of, the carrying on of any business at times before the procedure was so applied.

(2) For the purposes of this paragraph, an insolvency procedure is applied to a person if—

(a) a bankruptcy order, winding-up order or administration order is made in relation to that person or an award of sequestration is made on that person's estate;

(b) that person is put into administrative receivership;

(c) that person passes a resolution for voluntary winding up;

(d) any voluntary arrangement approved in accordance with—

(i) Part I or VIII of the Insolvency Act 1986, or 1986 c. 45.

(ii) Part II or Chapter II of Part VIII of the Insolvency (Northern Ireland) Order 1989, S.I. 1989/2405 (N.I. 19).

comes into force in relation to that person;

(e) a deed of arrangement registered in accordance with—

(i) the Deeds of Arrangement Act 1914, or 1914 c. 47.

(ii) Chapter I of Part VIII of that Order,

takes effect in relation to that person;

(f) a person is appointed as the interim receiver of some or all of that person's property under section 286 of the Insolvency Act 1986 or Article 259 of the Insolvency (Northern Ireland) Order 1989;

(g) a person is appointed as the provisional liquidator in relation to that person under section 135 of that Act or Article 115 of that Order;

(h) an interim order is made under Part VIII of that Act, or Chapter II of Part VIII of that Order, in relation to that person; or

(i) that person's estate becomes vested in any other person as that person's trustee under a trust deed (within the meaning of the Bankruptcy (Scotland) Act 1985).

1985 c. 66.

(3) In this paragraph references, in relation to any person, to the application of an insolvency procedure to that person shall not include—

(a) the making of a bankruptcy order, winding-up order, administration order or award of sequestration at a time when any such arrangement or deed as is mentioned in paragraph (d), (e) or (i) of sub-paragraph (2) is in force in relation to that person;

(b) the making of a winding-up order at any of the following times, that is to say—

(i) immediately upon the discharge of an administration order made in relation to that person;

(ii) when that person is being wound up voluntarily;

(iii) when that person is in administrative receivership;

or

(c) the making of an administration order in relation to that person at any time when that person is in administrative receivership.

(4) For the purposes of this paragraph a person shall be regarded as being in administrative receivership throughout any continuous period for which (disregarding any temporary vacancy in the office of receiver) there is an administrative receiver of that person.

(5) In this paragraph—

"administration order" means an administration order under section 8 of the Insolvency Act 1986 or Article 21 of the Insolvency (Northern Ireland) Order 1989;

1986 c. 45.
S.I. 1989/2405 (N.I. 19).

"administrative receiver" means an administrative receiver within the meaning of section 251 of that Act or Article 5(1) of that Order.

Part VI: supplemental provisions

76.—(1) Any notification of an assessment under any provision of this Part of this Schedule to a person's representative shall be treated for the purposes of this Schedule as notification to the person in relation to whom the representative acts.

(2) In this paragraph "representative", in relation to any person, means—

(a) any of that person's personal representatives;

(b) that person's trustee in bankruptcy or liquidator;

(c) any person holding office as a receiver in relation to that person or any of his property;

(d) that person's tax representative or any other person for the time being acting in a representative capacity in relation to that person.

(3) In this paragraph "trustee in bankruptcy" includes, as respects Scotland—

(a) an interim or permanent trustee (within the meaning of the Bankruptcy (Scotland) Act 1985); and

(b) a trustee acting under a trust deed (within the meaning of that Act).

(4) The powers conferred by paragraphs 73 and 74 are without prejudice to any power of the Commissioners to provide by tax credit regulations for any amount to be set against another.

PART VII

RECOVERY AND INTEREST

Recovery of levy as debt due

77. Levy shall be recoverable as a debt due to the Crown.

Assessments of amounts of levy due

78.—(1) Where it appears to the Commissioners—

(a) that any period is an accounting period by reference to which a person is liable to account for levy,

(b) that any levy for which that person is liable to account by reference to that period has become due, and

(c) that there has been a default by that person that falls within sub-paragraph (2),

they may assess the amount of levy due from that person for that period to the best of their judgement and notify that amount to that person.

(2) The defaults falling within this sub-paragraph are—

(a) any failure to make a return required to be made by any provision made by or under this Schedule;

(b) any failure to keep any documents necessary to verify returns required to be made under any such provision;

(c) any failure to afford the facilities necessary to verify returns required to be made under any such provision;

(d) the making, in purported compliance with any requirement of any such provision to make a return, of an incomplete or incorrect return;

(e) any failure to comply with a requirement imposed by or under Part V of this Schedule (registration).

(3) Where it appears to the Commissioners that a default falling within sub-paragraph (2) is a default by a person on whom the requirement to make a return is imposed in his capacity as the representative of another person, sub-paragraph (1) shall apply as if the reference to the amount of levy due included a reference to any levy due from that other person.

(4) In a case where—

(a) the Commissioners have made an assessment for any accounting period as a result of any person's failure to make a return for that period,

(b) the levy assessed has been paid but no proper return has been made for that period,

(c) as a result of a failure (whether by that person or a representative of his) to make a return for a later accounting period, the Commissioners find it necessary to make another assessment under this paragraph in relation to the later period, and

(d) the Commissioners think it appropriate to do so in the light of the absence of a proper return for the earlier period,

they may, in the assessment in relation to the later period, specify an amount of levy due that is greater than the amount that they would have considered to be appropriate had they had regard only to the later period.

(5) Where an amount has been assessed and notified to any person under this paragraph, it shall be recoverable on the basis that it is an amount of levy due from him.

(6) Sub-paragraph (5) does not have effect if, or to the extent that, the assessment in question has been withdrawn or reduced.

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Supplementary assessments

79.—(1) If, where an assessment has been notified to any person under paragraph 78 or this paragraph, it appears to the Commissioners that the amount which ought to have been assessed as due for any accounting period exceeds the amount that has already been assessed, the Commissioners may make a supplementary assessment of the amount of the excess and notify that person accordingly.

(2) Where an amount has been assessed and notified to any person under this paragraph it shall be recoverable on the basis that it is an amount of levy due from him.

(3) Sub-paragraph (2) does not have effect if, or to the extent that, the assessment in question has been withdrawn or reduced.

Time limits for assessments

80.—(1) An assessment under paragraph 78 or 79 of an amount of levy due for any accounting period—

(a) shall not be made more than two years after the end of the accounting period unless it is made within the period mentioned in sub-paragraph (2); and

(b) subject to sub-paragraph (3), shall not in any event be made more than three years after the end of that accounting period.

(2) The period referred to in sub-paragraph (1)(a) is the period of one year after evidence of facts sufficient in the Commissioners' opinion to justify the making of the assessment first came to their knowledge.

(3) Subject to sub-paragraph (4), where levy has been lost—

(a) as a result of any conduct for which a person has been convicted of an offence involving fraud,

(b) in circumstances giving rise to liability to a penalty under paragraph 55 (failure to notify of registrability etc.), or

(c) as a result of conduct falling within paragraph 98(1) (evasion),

that levy may be assessed under paragraph 78 or 79 as if, in sub-paragraph (1)(b) above, for "three years" there were substituted "twenty years".

(4) Where, after a person's death, the Commissioners propose to assess an amount of levy as due by reason of some conduct of the deceased—

(a) the assessment shall not be made more than three years after the death; and

(b) if the circumstances are as set out in sub-paragraph (3)—

(i) the modification of sub-paragraph (1) contained in that sub-paragraph shall not apply; but

(ii) any assessment which (applying that modification) could have been made immediately after the death may be made at any time within three years after it.

(5) Nothing in this paragraph shall prejudice the powers of the Commissioners under paragraph 78(4).

Ordinary interest on overdue levy paid before assessment

81.—(1) Where—

(a) the circumstances are such that an assessment could have been made under paragraph 78 or 79 of an amount of levy due from any person, but

(b) before such an assessment was made and notified to that person that amount was paid (so that no such assessment was necessary),

the whole of the amount paid shall carry interest for the period specified in sub-paragraph (2).

(2) That period is the period which—

(a) begins with the day after that on which the person is required in accordance with regulations under paragraph 41 to pay levy due from him for the accounting period to which the amount paid relates; and

(b) ends with the day before that on which the amount is paid.

(3) Interest under this paragraph shall be payable at the rate applicable under section 197 of the Finance Act 1996. 1996 c. 8.

Penalty interest on unpaid levy

82.—(1) Where—

(a) a person makes a return for the purposes of any regulations made under paragraph 41 (whether or not at the time required by the regulations), and

(b) the return shows that an amount of levy is due from him for the accounting period for which the return is made,

that amount shall carry penalty interest for the period specified in sub-paragraph (2).

(2) That period is the period which—

(a) begins with the day after that on which the person is required in accordance with regulations under paragraph 41 to pay levy due from him for the accounting period in question; and

(b) ends with the day before that on which the amount shown in the return is paid.

Penalty interest on levy where no return made

83.—(1) Where—

(a) the Commissioners make an assessment under paragraph 78 or 79 of an amount of levy due from any person for any accounting period and notify it to him, and

(b) the assessment is made at a time after the time by which a return is required by regulations under paragraph 41 to be made by that person for that accounting period and before any such return has been made,

that amount shall carry penalty interest for the period specified in sub-paragraph (2).

(2) That period is the period which—

(a) begins with the day after that on which the person is required in accordance with regulations under paragraph 41 to pay levy due from him for the accounting period in question; and

(b) ends with the day before that on which the assessed amount is paid.

(3) Where the person, after the assessment is made, makes for the purposes of any regulations under paragraph 41 a return for the accounting period in question, the assessed amount shall not carry penalty interest under this paragraph to the extent that that amount is shown in the return as an amount of levy due from him for that accounting period (and, accordingly, carries penalty interest under paragraph 82).

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Ordinary and penalty interest on under-declared levy

84.—(1) Subject to sub-paragraph (4), where—

(a) the Commissioners make an assessment under paragraph 78 or 79 of an amount of levy due from any person for any accounting period and notify it to him,

(b) the assessment is made after a return for the purposes of any regulations under paragraph 41 has been made by that person for that accounting period, and

(c) the assessment is made on the basis that the amount ("the additional amount") is due from him in addition to any amount shown in the return, or in a previous assessment made in relation to the accounting period,

the additional amount shall carry interest for the period specified in sub-paragraph (2).

(2) That period is the period which—

(a) begins with the day after that on which the person is required in accordance with regulations under paragraph 41 to pay levy due from him for the accounting period in question; and

(b) ends with the day before the day on which the additional amount is paid.

(3) Interest under this paragraph—

(a) in respect of so much of the period specified in sub-paragraph (2) as falls before the day on which the assessment is notified to the person in question, shall be payable at the rate applicable under section 197 of the Finance Act 1996 for the purposes of paragraph 81(3); and

1996 c. 8.

(b) in respect of the remainder (if any) of that period, shall be penalty interest.

(4) Where—

(a) the Commissioners make an assessment under paragraph 78 or 79 of an amount of levy due from any person for any accounting period and notify it to him,

(b) they also specify a date for the purposes of this sub-paragraph, and

(c) the amount assessed is paid on or before that date,

the only interest carried by that amount under this paragraph shall be interest, at the rate given by sub-paragraph (3)(a), for the period before the day on which the assessment is notified.

Penalty interest on unpaid ordinary interest

85.—(1) Subject to sub-paragraph (2), where the Commissioners make an assessment under paragraph 88 of an amount of interest payable at the rate given by paragraph 81(3), that amount shall carry penalty interest for the period which—

(a) begins with the day on which the assessment is notified to the person on whom the assessment is made; and

(b) ends with the day before the day on which the assessed interest is paid.

(2) Where—

(a) the Commissioners make an assessment under paragraph 88 of an amount of interest due from any person,

(b) they also specify a date for the purposes of this sub-paragraph, and

(c) the amount of interest assessed is paid on or before that date,

the amount paid before that date shall not carry penalty interest under this paragraph.

Penalty interest

86.—(1) Penalty interest under any of paragraphs 82 to 85 shall be compound interest calculated—

(a) at the penalty rate, and

(b) with monthly rests.

(2) For this purpose the penalty rate is the rate found by—

(a) taking the rate applicable under section 197 of the Finance Act 1996 for the purposes of paragraph 81(3); and 1996 c. 8.

(b) adding 10 percentage points to that rate.

(3) Where a person is liable under any of paragraphs 82 to 85 to pay any penalty interest, the Commissioners or, on appeal, an appeal tribunal may reduce the amount payable to such amount (including nil) as they think proper.

(4) Subject to sub-paragraph (5), where the person concerned satisfies the Commissioners or, on appeal, an appeal tribunal that there is a reasonable excuse for the conduct giving rise to the liability to pay penalty interest, that is a matter which (among other things) may be taken into account under sub-paragraph (3).

(5) In determining whether there is a reasonable excuse for the purposes of sub-paragraph (4), no account shall be taken of any of the following matters, that is to say—

(a) the insufficiency of the funds available to any person for paying any levy due or for paying the amount of the interest;

(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 levy;

(c) the fact that the person liable to pay the interest or a person acting on his behalf has acted in good faith.

(6) In the case of interest reduced by the Commissioners under sub-paragraph (3) an appeal tribunal, on an appeal relating to the interest, may cancel the whole or any part of the reduction made by the Commissioners.

Supplemental provisions about interest

87.—(1) Interest under any of paragraphs 81 to 85 shall be paid without any deduction of income tax.

(2) Sub-paragraph (3) applies where—

(a) an amount carries interest under any of paragraphs 81 to 85 (or would do so apart from that sub-paragraph); and

(b) all or part of the amount turns out not to be due.

(3) In such a case—

(a) the amount or part that turns out not to be due shall not carry interest under the applicable paragraph and shall be treated as never having done so; and

(b) all such adjustments as are reasonable shall be made, including (subject to paragraphs 64 to 76) adjustments by way of repayment.

Assessments to interest

88.—(1) Where a person is liable for interest under any of paragraphs 81 to 85, the Commissioners may assess the amount due by way of interest and notify it to him accordingly.

(2) If, where an assessment has been notified to any person under sub-paragraph (1) or this sub-paragraph, it appears to the Commissioners that the amount which ought to have been assessed exceeds the amount that has already been assessed, the Commissioners may make a supplementary assessment of the amount of the excess and shall notify that person accordingly.

(3) Where an amount has been assessed and notified to any person under this paragraph, it shall be recoverable as if it were levy due from him.

(4) Sub-paragraph (3)—

(a) shall not apply so as to require any interest to be payable on interest except—

(i) in accordance with paragraph 85, or

(ii) in so far as it falls to be compounded in accordance with paragraph 86;

and

(b) shall not have effect if, or to the extent that, the assessment in question has been withdrawn or reduced.

(5) Paragraph 80 shall apply in relation to assessments under this paragraph as if any assessment to interest were an assessment under paragraph 78 to levy due for the period which is the relevant accounting period in relation to that interest.

(6) Subject to sub-paragraph (7), where a person—

(a) is assessed under this paragraph to an amount due by way of any interest, and

(b) is also assessed under paragraph 78 or 79 for the accounting period which is the relevant accounting period in relation to that interest,

the assessments may be combined and notified to him as one assessment.

(7) A notice of a combined assessment under sub-paragraph (6) must separately identify the interest being assessed.

(8) The relevant accounting period for the purposes of this paragraph is—

(a) in the case of interest on levy due for any accounting period, that accounting period; and

(b) in the case of interest on interest (whether under paragraph 85 or by virtue of any compounding under paragraph 86), the period which is the relevant accounting period for the interest on which the interest is payable.

(9) In a case where—

(a) the amount of any interest falls to be calculated by reference to levy which was not paid at the time when it should have been, and

(b) that levy cannot be readily attributed to any one or more accounting periods,

that levy shall be treated for the purposes of interest on any of that levy as levy due for such period or periods as the Commissioners may determine to the best of their judgement and notify to the person liable.

Further assessments to penalty interest

89.—(1) Where an assessment is made under paragraph 88 to an amount of penalty interest under any of paragraphs 82 to 85—

(a) the notice of assessment shall specify a date, not later than the date of the notice of assessment, to which the amount of interest which is assessed is calculated; and

(b) if the interest continues to accrue after that date, a further assessment or further assessments may be made under paragraph 88 in respect of the amounts so accruing.

(2) Where—

(a) an assessment to penalty interest is made specifying a date for the purposes of sub-paragraph (1)(a), and

(b) within such period as may for the purposes of this sub-paragraph have been notified by the Commissioners to the person liable for the interest, the amount on which the interest is payable is paid,

that amount shall be deemed for the purposes of any further liability to interest to have been paid on the specified date.

Walking possession agreements

90.—(1) This paragraph applies where—

(a) in accordance with regulations under section 51 of the Finance Act 1997 (enforcement by distress), a distress is authorised to be levied on the goods and chattels of a person ("the person in default") who has refused or neglected to pay an amount of levy due from him or an amount recoverable from him as if it were levy; and 1997 c. 16.

(b) the person levying the distress and the person in default have entered into a walking possession agreement.

(2) For the purposes of this paragraph a walking possession agreement is 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 sub-paragraph (4), 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 levy or other amount referred to in sub-paragraph (1)(a).

(4) The person in default shall not be liable to a penalty under sub-paragraph (3) if he satisfies the Commissioners or, on appeal, an appeal tribunal that there is a reasonable excuse for the breach in question.

(5) This paragraph does not extend to Scotland.

Interpretation etc. of Part VII

91.—(1) In this Part of this Schedule "penalty interest" shall be construed in accordance with paragraph 86.

(2) Any notification of an assessment under any provision of this Part of this Schedule to a person's representative shall be treated for the purposes of this Schedule as notification to the person in relation to whom the representative acts.

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(3) In this Part of this Schedule "representative", in relation to any person, means—

(a) any of that person's personal representatives;

(b) that person's trustee in bankruptcy or liquidator;

(c) any person holding office as a receiver in relation to that person or any of his property;

(d) that person's tax representative or any other person for the time being acting in a representative capacity in relation to that person.

(4) In this paragraph "trustee in bankruptcy" includes, as respects Scotland—

1985 c. 66.

(a) an interim or permanent trustee (within the meaning of the Bankruptcy (Scotland) Act 1985); and

(b) a trustee acting under a trust deed (within the meaning of that Act).

PART VIII

EVASION, MISDECLARATION AND NEGLECT

Criminal offences: Evasion

92.—(1) A person is guilty of an offence if he is knowingly concerned in, or in the taking of steps with a view to—

(a) the fraudulent evasion by that person of any levy with which he is charged; or

(b) the fraudulent evasion by any other person of any levy with which that other person is charged.

(2) The references in sub-paragraph (1) to the evasion of levy include references to obtaining, in circumstances where there is no entitlement to it, either a tax credit or a repayment of levy.

(3) A person guilty of an offence under this paragraph shall be liable (subject to sub-paragraph (4))—

(a) on summary conviction, to a penalty of the statutory maximum or to imprisonment for a term not exceeding six months, or to both;

(b) on conviction on indictment, to a penalty of any amount or to imprisonment for a term not exceeding seven years, or to both.

(4) In the case of any offence under this paragraph, where the statutory maximum is less than three times the sum of the amounts of levy which are shown to be amounts that were or were intended to be evaded, the penalty on summary conviction shall be the amount equal to three times that sum (instead of the statutory maximum).

(5) For the purposes of sub-paragraph (4) the amounts of levy that were or were intended to be evaded shall be taken to include—

(a) the amount of any tax credit, and

(b) the amount of any repayment of levy,

which was, or was intended to be, obtained in circumstances where there was no entitlement to it.

(6) In determining for the purposes of sub-paragraph (4) how much levy (in addition to any amount falling within sub-paragraph (5)) was or was intended to be evaded, no account shall be taken of the extent (if any) to which any liability to levy of any person fell, or would have fallen, to be reduced by the amount of any tax credit or repayment of levy to which he was, or would have been, entitled.

Criminal offences: Misstatements

93.—(1) A person is guilty of an offence if, with the requisite intent and for purposes connected with the levy—

(a) he produces or provides, or causes to be produced or provided, any document which is false in a material particular, or

(b) he otherwise makes use of such a document;

and in this sub-paragraph "the requisite intent" means the intent to deceive any person or to secure that a machine will respond to the document as if it were a true document.

(2) A person is guilty of an offence if, in providing any information under any provision made by or under this Schedule—

(a) he makes a statement which he knows to be false in a material particular; or

(b) he recklessly makes a statement which is false in a material particular.

(3) A person guilty of an offence under this paragraph shall be liable (subject to sub-paragraph (4))—

(a) on summary conviction, to a penalty of the statutory maximum or to imprisonment for a term not exceeding six months, or to both;

(b) on conviction on indictment, to a penalty of any amount or to imprisonment for a term not exceeding seven years, or to both.

(4) In the case of any offence under this paragraph, where—

(a) the document referred to in sub-paragraph (1) is a return required under any provision made by or under this Schedule, or

(b) the information referred to in sub-paragraph (2) is contained in or otherwise relevant to such a return,

the amount of the penalty on summary conviction shall be whichever is the greater of the statutory maximum and the amount equal to three times the sum of the amounts (if any) by which the return understates any person's liability to levy.

(5) In sub-paragraph (4) the reference to the amount by which any person's liability to levy is understated shall be taken to be equal to the sum of—

(a) the amount (if any) by which his gross liability was understated; and

(b) the amount (if any) by which any entitlements of his to tax credits and repayments of levy were overstated.

(6) In sub-paragraph (5) "gross liability" means liability to levy before any deduction is made in respect of any entitlement to any tax credit or repayments of levy.

Criminal offences: Conduct involving evasions or misstatements

94.—(1) A person is guilty of an offence under this paragraph if his conduct during any particular period must have involved the commission by him of one or more offences under the preceding provisions of this Part of this Schedule.

(2) For the purposes of any proceedings for an offence under this paragraph it shall be immaterial whether the particulars of the offence or offences that must have been committed are known.

(3) A person guilty of an offence under this paragraph shall be liable (subject to sub-paragraph (4))—

(a) on summary conviction, to a penalty of the statutory maximum or to imprisonment for a term not exceeding six months, or to both;

(b) on conviction on indictment, to a penalty of any amount or to imprisonment for a term not exceeding seven years, or to both.

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(4) In the case of any offence under this paragraph, where the statutory maximum is less than three times the sum of the amounts of levy which are shown to be amounts that were or were intended to be evaded by the conduct in question, the penalty on summary conviction shall be the amount equal to three times that sum (instead of the statutory maximum).

(5) For the purposes of sub-paragraph (4) the amounts of levy that were or were intended to be evaded by any conduct shall be taken to include—

(a) the amount of any tax credit, and

(b) the amount of any repayment of levy,

which was, or was intended to be, obtained in circumstances where there was no entitlement to it.

(6) In determining for the purposes of sub-paragraph (4) how much levy (in addition to any amount falling within sub-paragraph (5)) was or was intended to be evaded, no account shall be taken of the extent (if any) to which any liability to levy of any person fell, or would have fallen, to be reduced by the amount of any tax credit or repayments of levy to which he was, or would have been, entitled.

Criminal offences: Preparations for evasion

95.—(1) Where a person—

(a) becomes a party to any agreement under or by means of which a supply of a taxable commodity is or is to be made, or

(b) makes arrangements for any other person to become a party to such an agreement,

he is guilty of an offence if he does so in the belief that levy chargeable on the supply will be evaded.

(2) Subject to sub-paragraph (3), a person guilty of an offence under this paragraph shall be liable, on summary conviction, to a penalty of level 5 on the standard scale.

(3) In the case of any offence under this paragraph, where level 5 on the standard scale is less than three times the sum of the amounts of levy which are shown to be amounts that were or were intended to be evaded in respect of the supply in question, the penalty shall be the amount equal to three times that sum (instead of level 5 on the standard scale).

(4) For the purposes of sub-paragraph (3) the amounts of levy that were or were intended to be evaded shall be taken to include—

(a) the amount of any tax credit, and

(b) the amount of any repayment of levy,

which was, or was intended to be, obtained in circumstances where there was no entitlement to it.

(5) In determining for the purposes of sub-paragraph (3) how much levy (in addition to any amount falling within sub-paragraph (4)) was or was intended to be evaded, no account shall be taken of the extent (if any) to which any liability to levy of any person fell, or would have fallen, to be reduced by the amount of any tax credit or repayments of levy to which he was, or would have been, entitled.

Offences under paragraphs 92 to 95: procedural matters

1979 c. 2.

96. Sections 145 to 155 of the Customs and Excise Management Act 1979 (proceedings for offences, mitigation of penalties and certain other matters) shall apply in relation to offences and penalties under paragraphs 92 to 95 as they apply in relation to offences and penalties under the customs and excise Acts.

Arrest for offences under paragraphs 92 to 94

97.—(1) Where an authorised person has reasonable grounds for suspecting that a fraud offence has been committed he may arrest anyone whom he has reasonable grounds for suspecting to be guilty of the offence.

(2) In this paragraph—

"authorised person" means any person acting under the authority of the Commissioners; and

"a fraud offence" means an offence under any of paragraphs 92 to 94.

Civil penalties: Evasion

98.—(1) Subject to sub-paragraph (5), where—

(a) any person engages in any conduct for the purpose of evading levy, and

(b) that conduct involves dishonesty (whether or not it is such as to give rise to criminal liability),

that person shall be liable to a penalty.

(2) The amount of the penalty shall be—

(a) equal to the amount of levy evaded, or (as the case may be) intended to be evaded, by the person's conduct if at the time of engaging in that conduct he was or was required to be registered for the purposes of the levy;

(b) equal to twice that amount if at that time the person neither was nor was required to be registered for those purposes.

(3) The references in sub-paragraph (1) to evading levy include references to obtaining, in circumstances where there is no entitlement to it, either—

(a) a tax credit; or

(b) a repayment of levy.

(4) For the purposes of sub-paragraph (2) the amount of levy that was or was intended to be evaded by any conduct shall be taken to include—

(a) the amount of any tax credit, and

(b) the amount of any repayment of levy,

which was, or was intended to be, obtained in circumstances where there was no entitlement to it.

(5) In determining for the purposes of sub-paragraph (2) how much levy (in addition to any amount falling within sub-paragraph (4)) was or was intended to be evaded, no account shall be taken of the extent (if any) to which any liability to levy of any person fell, or would have fallen, to be reduced by the amount of any tax credit or repayments of levy to which he was, or would have been, entitled.

(6) Where, by reason of conduct falling within sub-paragraph (1), a person is convicted of an offence (whether under this Act or otherwise) that person shall not by reason of that conduct be liable also to a penalty under this paragraph.

Liability of directors etc. for penalties under paragraph 98

99.—(1) Where it appears to the Commissioners—

(a) that a body corporate is liable to a penalty under paragraph 98, and

(b) that the conduct giving rise to that penalty is, in whole or in part, attributable to the dishonesty of a person who is, or at the material time was, a director or managing officer of the body corporate (a "named officer"),

the Commissioners may serve a notice under this paragraph on the body corporate and on the named officer.

(2) A notice under this paragraph shall state—

(a) the amount of the penalty referred to in sub-paragraph (1)(a) ("the basic penalty"), and

(b) that the Commissioners propose, in accordance with this paragraph, to recover from the named officer such portion of the basic penalty (which may be the whole of it) as is specified in the notice.

(3) Where a notice is served under this paragraph, the portion of the basic penalty specified in the notice shall be recoverable from the named officer as if he were personally liable under paragraph 98 to a penalty which corresponds to that portion.

(4) Where a notice is served under this paragraph—

(a) the amount which may be assessed under Part IX of this Schedule as the amount due by way of penalty from the body corporate shall be only so much (if any) of the basic penalty as is not assessed on and notified to a named officer; and

(b) the body corporate shall be treated as discharged from liability for so much of the basic penalty as is so assessed and notified.

(5) Subject to the following provisions of this paragraph, the giving of a notice under this paragraph as such shall not be a decision which may be reviewed under paragraph 121.

(6) Where a body corporate is assessed as mentioned in sub-paragraph (4)(a), the decisions of the Commissioners that may be reviewed in accordance with paragraph 121 shall include their decision—

(a) as to the liability of the body corporate to a penalty, and

(b) as to the amount of the basic penalty that is specified in the assessment;

and paragraphs 122 and 123 shall apply accordingly.

(7) Where an assessment is made on a named officer by virtue of this paragraph, the decisions which may be reviewed under paragraph 121 at the request of the named officer shall include—

(a) the Commissioners' decisions in the case of the body corporate as to the matters mentioned in sub-paragraph (6)(a) and (b);

(b) their decision that the conduct of the body corporate referred to in sub-paragraph (1)(b) is, in whole or in part, attributable to the dishonesty of the named officer; and

(c) their decision as to the portion of the penalty which the Commissioners propose to recover from him;

and paragraphs 122 and 123 shall apply accordingly.

(8) In this paragraph a "managing officer", in relation to a body corporate, means—

(a) any manager, secretary or other similar officer of the body corporate; or

(b) any person purporting to act in any such capacity or as a director.

(9) Where the affairs of a body corporate are managed by its members, this paragraph shall apply in relation to the conduct of a member in connection with his functions of management as if he were a director of the body corporate.

Civil penalties: Misdeclaration or neglect

100.—(1) Subject to sub-paragraphs (3) to (5), where for an accounting period—

(a) a return is made which understates a person's liability to levy or overstates his entitlement to any tax credit or repayment of levy, or

(b) at the end of the period of 30 days beginning on the date of the making of any assessment which understates a person's liability to levy, that person has not taken all such steps as are reasonable to draw the understatement to the attention of the Commissioners,

the person concerned shall be liable to a penalty equal to 5 per cent. of the amount of the understatement of liability or (as the case may be) overstatement of entitlement.

(2) Where—

(a) a return for an accounting period—

(i) overstates or understates to any extent a person's liability to levy, or

(ii) understates or overstates to any extent his entitlement to any tax credits or repayments of levy,

and

(b) that return is corrected—

(i) in such circumstances as may be prescribed, and

(ii) in accordance with such conditions as may be prescribed,

by a return for a later accounting period which understates or overstates, to the corresponding extent, any liability or entitlement for the later period,

it shall be assumed for the purposes of this paragraph that the statement made by each such return is a correct statement for the accounting period to which the return relates.

(3) Conduct falling within sub-paragraph (1) shall not give rise to liability to a penalty under this paragraph if the person concerned provides the Commissioners with full information with respect to the inaccuracy concerned—

(a) at a time when he has no reason to believe that enquiries are being made by the Commissioners into his affairs, so far as they relate to the levy; and

(b) in such form and manner as may be prescribed by regulations made by the Commissioners or specified by them in accordance with any such regulations.

(4) Conduct falling within sub-paragraph (1) shall not give rise to liability to a penalty under this paragraph if the person concerned satisfies the Commissioners or, on appeal, an appeal tribunal that there is a reasonable excuse for his conduct.

(5) Where, by reason of conduct falling within sub-paragraph (1)—

(a) a person is convicted of an offence (whether under this Act or otherwise), or

(b) a person is assessed to a penalty under paragraph 98,

that person shall not by reason of that conduct be liable also to a penalty under this paragraph.

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Civil penalties: Incorrect notifications etc.

101.—(1) Where—

(a) a person gives a notification for the purposes of paragraph 11 in relation to any supply (or supplies) of a taxable commodity (or taxable commodities), and

(b) the notification is incorrect,

the person shall be liable to a penalty.

(2) Where—

(a) a person gives, in relation to any supply (or supplies) of a taxable commodity (or taxable commodities) being made to him, to the supplier a certificate that the supply (or supplies) is (or are) to any extent—

(i) for domestic or charity use,

(ii) exempt under any of paragraphs 12, 13, 14, 18 and 21, or

(iii) a half-rate supply (or half-rate supplies), and

(b) the certificate is incorrect,

the person shall be liable to a penalty.

(3) The amount of the penalty to which a person is liable under sub-paragraph (1) or (2) shall be equal to 105 per cent. of the difference between—

(a) the amount of levy (which may be nil) that would have been chargeable on the supply (or supplies) if the notification or certificate had been correct, and

(b) the amount of levy actually chargeable.

(4) The giving of a notification or certificate shall not give rise to a penalty under this paragraph if the person who gave it satisfies the Commissioners or, on appeal, an appeal tribunal that there is a reasonable excuse for his having given it.

(5) Where by reason of giving a notification or certificate—

(a) a person is convicted of an offence (whether under this Act or otherwise), or

(b) a person is assessed to a penalty under paragraph 98,

that person shall not by reason of the giving of the notification or certificate be liable also to a penalty under this paragraph.

Interpretation of Part VIII

102.—(1) References in this Part of this Schedule to obtaining a tax credit are references to bringing an amount into account as a tax credit for the purposes of levy on the basis that that amount is an amount which may be so brought into account in accordance with tax credit regulations.

(2) References in this Part of this Schedule to obtaining a repayment of levy are references to obtaining either—

(a) the payment or repayment of any amount, or

(b) the acknowledgement of a right to receive any amount,

on the basis that that amount is the amount of a repayment of levy to which there is an entitlement.

PART IX

CIVIL PENALTIES

Preliminary

103.—(1) In this Part of this Schedule "civil penalty" means any penalty liability to which—

(a) is imposed by or under this Schedule, and

(b) arises otherwise than in consequence of a person's conviction for a criminal offence.

(2) In this Part of this Schedule—

(a) references to a person's being liable to a civil penalty include references to his being a person from whom the whole or any part of a civil penalty is recoverable by virtue of paragraph 99; and

(b) references, in relation to a person from whom the whole or any part of a civil penalty is so recoverable, to the penalty to which he is liable are references to so much of the penalty as is recoverable from him.

(3) Any notification of an assessment under any provision of this Part of this Schedule to a person's representative shall be treated for the purposes of this Schedule as notification to the person in relation to whom the representative acts.

(4) In this paragraph "representative", in relation to any person, means—

(a) any of that person's personal representatives;

(b) that person's trustee in bankruptcy or liquidator;

(c) any person holding office as a receiver in relation to that person or any of his property;

(d) that person's tax representative or any other person for the time being acting in a representative capacity in relation to that person.

(5) In this paragraph "trustee in bankruptcy" includes, as respects Scotland—

(a) an interim or permanent trustee (within the meaning of the Bankruptcy (Scotland) Act 1985); and 1985 c. 66.

(b) a trustee acting under a trust deed (within the meaning of that Act).

Reduction of penalties

104.—(1) Where a person is liable to a civil penalty—

(a) the Commissioners or, on appeal, an appeal tribunal may reduce the penalty to such amount (including nil) as they think proper; but

(b) on an appeal relating to any penalty reduced by the Commissioners, an appeal tribunal may cancel the whole or any part of the Commissioners' reduction.

(2) In determining whether a civil penalty should be, or should have been, reduced under sub-paragraph (1), no account shall be taken of any of the following matters, that is to say—

(a) the insufficiency of the funds available to any person for paying any levy due 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 levy;

(c) the fact that the person liable to the penalty or a person acting on his behalf has acted in good faith.

SCH. 6

Matters not amounting to reasonable excuse

105. For the purposes of any provision made by or under this Schedule under which liability to a civil penalty does not arise in respect of conduct for which there is shown to be a reasonable excuse—

(a) an insufficiency of funds available for paying any amount is not a reasonable excuse; and

(b) where reliance has been placed on any other person to perform any task, neither the fact of that reliance nor any conduct of the person relied upon is a reasonable excuse.

Assessments to penalties etc.

106.—(1) Where a person is liable to a civil penalty, the Commissioners may assess the amount due by way of penalty and notify it to him accordingly.

(2) If, where an assessment has been notified to any person under sub-paragraph (1) or this sub-paragraph, it appears to the Commissioners that the amount which ought to have been assessed exceeds the amount that has already been assessed, the Commissioners may make a supplementary assessment of the amount of the excess and shall notify that person accordingly.

(3) The fact that any conduct giving rise to a civil penalty may have ceased before an assessment is made under this paragraph shall not affect the power of the Commissioners to make such an assessment.

(4) Where an amount has been assessed and notified to any person under this paragraph, it shall be recoverable as if it were levy due from him.

(5) Sub-paragraph (4)—

(a) shall not apply so as to require any interest to be payable on a penalty otherwise than in accordance with this Part of this Schedule; and

(b) shall not have effect if, or to the extent that, the assessment in question has been withdrawn or reduced.

(6) Subject to sub-paragraph (7), where a person—

(a) is assessed under this paragraph to an amount due by way of a penalty, and

(b) is also assessed under any one or more provisions of Part VII of this Schedule for an accounting period to which the conduct attracting the penalty is referable,

the assessments may be combined and notified to him as one assessment.

(7) A notice of a combined assessment under sub-paragraph (6) must separately identify the penalty being assessed.

(8) The power to make an assessment under this paragraph is subject to paragraph 99(4).

Further assessments to daily penalties

107.—(1) This paragraph applies where an assessment is made under paragraph 106 to an amount of a civil penalty to which any person is liable—

(a) under paragraph 124(3) (failure to provide information); or

(b) under paragraph 127(4) (failure to produce a document).

(2) The notice of assessment shall specify a time, not later than the end of the day of the giving of the notice of assessment, to which the amount of any daily penalty is calculated.

(3) For the purposes of sub-paragraph (2) "daily penalty" means—

(a) in a case within sub-paragraph (1)(a), a penalty imposed by virtue of paragraph 124(3)(b); and

(b) in a case within sub-paragraph (1)(b), a penalty imposed by virtue of paragraph 127(4)(b).

(4) If further penalties accrue in respect of a continuing failure after that date to provide the information or, as the case may be, produce the document, a further assessment or further assessments may be made under paragraph 106 in respect of the amounts so accruing.

(5) Where—

(a) an assessment to a civil penalty is made specifying a date for the purposes of sub-paragraph (2), and

(b) the failure in question is remedied within such period as may for the purposes of this sub-paragraph have been notified by the Commissioners to the person liable for the penalty,

the failure shall be deemed for the purposes of any further liability to civil penalties to have been remedied on the specified date.

Time limits on penalty assessments

108.—(1) Subject to sub-paragraphs (2) and (3), an assessment under paragraph 106 to a penalty shall not be made more than three years after the conduct to which the penalty relates.

(2) Subject to sub-paragraph (3), if levy has been lost—

(a) as a result of any conduct for which a person has been convicted of an offence involving fraud,

(b) in circumstances giving rise to liability to a penalty under paragraph 55 (failure to notify of registrability etc.), or

(c) as a result of conduct falling within paragraph 98(1) (evasion),

an assessment may be made for any civil penalty relating to that conduct as if, in sub-paragraph (1), for "three years" there were substituted "twenty years".

(3) Where, after a person's death, the Commissioners propose to assess an amount of a civil penalty due by reason of some conduct of the deceased—

(a) the assessment shall not be made more than three years after the death; and

(b) if the circumstances are as set out in sub-paragraph (2)—

(i) the modification of sub-paragraph (1) contained in that sub-paragraph shall not apply; but

(ii) any assessment which (applying that modification) could have been made immediately after the death may be made at any time within three years after it.

Penalty interest on unpaid penalties

109.—(1) Subject to sub-paragraph (2), where the Commissioners make an assessment under paragraph 106 of any civil penalty to which a person is liable the amount of that penalty shall carry penalty interest for the period which—

(a) begins with the day on which the assessment is notified to the person on whom the assessment is made; and

(b) ends with the day before the day on which the assessed penalty is paid.

(2) Where—

(a) the Commissioners make an assessment under paragraph 106 of an amount of any civil penalty to which any person is liable,

(b) they also specify a date for the purposes of this sub-paragraph, and

(c) the amount of the penalty assessed is paid on or before that date,

the amount paid before that date shall not carry penalty interest under this paragraph.

(3) Penalty interest under this paragraph shall be compound interest calculated—

(a) at the penalty rate, and

(b) with monthly rests.

(4) For this purpose the penalty rate is the rate found by—

1996 c. 8.

(a) taking the rate applicable under section 197 of the Finance Act 1996 for the purposes of paragraph 81(3); and

(b) adding 10 percentage points to that rate.

(5) Where a person is liable under this paragraph to pay any penalty interest, the Commissioners or, on appeal, an appeal tribunal may reduce the amount payable to such amount (including nil) as they think proper.

(6) Subject to sub-paragraph (7), where the person concerned satisfies the Commissioners or, on appeal, an appeal tribunal that there is a reasonable excuse for the conduct giving rise to the liability to pay penalty interest, that is a matter which (among other things) may be taken into account under sub-paragraph (5).

(7) In determining whether there is a reasonable excuse for the purposes of sub-paragraph (6), no account shall be taken of any of the following matters, that is to say—

(a) the insufficiency of the funds available to any person for paying any levy or penalty due or for paying the amount of the interest;

(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 levy;

(c) the fact that the person liable to pay the interest or a person acting on his behalf has acted in good faith.

(8) In the case of interest reduced by the Commissioners under sub-paragraph (5), an appeal tribunal, on an appeal relating to the interest, may cancel the whole or any part of the reduction made by the Commissioners.

Supplemental provisions about interest

110.—(1) Interest under paragraph 109 shall be paid without any deduction of income tax.

(2) Sub-paragraph (3) applies where—

(a) an amount carries interest under paragraph 109 (or would do so apart from that sub-paragraph); and

(b) all or part of the amount turns out not to be due.

(3) In such a case—

(a) the amount or part that turns out not to be due shall not carry interest under paragraph 109 and shall be treated as never having done so; and

(b) all such adjustments as are reasonable shall be made, including (subject to paragraphs 64 to 76) adjustments by way of repayment.

Assessments to penalty interest on unpaid penalties

111.—(1) Where a person is liable for interest under paragraph 109, the Commissioners may assess the amount due by way of interest and notify it to him accordingly.

(2) If, where an assessment has been notified to any person under sub-paragraph (1) or this sub-paragraph, it appears to the Commissioners that the amount which ought to have been assessed exceeds the amount that has already been assessed, the Commissioners may make a supplementary assessment of the amount of the excess and notify that person accordingly.

(3) Where an amount has been assessed and notified to any person under this paragraph, it shall be recoverable as if it were levy due from him.

(4) Sub-paragraph (3)—

(a) shall not apply so as to require any interest to be payable on interest (except in so far as it falls to be compounded in accordance with paragraph 109(3)); and

(b) shall not have effect if, or to the extent that, the assessment in question has been withdrawn or reduced.

(5) Paragraph 108 shall apply in relation to assessments under this paragraph as if any assessment to interest on a penalty were an assessment under paragraph 106 to the penalty in question.

(6) Subject to sub-paragraph (7), where a person—

(a) is assessed under this paragraph to an amount due by way of any interest on a penalty, and

(b) is also assessed under any one or more provisions of Part VII of this Schedule for the accounting period to which the conduct attracting the penalty is referable,

the assessments may be combined and notified to him as one assessment.

(7) A notice of a combined assessment under sub-paragraph (6) must separately identify the interest being assessed.

Further assessments to interest on penalties

112.—(1) Where an assessment is made under paragraph 111 to an amount of penalty interest under paragraph 109—

(a) the notice of assessment shall specify a date, not later than the date of the notice of assessment, to which the amount of interest which is assessed is calculated; and

(b) if the interest continues to accrue after that date, a further assessment or further assessments may be made under paragraph 111 in respect of the amounts so accruing.

(2) Where—

(a) an assessment to penalty interest is made specifying a date for the purposes of sub-paragraph (1)(a), and

(b) within such period as may for the purposes of this sub-paragraph have been notified by the Commissioners to the person liable for the interest, the amount on which the interest is payable is paid,

that amount shall be deemed for the purposes of any further liability to interest to have been paid on the specified date.

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Up-rating of amounts of penalties

113.—(1) If it appears to the Treasury that there has been a change in the value of money since the time when the amount of a civil penalty provided for by this Schedule was fixed, they may by regulations substitute, for the amount for the time being specified as the amount of that penalty, such other sum as appears to them to be justified by the change.

(2) In sub-paragraph (1) the reference to the time when the amount of a civil penalty was fixed is a reference—

(a) in the case of a penalty which has not previously been modified under that sub-paragraph, to the time of the passing of this Act; and

(b) in any other case, to the time of the making of the regulations under that sub-paragraph that made the most recent modification of the amount of that penalty.

(3) Regulations under sub-paragraph (1) shall not apply to the penalty for any conduct before the coming into force of the regulations.

PART X

NON-RESIDENTS, GROUPS AND OTHER SPECIAL CASES

Non-resident taxpayers: appointment of tax representatives

114.—(1) The Commissioners may by regulations make provision for securing that every non-resident taxpayer has a person resident in the United Kingdom to act as his tax representative for the purposes of the levy.

(2) Regulations under this paragraph may, in particular, contain any or all of the following—

(a) provision requiring notification to be given to the Commissioners where a person becomes a non-resident taxpayer;

(b) provision requiring the appointment of tax representatives by non-resident taxpayers;

(c) provision for the appointment of a person as a tax representative to take effect only where the person appointed is approved by the Commissioners;

(d) provision authorising the Commissioners to give a direction requiring the replacement of a tax representative;

(e) provision authorising the Commissioners to give a direction requiring a person specified in the direction to be treated as the appointed tax representative of a non-resident taxpayer so specified;

(f) provision about the circumstances in which a person ceases to be a tax representative and about the withdrawal by the Commissioners of their approval of a tax representative;

(g) provision enabling a tax representative to act on behalf of the person for whom he is the tax representative through an agent of the representative;

(h) provision for the purposes of any provision made by virtue of paragraphs (a) to (g) regulating the procedure to be followed in any case and imposing requirements as to the information and other particulars to be provided to the Commissioners;

(i) provision as to the time at which things done under or for the purposes of the regulations are to take effect.

(3) Subject to sub-paragraph (4), a person who—

(a) becomes subject, in accordance with any regulations under this paragraph, to an obligation to request the Commissioners' approval for any person's appointment as his tax representative, but

(b) fails (with or without making the appointment) to make the request as required by the regulations,

shall be liable to a penalty of £10,000.

(4) A failure such as is mentioned in sub-paragraph (3) shall not give rise to liability to a penalty under this paragraph if the person concerned satisfies the Commissioners or, on appeal, an appeal tribunal that there is a reasonable excuse for the failure.

Effect of appointment of tax representatives

115.—(1) The tax representative of a non-resident taxpayer shall be entitled to act on the non-resident taxpayer's behalf for the purposes of any provision made by or under this Schedule.

(2) The tax representative of a non-resident taxpayer shall be under a duty, except to such extent as the Commissioners by regulations otherwise provide, to secure the non-resident taxpayer's compliance with, and discharge of, the obligations and liabilities to which the non-resident taxpayer is subject by virtue of any provision made by or under this Schedule (including obligations and liabilities arising or incurred before he became the non-resident taxpayer's tax representative).

(3) A person who is or has been the tax representative of a non-resident taxpayer shall be personally liable—

(a) in respect of any failure while he is or was the non-resident taxpayer's tax representative to secure compliance with, or the discharge of, any obligation or liability to which sub-paragraph (2) applies, and

(b) in respect of anything done in the course of, or for purposes connected with, acting on the non-resident taxpayer's behalf,

as if the obligations and liabilities to which sub-paragraph (2) applies were imposed jointly and severally on the tax representative and the non-resident taxpayer.

(4) A tax representative shall not be liable by virtue of this paragraph to be registered for the purposes of the levy; but the Commissioners may by regulations—

(a) require the names of tax representatives to be registered against the names of the non-resident taxpayers of whom they are the representatives;

(b) make provision for the deletion of the names so registered of persons who cease to be tax representatives.

(5) A tax representative shall not by virtue of this paragraph be guilty of any offence except in so far as—

(a) he has consented to, or connived in, the commission of the offence by the non-resident taxpayer;

(b) the commission of the offence by the non-resident taxpayer 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 this paragraph, is imposed both on the tax representative and on the non-resident taxpayer.

Groups of companies etc.

116.—(1) The Commissioners may make provision by regulations for two or more bodies corporate to be treated as members of a group for the purposes of the Schedule.

(2) Regulations under sub-paragraph (1) may, in particular, make provision for or about—

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(a) eligibility for group treatment;

(b) representative members of groups;

(c) applications for, or the variation or ending of, group treatment;

(d) the decisions to be made on applications;

(e) the variation or ending of group treatment by notice given by the Commissioners otherwise than on an application;

(f) treating a member of a group as charged with levy that would otherwise be levy with which another member of the group would be charged;

(g) the members of a group liable for levy, or amounts recoverable as levy, due from a member of a group.

(3) The provision mentioned in sub-paragraph (2)(c) includes provision—

(a) about the time within which applications are to be made,

(b) for authorising the Commissioners to extend such time, and

(c) for applications that seek group treatment, or its variation or ending, with effect from a time before they are made.

(4) The provision mentioned in sub-paragraph (2)(e) includes provision for a notice to have effect from a time before it is given.

(5) Regulations under sub-paragraph (1) may make provision for imposing requirements on a body corporate to notify the Commissioners of prescribed matters relating to group treatment.

(6) A body corporate which fails to comply with any such requirement imposed by such regulations shall be liable to a penalty of £250.

Partnerships and other unincorporated bodies

117.—(1) The Commissioners may by regulations make provision for determining by what persons anything required to be done under this Schedule is to be done where, apart from those regulations, that requirement would fall on—

(a) persons carrying on business in partnership; or

(b) persons carrying on business together as an unincorporated body;

but any regulations under this sub-paragraph must be construed subject to the following provisions of this paragraph.

(2) In determining for the purposes of this Schedule who at any time is the person accountable for any levy in a case where, apart from this sub-paragraph, the persons accountable are persons carrying on any business—

(a) in partnership, or

(b) as an unincorporated body,

the firm or body shall be treated, for the purposes of that determination (and notwithstanding any changes from time to time in the members of the firm or body), as the same person and as separate from its members.

1890 c. 39.

(3) Without prejudice to section 36 of the Partnership Act 1890 (rights of persons dealing with firm against apparent members of firm), where—

(a) persons have been carrying on in partnership any business in the course or furtherance of which there has been done any thing that resulted in the firm becoming liable to account for any levy, and

(b) a person ceases to be a member of the firm,

that person shall be regarded for the purposes of this Schedule (including sub-paragraph (7) below) as continuing to be a partner until the date on which the change in the partnership is notified to the Commissioners.

(4) Where a person ceases to be a member of a firm during an accounting period (or is treated as so ceasing by virtue of sub-paragraph (3)) any notice, whether of assessment or otherwise, which—

(a) is served on the firm under or for the purposes of any provision made by or under this Schedule, and

(b) relates to, or to any matter arising in, that period or any earlier period during the whole or part of which he was a member of the firm,

shall be treated as served also on him.

(5) Without prejudice to section 16 of the Partnership Act 1890 (notice to acting partner to be notice to the firm), any notice, whether of assessment or otherwise, which— 1890 c. 39.

(a) is addressed to a firm by the name in which it is registered, and

(b) is served in accordance with this Schedule,

shall be treated for the purposes of this Schedule as served on the firm and, accordingly, where sub-paragraph (4) applies, as served also on the former partner.

(6) Subject to sub-paragraph (7), nothing in this paragraph shall affect the extent to which, under section 9 of the Partnership Act 1890 (liability of partners for debts of the firm), a partner is liable for levy owed by the firm.

(7) Where a person is a partner in a firm during part only of an accounting period, his personal liability for levy incurred by the firm in respect of taxable supplies made in that period shall include, but shall not exceed, such proportion of the firm's liability as may be just and reasonable in the circumstances.

Death and incapacity

118.—(1) The Commissioners may, in accordance with sub-paragraph (2), by regulations make provision for the purposes of the levy in relation to cases where a person carries on a business of an individual who has died or become incapacitated.

(2) The provisions that may be contained in regulations under this paragraph are—

(a) provision requiring the person who is carrying on the business 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) provision allowing that person to be treated for a limited time as if he and the person who has died or become incapacitated were the same person; and

(c) such other provision as the Commissioners think fit for securing continuity in the application of this Schedule where a person is so treated.

Transfer of a business as a going concern

119.—(1) The Commissioners may by regulations make provision for securing continuity in the application of this Schedule in cases where any business carried on by a person is transferred to another person as a going concern.

(2) Regulations under this paragraph may, in particular, include any or all of the following—

(a) provision requiring the transferor to inform the Commissioners of the transfer;

(b) provision for liabilities and duties under this Schedule of the transferor to become, to such extent as may be provided by the regulations, liabilities and duties of the transferee;

(c) provision for any right of either of them to a tax credit or repayment of levy to be satisfied by allowing the credit or making the repayment to the other;

(d) provision as to the preservation of any records or accounts relating to the business which, by virtue of any regulations under paragraph 125, are required to be preserved for any period after the transfer.

(3) Regulations under this paragraph may provide that no such provision as is mentioned in paragraph (b) or (c) of sub-paragraph (2) shall have effect in relation to any transferor and transferee unless an application for the purpose has been made by them under the regulations.

Insolvency etc.

120.—(1) The Commissioners may by regulations make provision in accordance with the following provisions of this paragraph for the application of this Schedule in cases in which an insolvency procedure is applied to a person or to a deceased individual's estate.

In this paragraph "the relevant person" means the person to whom, or the deceased individual to whose estate, the insolvency procedure is applied.

(2) The provision that may be contained in regulations under this paragraph may include any or all of the following—

(a) provision requiring any such person as may be prescribed to give notification to the Commissioners, in the prescribed manner, of the prescribed particulars of any relevant matter;

(b) provision requiring a person to be treated, to the prescribed extent, as if he were the same person as the relevant person for the purposes of this Schedule or such of its provisions as may be prescribed; and

(c) provision for securing continuity in the application of any of the provisions of this Schedule where, by virtue of any regulations under this paragraph, any person is treated as if he were the same person as the relevant person.

(3) In sub-paragraph (2) "relevant matter", in relation to a case in which an insolvency procedure is applied to any person or to any deceased individual's estate, means—

(a) the application of that procedure to that person or estate;

(b) the appointment of any person for the purposes of the application of that procedure;

(c) any other matter relating to—

(i) the application of that procedure to the person to whom, or the estate to which, it is applied;

(ii) the holding of an appointment made for the purposes of that procedure; or

(iii) the exercise or discharge of any powers or duties conferred or imposed on any person by virtue of such an appointment.

(4) Regulations made by virtue of sub-paragraph (2)(b) may include provision for a person to cease to be treated as if he were the same person as the relevant person on the occurrence of such an event as may be prescribed.

(5) Regulations under this paragraph prescribing the manner in which any notification is to be given to the Commissioners may require it to be given in such manner and to contain such particulars as may be specified in a general notice published by the Commissioners in accordance with the regulations.

(6) Regulations under this paragraph may provide that the extent to which, and the purposes for which, a person is to be treated under the regulations as if he were the same person as the relevant person may be determined by reference to a notice given in accordance with the regulations to the person so treated.

(7) For the purposes of this paragraph, an insolvency procedure is applied to a person if—

(a) a bankruptcy order, winding-up order or administration order is made in relation to that person or a partnership of which he is a member;

(b) an award of sequestration is made on that person's estate or on the estate of a partnership of which he is a member;

(c) that person is put into administrative receivership;

(d) that person passes a resolution for voluntary winding up;

(e) any voluntary arrangement approved in accordance with—

(i) Part I or VIII of the Insolvency Act 1986, or — 1986 c. 45.

(ii) Part II or Chapter II of the Insolvency (Northern Ireland) Order 1989, — S.I. 1989/2405 (N.I. 19).

comes into force in relation to that person or a partnership of which that person is a member;

(f) a deed of arrangement registered in accordance with—

(i) the Deeds of Arrangement Act 1914, or — 1914 c. 47.

(ii) Chapter I of Part VIII of that Order,

takes effect in relation to that person;

(g) a person is appointed as the receiver or manager of some or all of that person's property, or of income arising from some or all of his property;

(h) a person is appointed as the interim receiver of some or all of that person's property under section 286 of the Insolvency Act 1986 or Article 259 of the Insolvency (Northern Ireland) Order 1989;

(i) a person is appointed as the provisional liquidator in relation to that person under section 135 of that Act or Article 115 of that Order;

(j) an interim order is made under Part VIII of that Act, or Chapter II of Part VIII of that Order, in relation to that person; or

(k) that person's estate, or the estate of a partnership of which that person is a member, becomes vested in any other person as that person's, or the partnership's, trustee under a trust deed (within the meaning of the Bankruptcy (Scotland) Act 1985). — 1985 c. 66.

(8) For the purposes of this paragraph, an insolvency procedure is applied to a deceased individual's estate if—

(a) a bankruptcy order, or an order by some other name but corresponding to a bankruptcy order, is made after the individual's death in relation to his estate under provisions of—

(i) the Insolvency Act 1986, or

(ii) the Insolvency (Northern Ireland) Order 1989,

as applied to the administration of the insolvent estates of deceased individuals; or

(b) an award of sequestration is made on the individual's estate after the individual's death.

(9) In sub-paragraph (7)—

(a) "administration order" means an administration order under section 8 of the Insolvency Act 1986 or Article 21 of the Insolvency (Northern Ireland) Order 1989; — S.I. 1989/2405 (N.I. 19).

(b) references to a member of a partnership include references to any person who is liable as a partner under section 14 of the Partnership Act 1890 (persons liable by "holding out").

1890 c. 39.

PART XI

REVIEW AND APPEAL

Review of Commissioners' decisions

121.—(1) This paragraph applies to a decision of the Commissioners with respect to any of the following matters—

(a) whether or not a person is charged in any case with an amount of levy;

(b) the amount of levy charged in any case and the time when the charge is to be taken as having arisen;

(c) the registration of any person for the purposes of the levy or the cancellation of any registration;

(d) the person liable to pay the levy charged in any case, the amount of a person's liability to levy and the time by which he is required to pay an amount of levy;

(e) whether to prepare a special utility scheme for a utility;

(f) the imposition of a requirement on any person to give security, or further security, under paragraph 139 and the amount and manner of providing any security required under that paragraph;

(g) whether or not liability to a penalty or to interest on any amount arises in any person's case under any provision made by or under this Schedule, and the amount of any such liability;

(h) any matter the decision as to which is reviewable under this paragraph of this Part of this Schedule in accordance with paragraph 99(6) or (7);

(i) the extent of any person's entitlement to any tax credit or to a repayment in respect of a tax credit and the extent of any liability of the Commissioners under this Schedule to pay interest on any amount;

(j) whether or not any person is required to have a tax representative by virtue of any regulations under paragraph 114;

(k) the giving, withdrawal or variation, for the purposes of any such regulations, of any approval or direction with respect to the person who is to act as another's tax representative;

(l) the giving, withdrawal or variation of a utility direction under paragraph 151(1);

(m) whether a body corporate is to be treated, or is to cease to be treated, as a member of a group, the times at which a body corporate is to be so treated and the body corporate which is, in relation to any time, to be the representative member for a group;

(n) any matter not falling within the preceding paragraphs the decision with respect to which is contained in—

(i) an assessment under paragraph 78 or 79 in respect of an accounting period in relation to which any return required to be made by virtue of regulations under paragraph 41 has been made, or

(ii) an assessment under any provision of this Schedule other than paragraph 78 or 79.

(2) Any person who is or will be affected by any decision to which this paragraph applies may by notice in writing to the Commissioners require them to review the decision.

(3) The Commissioners shall not be required under this paragraph 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 an assessment containing or giving effect to the decision, was first given to the person requiring the review.

(4) For the purposes of sub-paragraph (3) it shall be the duty of the Commissioners to give written notification of any decision to which this paragraph 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 paragraph.

(5) A person shall be entitled to give a notice under this paragraph 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) Where the Commissioners are required by a notice under this paragraph to review any decision, it shall be their duty to do so.

(7) On a review under this paragraph the Commissioners may (subject to sub-paragraph (9)) withdraw, vary or confirm the decision reviewed.

(8) Where—

(a) it is the duty under this paragraph of the Commissioners 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 the person requiring it of their determination on the review,

they shall be deemed to have confirmed the decision.

(9) Where the Commissioners decide, on a review under this paragraph, that a liability to a penalty or to an amount of interest arises, they shall not be entitled to modify the amount payable in respect of that liability except—

(a) in exercise of a power conferred by paragraph 104(1) (penalties) or paragraph 70(6), 86(3) or 109(5) (penalty interest); or

(b) for the purpose of making the amount payable conform to the amount of the liability imposed by this Schedule.

(10) This paragraph has effect subject to paragraph 99(5).

Appeals against reviewed decisions

122.—(1) Subject to the following provisions of this paragraph, 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 paragraph 121 (including a deemed confirmation under paragraph 121(8));

(b) any decision by the Commissioners on any such review of a decision referred to in paragraph 121(1) as the Commissioners have agreed to undertake in consequence of a request made after the end of the period mentioned in paragraph 121(3).

(2) Where an appeal under this paragraph relates to a decision (whether or not contained in an assessment) that an amount of levy is due from any person, that appeal shall not be entertained unless—

(a) the amount which the Commissioners have determined to be due has been paid or deposited with them; or

(b) on being satisfied that the appellant would otherwise suffer hardship—

(i) the Commissioners agree, or

(ii) the appeal tribunal decide,

that it should be entertained notwithstanding that that amount has not been so paid or deposited.

(3) On an appeal under this paragraph relating to a penalty under paragraph 98 (evasion), the burden of proof as to the matters specified in paragraphs (a) and (b) of sub-paragraph (1) of that paragraph shall lie upon the Commissioners.

Determinations on appeal

123.—(1) Where, on an appeal under paragraph 122—

(a) it is found that an assessment of the appellant made, confirmed or treated as confirmed by the Commissioners on a review under paragraph 121 ("the original assessment") is an assessment for an amount that is less than it ought to have been, and

(b) the appeal tribunal give a direction specifying the correct amount,

the assessment shall have effect as an assessment of the amount specified in the direction and (without prejudice to any power under this Schedule to reduce the amount of interest payable on the amount of an assessment) as if it were an assessment notified to the appellant in that amount at the same time as the original assessment.

(2) On an appeal under paragraph 122, the powers of the appeal tribunal in relation to any decision of the Commissioners shall include a power, where the tribunal allow an appeal on the ground that the Commissioners could not reasonably have arrived at the decision, either—

(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; or

(b) to require the Commissioners to conduct, in accordance with the directions of the tribunal, a further review of the original decision.

(3) Where, on an appeal under paragraph 122, the appeal tribunal find that a liability to a penalty or to an amount of interest arises, the tribunal shall not give any direction for the modification of the amount payable in respect of that liability except—

(a) in exercise of a power conferred on the tribunal by paragraph 104(1) (penalties) or paragraph 70(6) or (9), 86(3) or (6) or 109(5) or (8) (penalty interest); or

(b) for the purpose of making the amount payable conform to the amount of the liability imposed by this Schedule.

(4) Where, on an appeal under paragraph 122, it is found that the whole or part of any amount paid or deposited in pursuance of paragraph 122(2) 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 appeal tribunal may determine.

(5) Where, on an appeal under paragraph 122, it is found that the whole or part of any amount due to the appellant by way of any repayment in respect of a tax credit 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 appeal tribunal may determine.

(6) Where—

(a) an appeal under paragraph 122 has been entertained notwithstanding that an amount determined by the Commissioners to be payable as levy has not been paid or deposited, and

(b) it is found on the appeal that that amount is due,

the appeal tribunal may, if they think fit, direct that that amount shall be paid with interest at such rate as may be specified in the direction.

(7) Sections 85 and 87 of the Value Added Tax Act 1994 (settling of appeals by agreement and enforcement of certain decisions of tribunal) shall have effect as if— 1994 c. 23.

(a) the references to section 83 of that Act included references to paragraph 122; and

(b) the references to value added tax included references to levy.

PART XII

INFORMATION AND EVIDENCE

Provision of information

124.—(1) Every person involved (in whatever capacity) in making or receiving supplies of taxable commodities, or in any connected activities, shall provide the Commissioners with such information relating to the matters in which he is or has been involved as the Commissioners may reasonably require.

(2) Information required under sub-paragraph (1) shall be provided to the Commissioners within such period after being required, and in such form, as the Commissioners may reasonably require.

(3) Subject to sub-paragraphs (4) and (5) and to paragraph 107(5) (which relates to supplementary assessments of daily penalties), if a person fails to provide information which he is required to provide under this paragraph, he shall be liable—

(a) to a penalty of £250; and

(b) to a further penalty of £20 for every day after the last relevant date and before the day after that on which the required information is provided.

(4) Liability to a penalty specified in sub-paragraph (3) shall not arise if the person required to provide the information satisfies the Commissioners or, on appeal, an appeal tribunal—

(a) in the case of the penalty under paragraph (a) of that sub-paragraph that there is a reasonable excuse—

(i) for the initial failure to provide the required information on or before the last relevant date; and

(ii) for every subsequent failure to provide it;

and

(b) in the case of any penalty under paragraph (b) of that sub-paragraph for any day, that there is a reasonable excuse for the failure to provide the information on or before that day.

(5) Where, by reason of any failure by any person to provide information required under this paragraph—

(a) that person is convicted of an offence (whether under this Act or otherwise), or

(b) that person is assessed to a penalty under paragraph 98 (penalty for evasion),

that person shall not by reason of that failure be liable also to a penalty under this paragraph.

(6) In this paragraph "the last relevant date" means the last day of the period within which the person in question was required to provide the information.

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Records

125.—(1) The Commissioners may by regulations impose obligations to keep records on persons who are, or are required to be, registered.

(2) Regulations under this paragraph may be framed by reference to such records as may be stipulated in any notice published by the Commissioners in pursuance of the regulations and not withdrawn by a further notice.

(3) Regulations under this paragraph may—

(a) require any records kept in pursuance of the regulations to be preserved for such period, not exceeding six years, as may be specified in the regulations;

(b) authorise the Commissioners to direct that any such records need only be preserved for a shorter period than that specified in the regulations;

(c) authorise a direction to be made so as to apply generally or in such cases as the Commissioners may stipulate.

(4) Any duty under regulations under this paragraph to preserve records may be discharged by the preservation of the information contained in them by such means as the Commissioners may approve.

(5) The Commissioners may, as a condition of approving under sub-paragraph (4) any means of preserving information contained in any records, 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) Subject to sub-paragraphs (7) and (8), a person who fails to preserve any record in compliance with—

(a) any regulations under this paragraph, or

(b) any notice, direction or requirement given or imposed under such regulations,

shall be liable to a penalty of £250.

(7) A failure such as is mentioned in sub-paragraph (6) shall not give rise to any penalty under that sub-paragraph if the person required to preserve the record satisfies the Commissioners or, on appeal, an appeal tribunal that there is a reasonable excuse for the failure.

(8) Where, by reason of any such failure by any person as is mentioned in sub-paragraph (6)—

(a) that person is convicted of an offence (whether under this Act or otherwise), or

(b) that person is assessed to a penalty under paragraph 98 (penalty for evasion),

that person shall not by reason of that failure be liable also to a penalty under this paragraph.

(9) The Commissioners may if they think fit at any time modify or withdraw any approval or requirement given or imposed for the purposes of this paragraph.

Evidence of records that are required to be preserved

126.—(1) Subject to the following provisions of this paragraph, where any obligation to preserve records is discharged in accordance with paragraph 125(4), a copy of any document forming part of the records shall 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 this paragraph be admissible in evidence—

(a) in criminal proceedings in England and Wales, except in accordance with Part II of the Criminal Justice Act 1988; 1988 c. 33.

(b) in civil proceedings in Scotland, except in accordance with sections 5 and 6 of the Civil Evidence (Scotland) Act 1988; 1988 c. 32.

(c) in criminal proceedings in Scotland, except in accordance with Schedule 8 to the Criminal Procedure (Scotland) Act 1995; 1995 c. 46.

(d) in criminal proceedings in Northern Ireland, except in accordance with Part II of the Criminal Justice (Evidence, Etc.) (Northern Ireland) Order 1988. S.I. 1988/1847 (N.I. 17).

Production of documents

127.—(1) Every person involved (in whatever capacity) in making or receiving supplies of taxable commodities, or in any connected activities, shall upon demand made by an authorised person produce or cause to be produced for inspection by that person any documents relating to the matters in which he is or has been involved.

(2) Where, by virtue of sub-paragraph (1), an authorised person has power to require the production of any documents from any person—

(a) he shall have the like power to require production of the documents concerned from any other person who appears to the authorised person to be in possession of them; and

(b) the production of any document by that other person in pursuance of a requirement under this sub-paragraph shall be without prejudice to any lien claimed by that other person on that document.

(3) The documents mentioned in sub-paragraphs (1) and (2) shall be produced at such time and place as the authorised person may reasonably require.

(4) Subject to sub-paragraphs (5) and (6) and to paragraph 107(5) (which relates to supplementary assessments of daily penalties), if a person fails to produce any document which he is required to produce under this paragraph, he shall be liable—

(a) to a penalty of £250; and

(b) to a further penalty of £20 for every day after the last relevant date and before the day after that on which the document is produced.

(5) Liability to a penalty specified in sub-paragraph (4) shall not arise if the person required to produce the document in question satisfies the Commissioners or, on appeal, an appeal tribunal—

(a) in the case of the penalty under paragraph (a) of that sub-paragraph, that there is a reasonable excuse—

(i) for the initial failure to produce the document at the required time; and

(ii) for every subsequent failure to produce it;

and

(b) in the case of any penalty under paragraph (b) of that sub-paragraph for any day, that there is a reasonable excuse for the failure to produce the document on or before that day.

(6) Where, by reason of any failure by any person to provide information required under this paragraph—

(a) that person is convicted of an offence (whether under this Act or otherwise), or

(b) that person is assessed to a penalty under paragraph 98 (penalty for evasion),

that person shall not by reason of that failure be liable also to a penalty under this paragraph.

(7) In this paragraph "the last relevant date" means the last day of the period within which the person in question was required to produce the document.

Powers in relation to documents produced

128.—(1) An authorised person may take copies of, or make extracts from, any document produced under paragraph 127.

(2) If it appears to him to be necessary to do so, an authorised person may, at a reasonable time and for a reasonable period, remove any document produced under paragraph 127.

(3) An authorised person who removes any document under sub-paragraph (2) shall, if requested to do so, provide a receipt for the document so removed.

(4) Where a lien is claimed on a document produced under paragraph 127(2), the removal of the document under sub-paragraph (2) shall not be regarded as breaking the lien.

(5) Where a document removed by an authorised person under sub-paragraph (2) is reasonably required for any purpose he shall, as soon as practicable, provide a copy of the document, free of charge, to the person by whom it was produced or caused to be produced.

(6) Where any documents removed under the powers conferred by this paragraph are lost or damaged, the Commissioners shall be liable to compensate their owner for any expenses reasonably incurred by him in replacing or repairing the documents.

Entry and inspection

129. For the purpose of exercising any powers under this Schedule, an authorised person may at any reasonable time enter and inspect premises used in connection with the carrying on of a business.

Entry and search

130.—(1) Where—

(a) a justice of the peace is satisfied on information on oath that there is reasonable ground for suspecting that a fraud offence which appears to be of a serious nature is being, has been or is about to be committed on any premises or that evidence of the commission of such an offence is to be found there, or

1995 c. 46.

(b) in Scotland a justice (within the meaning of section 307 of the Criminal Procedure (Scotland) Act 1995) is satisfied by evidence on oath as mentioned in paragraph (a),

he may issue a warrant in writing authorising any authorised person to enter those premises, if necessary by force, at any time within one month from the time of the issue of the warrant and to search them.

(2) A person who enters the premises under the authority of the warrant may—

(a) take with him such other persons as appear to him to be necessary;

(b) seize and remove any such documents or other things at all found on the premises as he has reasonable cause to believe may be required as evidence for the purposes of proceedings in respect of a fraud offence which appears to him to be of a serious nature;

(c) search, or cause to be searched, any person found on the premises whom he has reasonable cause to believe to be in possession of any documents or other things which may be so required.

(3) Sub-paragraph (2) shall not authorise any person to be searched by a member of the opposite sex.

(4) The powers conferred by a warrant under this paragraph shall not be exercisable—

(a) by more than such number of authorised persons as may be specified in the warrant;

(b) outside such periods of the day as may be so specified; or

(c) if the warrant so provides, otherwise than in the presence of a constable in uniform.

(5) An authorised person seeking to exercise the powers conferred by a warrant under this paragraph or, if there is more than one such authorised person, such one of them as is in charge of the search shall provide a copy of the warrant endorsed with his name as follows—

(a) if the occupier of the premises concerned is present at the time the search is to begin, the copy shall be supplied to the occupier;

(b) if at that time the occupier is not present but a person who appears to the authorised person to be in charge of the premises is present, the copy shall be supplied to that person;

(c) if neither paragraph (a) nor paragraph (b) applies, the copy shall be left in a prominent place on the premises.

(6) In this paragraph "a fraud offence" means an offence under any of paragraphs 92 to 94.

Order for access to recorded information etc.

131.—(1) Where, on an application by an authorised person, a justice of the peace or, in Scotland, a justice (within the meaning of section 307 of the Criminal Procedure (Scotland) Act 1995) is satisfied that there are reasonable grounds for believing— 1995 c. 46.

(a) that an offence in connection with levy is being, has been or is about to be committed, and

(b) that any recorded information (including any document of any nature at all) 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 paragraph.

(2) An order under this paragraph is an order that the person who appears to the justice to be in possession of the recorded information to which the application relates shall—

(a) give an authorised person access to it, and

(b) permit an authorised person to remove and take away any of it which he reasonably considers necessary,

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) The reference in sub-paragraph (2)(a) to giving an authorised person access to the recorded information to which the application relates includes a reference to permitting the authorised person to take copies of it or to make extracts from it.

(4) Where the recorded information consists of information contained in a computer, an order under this paragraph shall have effect as an order to produce the information—

(a) in a form in which it is visible and legible; and

(b) if the authorised person wishes to remove it, in a form in which it can be removed.

(5) This paragraph is without prejudice to the preceding paragraphs of this Part of this Schedule.

Removal of documents etc.

132.—(1) An authorised person who removes anything in the exercise of a power conferred by or under paragraph 130 or 131 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 authorised person shall provide the record within a reasonable time from the making of the request for it.

(3) Subject to sub-paragraph (7), if a request for permission to be allowed access to anything which—

(a) has been removed by an authorised person, and

(b) is retained by the Commissioners for the purposes of investigating an offence,

is made to the officer in overall charge of the investigation by a person who had custody or control of the thing 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 authorised person.

(4) Subject to sub-paragraph (7), if a request for a photograph or copy of any such thing is made to the officer in overall charge of the investigation by a person who had custody or control of the thing 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 authorised person for the purpose of photographing it or copying it; or

(b) photograph or copy it, or cause it to be photographed or copied.

(5) Subject to sub-paragraph (7), where anything is photographed or copied under sub-paragraph (4)(b), the officer shall supply the photograph or copy, or cause it to 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 paragraph to allow access to anything, or to supply a photograph or copy of anything, if the officer in overall 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 thing was removed; or

(c) any criminal proceedings which may be brought as a result of the investigation of which he is in charge or any such investigation as is mentioned in paragraph (b).

(8) Any reference in this paragraph to the officer in overall charge of the investigation is a reference to the person whose name and address are endorsed on the warrant concerned as being the officer so in charge.

Enforcement of paragraph 132

133.—(1) Where, on an application made as mentioned in sub-paragraph (2), the appropriate judicial authority is satisfied that a person has failed to comply with a requirement imposed by paragraph 132, 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 sub-paragraph (1) shall not be made except—

(a) in the case of a failure to comply with any of the requirements imposed by paragraph 132(1) and (2)—

(i) by the occupier of the premises from which the thing in question was removed, or

(ii) by the person who had custody or control of it immediately before it was so removed;

(b) in any other case, by the person who had such custody or control.

(3) In this paragraph "the appropriate judicial authority" means—

(a) in England and Wales, a magistrates' court;

(b) in Scotland, the sheriff;

(c) in Northern Ireland, a court of summary jurisdiction, as defined in Article 2(2)(a) of the Magistrates' Courts (Northern Ireland) Order 1981. S.I. 1981/1675 (N.I. 26).

(4) In England and Wales and Northern Ireland, an application for an order under this paragraph shall be made by way of complaint; and sections 21 and 42(2) of the Interpretation Act (Northern Ireland) 1954 shall apply as if any reference in those provisions to any enactment included a reference to this paragraph. 1954 c. 33 (N.I.).

Power to take samples and examine meters

134.—(1) An authorised person, if it appears to him necessary for the protection of the revenue against mistake or fraud, may at any time take, from material which he has reasonable cause to believe is—

(a) a taxable commodity which is intended to be, is being or has been the subject of a taxable supply, or

(b) a product of the burning of a taxable commodity (other than electricity) which is being or has been the subject of a taxable supply,

such samples as he may require with a view to determining how the material ought to be treated, or to have been treated, for the purposes of the levy.

(2) An authorised person, if it appears to him necessary for the protection of the revenue against mistake or fraud, may at any time examine any meter which he has reasonable cause to believe is intended to be, is being or has been used for ascertaining the quantity of any taxable commodity supplied by a taxable supply.

(3) Any sample taken under sub-paragraph (1) shall be disposed of in such manner as the Commissioners may direct.

Evidence by certificate

135.—(1) In any proceedings a certificate of the Commissioners—

(a) that a person was or was not at any time registered for the purposes of the levy,

(b) that any return required by regulations made under paragraph 41 has not been made or had not been made at any time,

(c) that any levy shown as due in a return made in pursuance of regulations made under paragraph 41 has not been paid, or

(d) that any amount shown as due in any assessment made under this Schedule has not been paid,

shall be evidence or, in Scotland, sufficient evidence of that fact.

(2) A photograph of any document provided to the Commissioners for the purposes of this Schedule and certified by them to be such a photograph shall be admissible in any proceedings, whether civil or criminal, to the same extent as the document itself.

(3) In any proceedings any document purporting to be a certificate under sub-paragraph (1) or (2) shall be taken to be such a certificate unless the contrary is shown.

Inducements to provide information

136.—(1) This paragraph applies—

(a) to any criminal proceedings against a person in respect of an offence in connection with or in relation to levy; and

(b) to any proceedings against a person for the recovery of any sum due from him in connection with or in relation to levy.

(2) Statements made or documents produced or provided by or on behalf of a person shall not be inadmissible in any proceedings to which this paragraph applies by reason only that—

(a) a matter falling within sub-paragraph (3) or (4) has been drawn to that person's attention; and

(b) he was or may have been induced, as a result, to make the statements or to produce or provide the documents.

(3) The matters falling within this sub-paragraph are—

(a) that, in relation to levy, the Commissioners may assess an amount due by way of a civil penalty instead of instituting criminal proceedings;

(b) that it is the practice of the Commissioners (without giving any undertaking as to whether they will make such an assessment in any case) to be influenced by whether a person—

(i) has made a full confession of any dishonest conduct to which he has been a party; and

(ii) has otherwise co-operated to the full with any investigation.

(4) The matter falling within this sub-paragraph is the fact that the Commissioners or, on appeal, an appeal tribunal have power under any provision of this Schedule to reduce a penalty.

Disclosure of information

137.—(1) Notwithstanding any obligation not to disclose information that would otherwise apply, but subject to sub-paragraph (2), the Commissioners may disclose any information obtained or held by them in or in connection with the carrying out of their functions in relation to the levy to any of the following—

(a) any Minister of the Crown;

(b) the Scottish Ministers;

1998 c. 47.

(c) any Minister, within the meaning of the Northern Ireland Act 1998, or any Northern Ireland department;

(d) the National Assembly for Wales;

(e) the Environment Agency;

(f) the Scottish Environment Protection Agency;

(g) the Gas and Electricity Markets Authority;

(h) the Director General of Electricity Supply for Northern Ireland;

(i) the Director General of Gas for Northern Ireland;

(j) an authorised officer of any person mentioned in paragraphs (a) to (i).

(2) Information shall not be disclosed under sub-paragraph (1) except for the purpose of assisting a person falling within paragraphs (a) to (j) of that sub-paragraph in the performance of his duties.

(3) Notwithstanding any such obligation as is mentioned in sub-paragraph (1), any person mentioned in sub-paragraph (1)(a) to (j) may disclose information—

(a) to the Commissioners, or

(b) to an authorised officer of the Commissioners,

for the purpose of assisting the Commissioners in the performance of duties in relation to the levy.

(4) Information that has been disclosed to a person by virtue of this paragraph shall not be disclosed by him except—

(a) to another person to whom (instead of him) disclosure could by virtue of this paragraph have been made; or

(b) for the purpose of any proceedings connected with the operation of any provision made by or under any enactment relating to the environment or to levy.

(5) References in the preceding provisions of this paragraph to an authorised officer of any person ("the principal") are to any person who has been designated by the principal as a person to and by whom information may be disclosed by virtue of this paragraph.

(6) Where the principal is a person falling within any of paragraphs (a) to (c) of sub-paragraph (1), the principal shall notify the Commissioners in writing of the name of any person designated by the principal for the purposes of this paragraph.

(7) No charge may be made for any disclosure made by virtue of this paragraph.

(8) In this paragraph "enactment" includes an enactment contained in an Act of the Scottish Parliament or in any Northern Ireland legislation.

Meaning of "authorised person"

138. In this Part of this Schedule "authorised person" means any person acting under the authority of the Commissioners.

PART XIII

MISCELLANEOUS AND SUPPLEMENTARY

Security for levy

139.—(1) Where it appears to the Commissioners necessary to do so for the protection of the revenue they may require any person who is or is required to be registered for the purposes of the levy to give security, or further security, for the payment of any levy which is or may become due from him.

(2) The power of the Commissioners to require any security, or further security, under this paragraph shall be a power to require security, or further security, of such amount and in such manner as they may determine.

(3) A person who is liable to account for the levy on a taxable supply that he makes is guilty of an offence if, at the time the supply is made—

(a) he has been required to give security under this paragraph, and

(b) he has not complied with that requirement.

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(4) A person who is liable to account for the levy on a taxable supply that another person makes to him is guilty of an offence if he makes any arrangements for the making of the supply at a time when—

(a) he has been required to give security under this paragraph, and

(b) he has not complied with that requirement.

(5) A person guilty of an offence under this paragraph shall be liable, on summary conviction, to a penalty of level 5 on the standard scale.

1979 c. 2.

(6) Sections 145 to 155 of the Customs and Excise Management Act 1979 (proceedings for offences, mitigation of penalties and certain other matters) shall apply in relation to an offence under this paragraph as they apply in relation to offences and penalties under the customs and excise Acts.

Destination of receipts

140. All money and securities for money collected or received for or on account of levy shall—

(a) if collected or received in Great Britain, be placed to the general account of the Commissioners kept at the Bank of England under section 17 of the Customs and Excise Management Act 1979; and

(b) if collected or received in Northern Ireland, be paid into the Consolidated Fund of the United Kingdom in such manner as the Treasury may direct.

Provisional collection of levy

141.—(1) Where—

1968 c. 2.

(a) by virtue of a resolution having effect under the Provisional Collection of Taxes Act 1968 (which is amended by Schedule 7 to this Act so as to apply in relation to levy), levy has been paid at a rate specified in the resolution on a supply of a taxable commodity, and

(b) by virtue of section 1(6) or (7) or 5(3) of that Act, any of the levy paid is repayable in consequence of the restoration in relation to the supply of a lower rate,

the amount repayable shall be the difference between the levy paid on the supply at the rate specified in the resolution and the levy that would have been payable on a supply of the same quantity of the commodity at the lower rate.

(2) Where—

(a) by virtue of a resolution having effect under that Act, levy is chargeable at a rate specified in the resolution on a supply of a taxable commodity, but

(b) before the levy is paid it ceases to be chargeable at that rate in consequence of the restoration in relation to the supply of a lower rate,

the levy chargeable at the lower rate shall be charged by reference to the same quantity of the commodity as that by reference to which levy would have been chargeable at the rate specified in the resolution.

Adjustment of contracts

142.—(1) Sub-paragraph (2) applies in the case of a contract for the supply of a taxable commodity if—

(a) the contract is entered into before 1st April 2001 (whether before or after the passing of this Act) or at a time when supplies such as are provided for by the contract are not taxable supplies, but

(b) supplies falling to be made under the contract will be, or become or will become, taxable supplies.

(2) The supplier of the commodity may unilaterally vary the contract by adjusting the price chargeable for any supply made under the contract if he does so for the purpose of passing on, to the person liable to pay for the supply, the burden (or any part of the burden) of the levy for which the supplier is liable to account on the supply.

(3) Sub-paragraph (4) applies in the case of a contract for the supply of a taxable commodity if it provides (whether as a result of a variation under sub-paragraph (2) or otherwise) for the passing on, to the person liable to pay for the supply, of the burden (or any part of the burden) of any levy for which the supplier is liable to account on the supply.

(4) The supplier of the commodity may unilaterally vary the contract by adjusting the price chargeable for any supply made under the contract if he does so for the purpose of giving effect (to any extent) to—

(a) any change in the rate at which levy is charged on the supply;

(b) levy ceasing to be chargeable on the supply.

(5) The powers conferred by this paragraph are in addition to any contractual powers.

Climate change levy accounting documents

143.—(1) Provision may be made by regulations requiring registered persons who make taxable supplies—

(a) in prescribed cases, or

(b) to persons of prescribed descriptions,

to provide the persons supplied with climate change levy accounting documents.

(2) For the purposes of this Schedule a "climate change levy accounting document" for a taxable supply is an invoice—

(a) stating that it is a climate change levy accounting document (for which purpose the inclusion of the phrase "climate change levy accounting document" or the phrase "CCL accounting document", whether as shown here or with any of the letters shown here as small letters appearing as capitals, shall be sufficient),

(b) stating the date on which it is issued, and

(c) containing the required statements.

(3) For the purposes of sub-paragraph (2)(c) "the required statements" means—

(a) in the case of a climate change levy accounting document issued under paragraph 27, the statements required by paragraph 27(5);

(b) in the case of a climate change levy accounting document whose provision is required by regulations, statements of prescribed particulars of or relating to—

(i) the supply,

(ii) the persons by and to whom the supply is made, and

(iii) the levy chargeable.

(4) Where regulations make provision requiring a climate change levy accounting document to be provided in connection with any description of supply, regulations may make provision for—

(a) requiring the accounting document to be provided within a prescribed time after, or at a prescribed time before, the supply is treated as taking place;

(b) allowing an accounting document to be provided later than required by the regulations where it is provided in accordance with general or special directions given by the Commissioners.

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(5) Regulations may make provision conferring power on the Commissioners to allow the requirements of any regulations as to the statements to be contained in a climate change levy accounting document to be relaxed or dispensed with.

(6) Regulations may make provision for allowing a climate change levy accounting document required to be issued under paragraph 27 to be issued later than the time applicable under paragraph 27(2) where it is issued in accordance with general or special directions given by the Commissioners.

(7) In this paragraph "regulations" means regulations made by the Commissioners.

Service of notices etc.

144.—(1) Any notice, notification or requirement that is to be or may be served on, given to or imposed on any person for the purposes of any provision made by or under this Schedule may be served, given or imposed by sending it to that person or his tax representative by post in a letter addressed to that person or his representative at the latest or usual residence or place of business of that person or representative.

(2) Any direction required or authorised by or under this Schedule to be given by the Commissioners may be given by sending it by post in a letter addressed to each person affected by it at his latest or usual residence or place of business.

Variation and withdrawal of directions etc.

145. Any direction, notice or notification required or authorised by or under this Schedule to be given by the Commissioners may be withdrawn or varied by them by a direction, notice or notification given in the same manner as the one withdrawn or varied.

Regulations and orders

146.—(1) Any power under this Schedule to make regulations shall be exercisable by statutory instrument.

(2) A statutory instrument that—

(a) contains regulations made under this Schedule, and

(b) is not subject to a requirement that a draft of the instrument be laid before Parliament and approved by a resolution of the House of Commons,

shall be subject to annulment in pursuance of a resolution of the House of Commons.

(3) A statutory instrument that contains (whether alone or with other provisions) regulations under paragraph 3(3), 14(3), 15(4)(a), 16, 18(2), 52, 113(1), 148(4), 149 or 151(2) (regulations made by the Treasury) shall not be made unless a draft of the statutory instrument containing the regulations has been laid before Parliament and approved by a resolution of the House of Commons.

(4) Where regulations under this Schedule made by the Commissioners impose a relevant requirement on any person, they may provide that if the person fails to comply with the requirement he shall be liable, subject to sub-paragraph (5), to a penalty of £250.

(5) Where by reason of any conduct—

(a) a person is convicted of an offence (whether under this Act or otherwise), or

(b) a person is assessed to a penalty under paragraph 98,

that person shall not by reason of that conduct be liable also to a penalty under any regulations under this Schedule.

(6) In sub-paragraph (4) "relevant requirement" means any requirement other than one the penalty for a contravention of which is specified in paragraph 41(3), 114(3) or 125(6).

(7) A power under this Schedule to make any provision by regulations—

(a) may be exercised so as to apply the provision only in such cases as may be described in the regulations;

(b) may be exercised so as to make different provision for different cases or descriptions of case; and

(c) shall include power by the regulations to make such supplementary, incidental, consequential or transitional provision as the authority making the regulations may think fit.

PART XIV

INTERPRETATION

General

147. In this Schedule—

"accounting period" means a period which, in pursuance of any regulations under paragraph 41, is an accounting period for the purposes of the levy;

"agreement" includes any arrangement or understanding (whether or not legally enforceable), and cognate expressions shall be construed accordingly;

"appeal tribunal" means a VAT and duties tribunal;

"auto-generator" has the meaning given by paragraph 152;

"climate change agreement" has the meaning given by paragraph 46;

"climate change levy accounting document" has the meaning given by paragraph 143(2);

"combined heat and power station" has the meaning given by paragraph 148(1);

"the Commissioners" means the Commissioners of Customs and Excise;

"conduct" includes acts and omissions;

"electricity utility" has the meaning given by paragraph 150(2) (but see paragraph 150(4));

"fully exempt combined heat and power station" has the meaning given by paragraph 148(2);

"gas utility" has the meaning given by paragraph 150(3) (but see paragraph 150(4));

"half-rate supply" has the meaning given by paragraph 43(1);

"member", in relation to a group, shall be construed in accordance with regulations under paragraph 116;

"non-resident taxpayer" means a person who—

(a) is or is required to be registered for the purposes of the levy, and

(b) is not resident in the United Kingdom;

"partly exempt combined heat and power station" has the meaning given by paragraph 148(3);

"prescribed" (except in paragraphs 14(3), 16(3) and 148(4)) means prescribed by regulations made by the Commissioners under this Schedule;

"produced"—

(a) in relation to electricity, means generated, and

(b) in relation to any other commodity, includes extracted;

"reduced-rate supply" has the meaning given by paragraph 44(3) (which, by virtue of paragraph 44(4), has effect subject to paragraph 45);

"registered" means registered in the register maintained under paragraph 53(2);

"representative member", in relation to a group, shall be construed in accordance with regulations under paragraph 116;

"resident in the United Kingdom" has the meaning given by paragraph 156;

"ship" includes hovercraft;

"special utility scheme" has the meaning given by paragraph 29(1);

1978 c. 30. "subordinate legislation" has the same meaning as in the Interpretation Act 1978;

"supply for charity use" shall be construed in accordance with paragraph 8;

"supply for domestic use" shall be construed in accordance with paragraphs 8 and 9;

"tax credit" means a tax credit for which provision is made by tax credit regulations;

"tax credit regulations" means regulations under paragraph 62;

"tax representative", in relation to any person, means the person who, in accordance with any regulations under paragraph 114, is for the time being that person's tax representative for the purposes of the levy;

"taxable commodity" shall be construed in accordance with paragraph 3;

"taxable supply" shall be construed in accordance with paragraphs 2(2) and 4;

"the United Kingdom" includes the territorial waters adjacent to any part of the United Kingdom;

"utility" has the meaning given by paragraph 150(1).

Meaning of "combined heat and power station" etc.

148.—(1) In this Schedule "combined heat and power station" means a station producing electricity or motive power that is (or may be) operated for purposes including the supply to any premises of—

(a) heat produced in association with electricity or motive power, or

(b) steam produced from, or air or water heated by, such heat.

(2) In this Schedule "fully exempt combined heat and power station" means a combined heat and power station in respect of which there is in force a certificate (a "full-exemption certificate")—

(a) given by the Secretary of State,

(b) stating that the station is a fully exempt combined heat and power station for the purposes of the levy, and

(c) complying with sub-paragraph (6) and (so far as applicable) any provision made by regulations under sub-paragraph (10).

(3) In this Schedule "partly exempt combined heat and power station" means a combined heat and power station in respect of which there is in force a certificate (a "part-exemption certificate")—

(a) given by the Secretary of State,

(b) stating that the station is a partly exempt combined heat and power station for the purposes of the levy, and

(c) complying with sub-paragraph (6) and (so far as applicable) any provision made by regulations under sub-paragraph (10).

(4) The Secretary of State shall give a full-exemption certificate in respect of a combined heat and power station where—

(a) an application is made for a certificate under this paragraph in respect of the station, and

(b) it appears to him that such conditions as may be prescribed are satisfied in relation to the station.

For this purpose "prescribed" means prescribed by regulations made by the Treasury.

(5) The Secretary of State shall give a part-exemption certificate in respect of a combined heat and power station where—

(a) an application is made for a certificate under this paragraph in respect of the station, and

(b) his decision on the application is to refuse to give a full-exemption certificate.

(6) A full-exemption or part-exemption certificate given in respect of a combined heat and power station shall state the percentage that, for the purposes of paragraph 15, is the efficiency percentage for the station determined in accordance with any regulations under paragraph 149.

(7) In prescribing conditions under sub-paragraph (4), the Treasury must have regard to the object of securing that a combined heat and power station will only be a fully exempt combined heat and power station for the purposes of this Schedule if it is one in which electricity or motive power is produced concurrently with heat in a manner that makes efficient use of the commodities used in their production.

(8) A condition prescribed under sub-paragraph (4) may, in particular, relate to any of the following—

(a) a station's outputs;

(b) the commodities used in the production of such outputs;

(c) the methods of producing such outputs;

(d) the efficiency with which such outputs are produced.

(9) For the purposes of sub-paragraph (8), a station's "outputs" are any electricity or motive power produced in the station and any of the following supplied from the station, namely—

(a) heat or steam, or

(b) air, or water, that has been heated or cooled.

(10) The Secretary of State may by regulations make provision for or about—

(a) certificates under this paragraph;

(b) applications for such certificates;

(c) the information that is to accompany such applications.

(11) The provision that may be made by virtue of sub-paragraph (10)(a) includes in particular—

(a) provision in respect of the periods for which certificates under this paragraph are to be in force;

(b) provision for the (non-retrospective) variation or revocation of such certificates.

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Determination of efficiency percentages for combined heat and power stations

149.—(1) The Treasury may by regulations make provision for determining the percentage that is to be stated in a certificate under paragraph 148 as the efficiency percentage for a combined heat and power station.

(2) Regulations under this paragraph may, in particular, include—

(a) provision in respect of methods of calculating efficiency percentages;

(b) provision in respect of the measurements and data to be used in calculating such percentages;

(c) provision in respect of the procedures for determining such percentages;

(d) provision in respect of verifying—

(i) calculations by which such percentages are produced, and

(ii) measurements and data used in such calculations;

(e) provision that, so far as framed by reference to any document, is framed by reference to that document as from time to time in force.

(3) In making provision under this paragraph, the Treasury must have regard to the object of securing that the efficiency percentage for a combined heat and power station is (save for any appropriate adjustments) a percentage that reflects a fair assessment of the efficiency with which commodities are transformed in the station into electricity or motive power.

Meaning of "utility"

150.—(1) In this Schedule "utility" means an electricity utility or a gas utility.

(2) In this Schedule "electricity utility" means the holder of—

1989 c. 29. (a) a licence under section 6(1)(d) of the Electricity Act 1989 (supply licences), or

S.I. 1992/231 (N.I. 1). (b) a licence under Article 10(1)(c) or (2) of the Electricity Supply (Northern Ireland) Order 1992,

except where the holder is acting otherwise than for purposes connected with the carrying on of activities authorised by the licence.

Until the coming into force of the substitution for section 6 of the Electricity 2000 c. 27. Act 1989 provided for by the Utilities Act 2000, paragraph (a) above shall have effect as if the reference to section 6(1)(d) were to section 6(1)(c) or (2).

(3) In this Schedule "gas utility" means the holder of—

1986 c. 44. (a) a licence under section 7A(1) of the Gas Act 1986 (supply licences), or

S.I. 1996/275 (N.I. 2). (b) a licence under Article 8(1)(c) of the Gas (Northern Ireland) Order 1996,

except where the holder is acting otherwise than for purposes connected with the carrying on of activities authorised by the licence.

(4) Sub-paragraphs (1) to (3) have effect subject to—

(a) any direction under paragraph 151(1), and

(b) any regulations under paragraph 151(2).

Person treated as, or as not being, a utility

151.—(1) The Commissioners may by direction (a "utility direction") make, in respect of a person (or persons) specified in the direction, provision authorised by sub-paragraph (3).

(2) The Treasury may by regulations ("utility regulations") make, in respect of any person of a description specified in the regulations, provision authorised by sub-paragraph (3).

(3) The provision authorised by this sub-paragraph is provision for—

(a) a person who is an unregulated electricity supplier to be treated for levy purposes as being an electricity utility;

(b) a person who is an unregulated gas supplier to be treated for levy purposes as being a gas utility;

(c) a person who is an electricity utility to be treated for levy purposes as not being an electricity utility;

(d) a person who is a gas utility to be treated for levy purposes as not being a gas utility.

(4) References in sub-paragraph (3) to provision for a person to be treated in a particular way for "levy purposes" are to provision for him to be treated in that way for—

(a) the purposes of this Schedule, or

(b) such of those purposes as are specified in the direction or regulations by which the provision is made.

(5) The power to make any provision by a utility direction or utility regulations may be exercised so that the provision applies in relation to a person only to an extent specified in, or determined under, the direction or regulations.

(6) A utility direction cannot take effect until it has been—

(a) given by the Commissioners to each person in respect of whom it makes provision, and

(b) published by the Commissioners.

(7) Paragraph 146(7)(b) and (c) applies to the power to make provision by a utility direction as to a power to make provision by regulations.

(8) In this paragraph—

"unregulated electricity supplier" means a person who—

(a) makes supplies of electricity, and

(b) is not an electricity utility;

"unregulated gas supplier" means a person who—

(a) makes supplies of gas that is in a gaseous state and is of a kind supplied by a gas utility, and

(b) is not a gas utility.

Meaning of "auto-generator"

152.—(1) In this Schedule "auto-generator" means a person who produces electricity if the electricity that he produces is primarily for his own consumption.

(2) The Commissioners may by regulations specify requirements to be fulfilled before the electricity that a person produces is, for the purposes of sub-paragraph (1), to be taken as produced primarily for his own consumption.

(3) For the purposes of this paragraph, electricity is for a person's own consumption if it is for consumption by him or a person connected with him within the meaning of section 839 of the Taxes Act 1988.

Meaning of "levy due for an accounting period"

153. References in this Schedule, in relation to any accounting period, to levy due from any person for that period are references (subject to any regulations made by virtue of paragraph 41(2)(a)) to the levy for which that person is required, in accordance with regulations under paragraph 41, to account by reference to that period.

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Meaning of "repayment of levy"

154. References in this Schedule to a repayment of levy or of an amount of levy are references to any repayment of an amount to any person by virtue of—

(a) any tax credit regulations; or

(b) paragraph 63, 87(3) or 110(3).

Interpretation of "in the course or furtherance of a business"

155.—(1) Anything done in connection with the termination or intended termination of a business shall, for the purposes of this Schedule, be treated as being done in the course or furtherance of the business.

(2) Where in a disposition of a business as a going concern, or of its assets (whether or not in connection with its reorganisation or winding up), there is a supply of a taxable commodity, that supply shall for the purposes of this Schedule be taken to be made in the course or furtherance of the business.

Meaning of "resident in the United Kingdom"

156. For the purposes of this Schedule a person is resident in the United Kingdom at any time if, at that time—

(a) that person has an established place of business in the United Kingdom;

(b) that person has a usual place of residence in the United Kingdom; or

(c) that person is a firm or unincorporated body which (without having a relevant connection with the United Kingdom by virtue of paragraph (a)) has amongst its partners or members at least one individual with a usual place of residence in the United Kingdom.

References to the Gas and Electricity Markets Authority: transitional provision

157.—(1) Until such time as a transfer of functions from the Director General of Electricity Supply to the Gas and Electricity Markets Authority ("the Authority") has taken effect, references in paragraph 19 to the Authority shall be taken to be references to the Director General.

(2) Until such time as all the functions of the Director General of Electricity Supply have been transferred in accordance with the Utilities Act 2000 (transfer to the Authority) or abolished, references to the Authority in paragraph 137 shall be taken to include the Director General.

2000 c. 27.

(3) Until such time as all the functions of the Director General of Gas Supply have been transferred in accordance with the Utilities Act 2000 (transfer to the Authority) or abolished, references to the Authority in paragraph 137 shall be taken to include the Director General.

(4) The power conferred by paragraph 146(7) includes, in particular, power for regulations under paragraph 19 to make transitional provision in connection with the transfer of functions from the Director General of Electricity Supply to the Authority.

Section 30.

SCHEDULE 7

CLIMATE CHANGE LEVY: CONSEQUENTIAL AMENDMENTS

Provisional Collection of Taxes Act 1968 (c.2)

1. In section 1(1) of the Provisional Collection of Taxes Act 1968 (taxes in relation to which resolutions may have temporary statutory effect), after "value added tax" there shall be inserted ", climate change levy,".

Bankruptcy (Scotland) Act 1985 (c.66)

2.—(1) In paragraph 2 of Schedule 3 to the Bankruptcy (Scotland) Act 1985 (tax liabilities that are preferred debts), after sub-paragraph (1B) insert—

"(1C) Any climate change levy which is referable to the period of six months next before the relevant date."

(2) In that Schedule, after paragraph 8B insert—

"Periods to which climate change levy referable

8C.—(1) For the purpose of paragraph 2(1C) of Part I of this Schedule—

(a) where the whole of the accounting period to which any climate change levy is attributable falls within the period of six months next before the relevant date ('the relevant period'), the whole amount of that levy shall be referable to the relevant period; and

(b) in any other case the amount of any climate change levy which shall be referable to the relevant period shall be the proportion of the levy which is equal to such proportion (if any) of the accounting period in question as falls within the relevant period.

(2) In sub-paragraph (1) 'accounting period' shall be construed in accordance with Schedule 6 to the Finance Act 2000."

Insolvency Act 1986 (c.45)

3.—(1) In the Insolvency Act 1986—

(a) in section 386(1) (preferential debts), after "landfill tax," insert "climate change levy,"; and

(b) in Schedule 6 (categories of preferential debts), after paragraph 3B insert the paragraph set out in sub-paragraph (2).

(2) That paragraph is as follows—

"3C. Any climate change levy which is referable to the period of 6 months next before the relevant date (which period is referred to below as 'the 6-month period').

For the purposes of this paragraph—

(a) where the whole of the accounting period to which any climate change levy is attributable falls within the 6-month period, the whole amount of that levy is referable to that period; and

(b) in any other case the amount of any climate change levy which is referable to the 6-month period is the proportion of the levy which is equal to such proportion (if any) of the accounting period in question as falls within the 6-month period;

and references here to accounting periods shall be construed in accordance with Schedule 6 to the Finance Act 2000."

Income and Corporation Taxes Act 1988 (c.1)

4. In section 827 of the Taxes Act 1988 (no deduction for penalties etc.), the following subsection shall be inserted after subsection (1C)—

"(1D) Where a person is liable to make a payment by way of—

(a) any penalty under any provision of Schedule 6 to the Finance Act 2000 (climate change levy),

(b) interest under paragraph 70 of that Schedule (interest on recoverable overpayments etc.),

(c) interest under any of paragraphs 81 to 85 of that Schedule (interest on climate change levy due and on interest), or

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(d) interest under paragraph 109 of that Schedule (interest on penalties),

the payment shall not be allowed as a deduction in computing any income, profits or losses for any tax purposes."

Insolvency (Northern Ireland) Order 1989 (N.I. 19)

S.I. 1989/2405.

5.—(1) In the Insolvency (Northern Ireland) Order 1989—

(a) in Article 346(1) (preferential debts), after "landfill tax," insert "climate change levy,"; and

(b) in Schedule 4 (categories of preferential debts), after paragraph 3B insert the paragraph set out in sub-paragraph (2).

(2) That paragraph is as follows—

"3C. Any climate change levy which is referable to the period of 6 months next before the relevant date (which period is referred to below as 'the 6-month period').

For the purposes of this paragraph—

(a) where the whole of the accounting period to which any climate change levy is attributable falls within the 6-month period, the whole amount of that levy is referable to that period; and

(b) in any other case the amount of any climate change levy which is referable to the 6-month period is the proportion of the levy which is equal to such proportion (if any) of the accounting period in question as falls within the 6-month period;

and references here to accounting periods shall be construed in accordance with Schedule 6 to the Finance Act 2000."

Finance Act 1996 (c.8)

6. In section 197(2) of the Finance Act 1996 (enactments for which interest rates are set under section 197), after paragraph (f) there shall be inserted—

"(g) the following provisions of Schedule 6 to the Finance Act 2000 (interest payable to or by the Commissioners in connection with climate change levy), that is to say, paragraphs 41(2)(f), 62(3)(f), 66, 70(1)(b) and 81(3)."

Finance Act 1997 (c.16)

7.—(1) The Finance Act 1997 is amended as follows.

(2) In section 51(5) (indirect taxes in respect of which the Commissioners may make regulations about enforcement by distress), after paragraph (e) insert—

"(f) climate change levy."

(3) In section 52(5) (enforcement in Scotland of indirect taxes by diligence), after paragraph (e) insert—

"(f) climate change levy."

(4) Sub-paragraph (3) extends only to Scotland.

SCHEDULE 8

Section 47.

EMPLOYEE SHARE OWNERSHIP PLANS

PART I

INTRODUCTORY

Employee share ownership plans

1.—(1) In this Schedule an "employee share ownership plan" means a plan established by a company providing—

(a) for shares ("free shares") to be appropriated to employees without payment, or

(b) for shares ("partnership shares") to be acquired on behalf of employees out of sums deducted from their salary.

(2) A plan that provides for partnership shares may also provide for shares ("matching shares") to be appropriated without payment to employees in proportion to the partnership shares acquired by them.

(3) Where a plan contains provision for all, or more than one, of the kinds of shares mentioned in sub-paragraphs (1) and (2), it may leave it for the company to decide when the provisions relating to each kind of share are to have effect.

(4) In this Schedule, in relation to an employee share ownership plan "the company" means the company which established the plan.

Group plans

2.—(1) An employee share ownership plan established by a company that controls other companies (a "parent company") may extend to all or any of those other companies.

In this Schedule a plan established by a parent company which so extends is referred to as a "group plan".

(2) In relation to a group plan a "participating company" means the parent company or any other company to which for the time being the plan is expressed to extend.

Meaning of "award of shares", "participant" etc.

3.—(1) For the purposes of this Schedule an award of shares is made under a plan on each occasion when in accordance with the plan—

(a) matching or free shares are appropriated to employees, or

(b) partnership shares are acquired on behalf of employees.

(2) For the purposes of this Schedule an individual participates in an award of free, matching or partnership shares under the plan if shares ("the individual award") included in that award are—

(a) in the case of an award of free or matching shares, appropriated to him, or

(b) in the case of an award of partnership shares, acquired on his behalf,

and references to shares awarded to an individual are to free or matching shares appropriated to him, or partnership shares acquired on his behalf, under the plan.

(3) In this Schedule "participant", in relation to a plan, means an individual to whom shares have been awarded under the plan.

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Application for approval

4.—(1) Where an employee share ownership plan has been established, on the application of the company the Inland Revenue shall approve the plan if they are satisfied that it meets the requirements of this Schedule.

(2) An application for approval must contain such particulars and be supported by such evidence as the Inland Revenue may require.

Appeal against refusal of approval

5.—(1) If the Inland Revenue refuse to approve the plan, the company may appeal to the Special Commissioners.

(2) Notice of appeal must be given to the Inland Revenue within 30 days after their decision was notified to the company.

(3) If the Special Commissioners allow the appeal they may direct the Inland Revenue to approve the plan with effect from such date (but not earlier than the application for approval) as the Commissioners may specify.

PART II

GENERAL REQUIREMENTS

Introduction

6. The plan must meet the requirements of—

paragraph 7 (the purpose of plan);

paragraph 8 (all-employee nature of plan);

paragraph 9 (participation on same terms);

paragraph 10 (no preferential treatment for directors, etc.);

paragraph 11 (no further conditions);

paragraph 12 (no loan arrangements).

The purpose of the plan

7.—(1) The purpose of the plan must be to provide benefits to employees in the nature of shares in a company which give them a continuing stake in that company.

(2) The plan must not contain, and the operation of the plan must not involve, features which are neither essential nor reasonably incidental to that purpose.

All-employee nature of plan

8.—(1) The plan must provide that every employee who—

(a) meets the requirements mentioned in Part III (eligibility of individuals) in relation to an award of shares under the plan, and

(b) is chargeable to tax under Case I of Schedule E in respect of the employment by reference to which he satisfies the condition in paragraph 14 (the employment requirement),

is eligible to participate in the award, and invited to do so.

(2) The plan must not contain any feature which has or would have the effect of discouraging any description of employees within sub-paragraph (1) from participating in an award of shares under the plan.

This does not apply to any provision required or authorised by this Schedule.

(3) The plan may provide that an employee who—

(a) meets the requirements mentioned in Part III (eligibility of individuals) in relation to an award of shares under the plan, but

(b) is not chargeable to tax as mentioned in sub-paragraph (1)(b),

is eligible to participate in the award, and may be invited to do so.

(4) For the purposes of this Schedule an individual is a "qualifying employee", in relation to an award of shares, if—

(a) he is eligible to participate in the award, and

(b) either—

(i) he must be invited to participate in the award (see sub-paragraph (1)), or

(ii) under the plan he may be invited to participate in the award (see sub-paragraph (3)) and has been so invited.

Participation on same terms

9.—(1) The requirement of this paragraph is—

(a) that every employee who is invited to participate in an award must be invited to participate on the same terms, and

(b) that those who do participate must actually do so on the same terms.

(2) The requirement of this paragraph is infringed by the awarding of free shares by reference to factors other than those mentioned in sub-paragraph (3).

(3) The requirement of this paragraph is not infringed by the awarding of free shares by reference to an employee's—

(a) remuneration,

(b) length of service, or

(c) hours worked.

This is subject to sub-paragraph (4).

(4) Where the awarding of free shares is by reference to more than one of the factors mentioned in sub-paragraph (3) the requirement of this paragraph is infringed unless—

(a) each factor gives rise to a separate entitlement related to the level of remuneration, length of service or (as the case may be) hours worked, and

(b) the total entitlement is the sum of those separate entitlements.

(5) In the case of an award of free shares which provides for performance allowances, this paragraph has effect as provided in paragraph 29 (performance allowances: method one) or, as the case may be, paragraph 30 (performance allowances: method two).

For this purpose "performance allowance" has the meaning given in paragraph 25(1).

No preferential treatment for directors etc.

10.—(1) The first requirement of this paragraph is that no feature of the plan must have or be likely to have the effect of conferring benefits wholly or mainly—

(a) on directors, or

(b) on employees receiving higher levels of remuneration.

(2) The second requirement of this paragraph is that in the case of a plan established by a company that is a member of a group, the identity of the company (or, if it is a group plan, the participating companies) must not be such that the plan has or is likely to have the effect of conferring benefits wholly or mainly—

(a) on employees of companies that are members of the group who receive higher levels of remuneration, or

(b) on directors of such companies.

(3) This paragraph is subject to paragraph 9(3) (award of shares by reference to remuneration etc.).

No further conditions

11. No conditions, other than those required or permitted by this Schedule, may be imposed on an employee's participation in an award of shares under the plan.

No loan arrangements

12.—(1) The arrangements for the plan must not make any provision, or be in any way associated with any provision made, for loans to some or all of the employees of—

(a) the company, or

(b) in the case of a group plan, any participating company,

and the operation of the plan must not be in any way associated with such loans.

(2) For the purposes of sub-paragraph (1) "arrangements" includes any scheme, agreement, undertaking or understanding, whether or not legally enforceable.

PART III

ELIGIBILITY OF INDIVIDUALS

Introduction

13.—(1) The plan must provide that an individual may only participate in an award of shares if—

(a) in the case of free shares, he is eligible to participate in the award at the time it is made, and

(b) in the case of partnership or matching shares—

(i) if there is no accumulation period, he is eligible to participate in the award at the time the partnership share money relating to the award is deducted, and

(ii) if there is an accumulation period, he is eligible to participate in the award at the time of the first deduction of partnership share money relating to the award.

(2) For the purposes of sub-paragraph (1), in the case of an award of matching shares the deduction of partnership share money "relating" to the award is the deduction relating to the award of partnership shares to which the matching shares relate.

(3) An individual is eligible to participate in an award of shares under the plan if and only if—

(a) the requirements of the plan are met as to—

(i) employment (see paragraph 14),

(ii) no material interest (see paragraph 15), and

(iii) not participating in other schemes (see paragraph 16), and

(b) in a case where the individual is not within paragraph 8(1) (employees who must be invited to participate in the award), any further eligibility requirements of the plan are met.

The employment requirement

14.—(1) The plan must provide that an individual is not eligible to participate in an award of shares unless—

(a) he is an employee of the company or, in the case of a group plan, of a participating company, and

(b) where the plan provides for a qualifying period, he has at all times during that period been an employee—

(i) of the company, or

(ii) in the case of a group plan, of a company that is a participating company at the end of that period.

(2) If the plan provides for a qualifying period, that period must be—

(a) in the case of free shares, a period of not more than 18 months ending with the date on which the award is made,

(b) in the case of partnership or matching shares—

(i) if the plan does not provide for an accumulation period, a period of not more than 18 months ending with the deduction of partnership share money relating to the award, and

(ii) if the plan provides for an accumulation period, a period of not more than six months ending with the start of the accumulation period relating to the award.

(3) For the purposes of sub-paragraph (2), in the case of an award of matching shares the deduction of partnership share money or accumulation period "relating" to the award is the deduction or period relating to the award of partnership shares to which the matching shares relate.

(4) In relation to an award, the same qualifying period must apply in relation to all employees of the company or, in the case of a group plan, of the participating companies.

(5) Subject to sub-paragraphs (2) and (4), the plan may authorise the company to specify different qualifying periods in respect of different awards of shares.

The "no material interest" requirement

15.—(1) The plan must provide that an individual is not eligible to participate in an award of shares if he has, or has within the preceding twelve months had, a material interest in—

(a) a close company whose shares may be awarded under the plan, or

(b) a company which has control of such a company or is a member of a consortium which owns such a company.

(2) For the purposes of this paragraph an individual is regarded as having a material interest in a company if—

(a) the individual,

(b) the individual together with one or more associates of his, or

(c) any associate of the individual's, with or without any other such associates,

has a material interest in the company.

(3) This paragraph is supplemented—

(a) as regards the meaning of "material interest", by paragraphs 17 to 19, and

(b) as regards the meaning of "associate", by paragraph 20 (read with paragraphs 21 and 22).

SCH. 8

The requirement of non-participation in other relevant share schemes

16.—(1) The plan must provide that an individual is not to participate in an award of free shares under the plan in a tax year if in that year—

(a) shares have been (or are at the same time to be) appropriated to him in accordance with an approved profit sharing scheme established by the company or a connected company, or

(b) he has participated (or is at the same time to participate) in another employee share ownership plan established by the company or a connected company and approved under this Schedule.

(2) The plan must provide that an individual is not eligible to participate in an award of partnership or matching shares under the plan in any tax year if, in that year, he has participated (or at the same time participates) in an award of shares under another employee share ownership plan established by the company or a connected company and approved under this Schedule.

(3) For the purposes of this paragraph an individual is treated as having participated in an award of free shares under an employee share ownership plan if he would have participated in that award but for his failure to obtain a performance allowance (see paragraph 25).

(4) In this paragraph "connected company" means—

(a) a company which controls or is controlled by the company or which is controlled by a company which also controls the company, or

(b) a company which is a member of a consortium owning the company or which is owned in part by the company as a member of a consortium.

Meaning of "material interest"

17.—(1) For the purposes of paragraph 15 (the "no material interest" requirement) a material interest in a company means—

(a) beneficial ownership of, or the ability to control, directly or through the medium of other companies or by any other indirect means, more than 25% of the ordinary share capital of the company; or

(b) where the company is a close company, possession of or entitlement to acquire such rights as would, in the event of the winding up of the company or in any other circumstances, give an entitlement to receive more than 25% of the assets that would then be available for distribution among the participators.

(2) In this paragraph—

"close company" includes a company that would be a close company but for—

(a) section 414(1)(a) of the Taxes Act 1988 (exclusion of companies not resident in the United Kingdom), or

(b) section 415 of that Act (exclusion of certain quoted companies); and

"participator" has the meaning given by section 417(1) of that Act.

(3) This paragraph is supplemented by paragraph 18 (options etc.) and paragraph 19 (shares held by trustees of approved profit sharing scheme etc.).

Material interest: options etc.

18.—(1) For the purposes of paragraph 17(1) (meaning of material interest) a right to acquire shares (however arising) is treated as a right to control them.

(2) In any case where—

(a) the shares attributed to an individual consist of or include shares which he or another person has a right to acquire, and

(b) the circumstances are such that if that right were to be exercised the shares acquired would be shares which were previously unissued and which the company is contractually bound to issue in the event of the exercise of the right,

then in determining at any time prior to the exercise of the right whether the number of shares attributed to the individual exceeds a particular percentage of the ordinary share capital of the company, that ordinary share capital shall be taken to be increased by the number of unissued shares referred to in paragraph (b).

(3) The references in sub-paragraph (2) to the shares attributed to an individual are to the shares which in accordance with paragraph 17(1)(a) fall to be brought into account in his case to determine whether their number exceeds a particular percentage of the company's ordinary share capital.

Material interest: shares held by trustees of approved profit sharing schemes etc.

19. In applying paragraph 17(1) (meaning of material interest) there shall be disregarded—

(a) the interest of the trustees of—

(i) any approved profit sharing scheme, or

(ii) an approved employee share ownership plan,

in any shares held by them in accordance with the scheme or plan but which have not been appropriated to or acquired on behalf of an individual; and

(b) any rights exercisable by those trustees by virtue of any such interest.

Meaning of "associate"

20.—(1) In paragraph 15 (the "no material interest" requirement) "associate", in relation to a person, means—

(a) any relative or partner of that person,

(b) the trustee or trustees of any settlement in relation to which that person, or any relative of his (living or dead), is or was a settlor, and

(c) where that person is interested in any shares or obligations of the company which are subject to any trust, or are part of the estate of a deceased person, the trustee or trustees of the settlement concerned or (as the case may be) the personal representatives of the deceased.

(2) In sub-paragraph (1)(a) and (b) "relative" means husband or wife, parent or remoter forebear, child or remoter issue, or brother or sister.

(3) In sub-paragraph (1)(b) "settlor" and "settlement" have the same meaning as in Chapter IA of Part XV of the Taxes Act 1988 (see section 660G(1) and (2)).

Meaning of "associate": trustees of employee benefit trust

21.—(1) This paragraph applies for the purposes of paragraph 20(1)(c) (meaning of "associate": trustees of settlement) where an individual is interested as a beneficiary of an employee benefit trust in shares or obligations of a company ("the relevant company") in relation to which it falls to be determined whether that individual has an interest.

(2) The trustees of the employee benefit trust are not regarded as associates of the individual by reason only of his being so interested if neither—

(a) the individual, nor

(b) the individual together with one or more associates of his, nor

(c) any associate of the individual's, with or without any other such associates,

has at any time on or after 14th March 1989 been the beneficial owner of, or able (directly or through the medium of other companies or by any other indirect means) to control, more than 25% of the ordinary share capital of the company.

(3) In this paragraph "employee benefit trust" has the same meaning as in paragraph 7 of Schedule 8 to the Taxes Act 1988.

(4) Sub-paragraphs (9) to (12) of that paragraph apply for the purposes of this paragraph in relation to an individual as they apply for the purposes of that paragraph in relation to an employee.

(5) In sub-paragraph (2)(b) and (c) "associate" does not include the trustees of an employee benefit trust by reason only that the individual has an interest in shares or obligations of the trust.

Meaning of "associate": trustees of discretionary trust

22.—(1) This paragraph applies for the purposes of paragraph 20(1)(c) (meaning of "associate": trustees of settlement) where—

(a) the person in question ("the beneficiary") is one of the objects of a discretionary trust, and

(b) the property subject to the trust has at any time consisted of, or included, shares or obligations of the company ("the relevant company") in relation to which it falls to be determined whether that person has an interest.

(2) If—

(a) the beneficiary has ceased to be eligible to benefit under the discretionary trust by reason of—

(i) an irrevocable disclaimer or release executed by him, or

(ii) the irrevocable exercise by the trustees of a power to exclude him from the objects of the trust,

(b) immediately after the beneficiary ceased to be so eligible, no associate of his was interested in the shares or obligations of the relevant company which were subject to the trust, and

(c) during the period of twelve months ending with the date when the beneficiary ceased to be so eligible, neither he nor any associate of his received any benefit under the trust,

the beneficiary is not regarded by reason only of the matters mentioned in sub-paragraph (1) as having been interested in the shares or obligations of the relevant company at any time during the period of twelve months mentioned in paragraph (c).

(3) In sub-paragraph (2) "associate" has the meaning given by paragraph 20, but with the omission of sub-paragraph (1)(c) of that paragraph (trusts and estates).

PART IV

FREE SHARES

Introduction

23. If the plan provides for free shares it must comply with the requirements of this Part of this Schedule.

Maximum annual award

24.—(1) The plan must provide that the initial market value of the free shares awarded to a participant in any tax year cannot exceed £3,000.

(2) For this purpose the "initial market value" of shares means their market value on the date on which they are awarded.

(3) For the purposes of this paragraph the market value of shares subject to restrictions or risk of forfeiture shall be determined as if there were no such restriction or risk.

For this purpose shares are "subject to risk of forfeiture" if the interest that may be acquired is only conditional within the meaning of section 140C of the Taxes Act 1988.

Performance allowances

25.—(1) Sub-paragraph (2) applies if the plan provides for performance allowances, that is for—

(a) whether or not free shares will be awarded to an individual, or

(b) the number or value of free shares awarded,

to be conditional on performance targets being met.

(2) Where this sub-paragraph applies—

(a) the requirements of—

paragraph 26 (performance allowances: general application),

paragraph 27 (performance measures and targets), and

paragraph 28 (performance allowances: information to be given to employees), and

(b) the requirements of either paragraph 29 (method one) or paragraph 30 (method two),

must be complied with.

Performance allowances: general application

26. If the plan provides for performance allowances in relation to an award it must make provision for such allowances for all qualifying employees in relation to that award.

Performance allowances: measures and targets

27.—(1) If the plan provides for performance allowances the following requirements must be met with respect to performance measures and performance targets.

(2) The performance measures used must—

(a) be based on business results or other objective criteria, and

(b) be fair and objective measures of the performance of the units to which they are or may be applied.

(3) The performance targets must be set for performance units comprising one or more employees.

(4) For the purposes of an award of free shares under the plan an employee must not be a member of more than one performance unit.

SCH. 8

Performance allowances: information to be given to employees

28.—(1) If the plan provides for performance allowances in relation to an award of shares, the plan must require the company—

(a) to notify each employee participating in the award of the performance targets and measures which, under the plan, will be used to determine the number or value of free shares awarded to him; and

(b) to notify all qualifying employees of the company or, in the case of a group plan, of any participating company, in general terms, of the performance measures to be used to determine the number or value of free shares to be awarded to each employee participating in the award.

(2) The notices must be given as soon as reasonably practicable.

(3) The company may exclude from the notice mentioned in sub-paragraph (1)(b) any information the disclosure of which the company reasonably considers would prejudice commercial confidentiality.

Performance allowances: method one

29.—(1) The requirements of this paragraph are that if the plan provides for performance allowances in relation to an award of shares—

(a) at least 20% of the shares in the award must be awarded without reference to performance in accordance with the requirement of paragraph 9 (participation on same terms),

(b) the remaining shares must be awarded by reference to performance, and

(c) the highest number of shares within paragraph (b) awarded to an individual must be not more than four times the highest number of shares within paragraph (a) awarded to an individual.

(2) In determining for the purposes of sub-paragraph (1)(a) whether the requirement of paragraph 9 (participation on same terms) is met the shares to which sub-paragraph (1)(a) above applies are treated as a separate award of free shares.

(3) Where the plan meets the requirements of sub-paragraph (1), the requirement of paragraph 9 (participation on same terms) does not apply to any provision of the plan relating to the awarding of shares within sub-paragraph (1)(b).

(4) If free shares of different classes are awarded, the requirements of sub-paragraph (1) apply separately in relation to each class.

Performance allowances: method two

30.—(1) The requirements of this paragraph are that in relation to an award of free shares under the plan—

(a) some or all of the shares must be awarded by reference to performance; and

(b) the awarding of the shares to qualifying employees who are members of the same performance unit must meet the requirement of paragraph 9 (participation on same terms).

(2) In determining for the purposes of sub-paragraph (1)(b) whether the requirement of paragraph 9 (participation on same terms) is met the free shares awarded in respect of each performance unit are treated as a separate award of free shares.

(3) If this method is used nothing in paragraph 9 (participation on same terms) requires the awarding of shares to members of different performance units to be on the same terms.

The holding period

31.—(1) The plan must require the company in respect of each award of free shares to specify a period ("the holding period") during which a participant is bound by contract with the company—

(a) to permit his free shares to remain in the hands of the trustees, and

(b) not to assign, charge or otherwise dispose of his beneficial interest in the shares.

(2) The holding period—

(a) must be a period of at least three years but not more than five years, beginning with the date on which the shares in question are awarded to the participant, and

(b) must be the same in respect of all shares in the same award.

(3) The plan may authorise the company to specify different holding periods from time to time.

But it must prevent the company from increasing the holding period specified in respect of free shares that have been awarded under the plan.

(4) The participant's obligations with respect to the holding period—

(a) come to an end if during the period he ceases to be in relevant employment, and

(b) are subject to—

paragraph 32 (power to authorise trustees to accept general offers etc.);

paragraph 73 (meeting PAYE obligations); and

paragraph 121(5) (termination of plan: early removal of shares with participant's consent).

Holding period: power to authorise trustees to accept general offers etc.

32. A participant may direct the trustees to do any of the following during the holding period—

(a) to accept an offer for any of his free shares ("the original shares") if the acceptance or agreement will result in a new holding being equated with the original shares for the purposes of capital gains tax; or

(b) to accept an offer of a qualifying corporate bond (whether alone or with other assets or cash or both) for his free shares if the offer forms part of such a general offer as is mentioned in paragraph (c); or

(c) to accept an offer of cash, with or without other assets, for his free shares if the offer forms part of a general offer which is made to holders of shares of the same class as his or of shares in the same company and which is made in the first instance on a condition such that if it is satisfied the person making the offer will have control of that company, within the meaning of section 416 of the Taxes Act 1988; or

(d) to agree to a transaction affecting his free shares or such of them as are of a particular class, if the transaction would be entered into pursuant to a compromise, arrangement or scheme applicable to or affecting—

(i) all the ordinary share capital of the company or, as the case may be, all the shares of the class in question, or

(ii) all the shares, or all the shares of the class in question, which are held by a class of shareholders identified otherwise than by reference to their employment or their participation in an approved employee share ownership plan.

SCH. 8

PART V

PARTNERSHIP SHARES

Introduction

33. If the plan provides for partnership shares it must comply with the requirements of this Part of this Schedule.

Partnership share agreements

34. The plan must provide for qualifying employees to enter into agreements with the company ("partnership share agreements") under which—

(a) the employee authorises the company to deduct part of his salary for the purchase of partnership shares, and

(b) the company undertakes to arrange for partnership shares to be awarded to the employee in accordance with the plan.

Deductions from salary

35.—(1) The plan must provide for a partnership share agreement to be given effect by deductions from the employee's salary.

Amounts so deducted are referred to in this Part of this Schedule as "partnership share money".

(2) The partnership share agreement must specify—

(a) what amounts are to be deducted, and

(b) at what intervals.

This does not prevent the employee and the company agreeing to vary those amounts or intervals.

(3) For the purposes of sub-paragraph (2)(a) the agreement may specify a percentage of the employee's salary.

(4) The plan must require the employer company to calculate the amounts and intervals having regard to the provisions of paragraph 36 (maximum amount of deductions from salary).

For this purpose "the employer company" is the company by reference to which the employee meets the requirement of paragraph 14 (the employment requirement) in relation to the plan.

Maximum amount of deductions

36.—(1) The amount of partnership share money deducted from an employee's salary must not exceed—

(a) £125 in any month, or

(b) where the salary is not paid at monthly intervals, such amount as bears to £125 the same proportion as the pay interval in question bears to one month.

(2) The amount of partnership share money deducted from an employee's salary must not exceed 10% of the employee's salary.

This means—

(a) if the plan does not provide for an accumulation period, 10% of the salary payment from which the deduction is made;

(b) if the plan provides for an accumulation period, 10% of the total of the employee's salary payments over that period.

(3) The plan may authorise the company to specify lower limits than those specified in sub-paragraphs (1) and (2).

Different limits may be specified in relation to different awards of shares.

(4) Any amount deducted in excess of that allowed by sub-paragraph (1) or (2), or any lower limit in the plan, must be paid over to the employee as soon as practicable.

Minimum amount of deductions

37.—(1) The plan may provide that the amount to be deducted in pursuance of a partnership share agreement in any month must not be less than a minimum amount specified in the plan.

(2) The specified minimum amount must not be greater than £10.

(3) Sub-paragraphs (1) and (2) apply whatever the intervals at which the employee is paid.

Notice of possible effect of deductions on benefit entitlement

38.—(1) The plan must provide that the company may not enter into a partnership share agreement with an employee unless the agreement contains a notice under this paragraph.

(2) A notice under this paragraph is a notice in a prescribed form containing prescribed information as to the possible effect of deductions on an employee's entitlement to social security benefits, statutory sick pay and statutory maternity pay.

(3) In this paragraph "prescribed" means prescribed by regulations made by the Board.

Partnership share money held for employee

39.—(1) The plan must provide that partnership share money deducted in accordance with a partnership share agreement is—

(a) paid to the trustees as soon as practicable, and

(b) held by them on behalf of the employee until such time as it is applied by them in acquiring partnership shares on the employee's behalf.

This is subject to paragraphs 40(4)(b) and 42(5)(b) and (6) (obligations to pay money to employee).

(2) References in this Schedule to the trustees acquiring partnership shares on behalf of an employee include their appropriating to an employee shares already held by them.

(3) The plan must provide for the trustees to keep any money required to be held by them under this paragraph in an account (interest bearing or otherwise) with—

(a) an institution authorised under the Banking Act 1987, 1987 c. 22.

(b) a building society, or

(c) a relevant European institution.

(4) If the partnership share money held on behalf of an employee is held in an interest bearing account the plan must provide for the trustees to account to the employee for the interest.

SCH. 8

Plan with no accumulation period

40.—(1) If the plan does not provide for an accumulation period, it must provide for partnership share money to be applied by the trustees in acquiring partnership shares on behalf of the employee on the acquisition date.

(2) For this purpose "the acquisition date" means the date set by the trustees in relation to the award of partnership shares, being a date within 30 days after the last date on which the partnership share money to be applied in acquiring the shares was deducted.

(3) The number of shares awarded to each employee must be determined in accordance with the market value of the shares on the acquisition date.

(4) Any surplus partnership share money remaining after the acquisition of shares by the trustees—

(a) may with the agreement of the employee be carried forward and added to the amount of the next deduction, and

(b) in any other case must be paid over to the employee as soon as practicable.

(5) This paragraph is subject to paragraph 43 (restriction imposed on number of shares awarded).

Plan with accumulation period

41.—(1) The plan may provide for accumulation periods not exceeding twelve months.

(2) Where it does so—

(a) the partnership share agreement must specify when each accumulation period begins and ends (the beginning of the first period being not later than the date on which the first deduction is made), and

(b) the accumulation period which applies in relation to each award of partnership shares must be the same for all individuals who are eligible to participate in the award.

(3) The partnership share agreement may specify that an accumulation period comes to an end on the occurrence of a specified event.

This is subject to sub-paragraph (2)(b).

(4) Where the plan provides for accumulation periods, it may also provide that if—

(a) during an accumulation period, a transaction occurs in relation to any of the shares ("the original holding") to be acquired under a partnership share agreement which results in a new holding of shares being equated with the original holding for the purposes of capital gains tax, and

(b) the employee gives his consent for the purposes of this sub-paragraph,

the partnership share agreement shall have effect after the time of that transaction as if it were an agreement for the purchase of shares comprised in the new holding.

Application of money deducted in accumulation period

42.—(1) This paragraph applies if the plan provides for one or more accumulation periods.

(2) The plan must provide for the partnership share money deducted in each period to be applied by the trustees in acquiring partnership shares on behalf of the employee on the acquisition date.

This is subject to sub-paragraphs (6) and (7).

(3) In sub-paragraph (2) "the acquisition date" means the date set by the trustees in relation to the award of partnership shares, being a date within 30 days after the end of the accumulation period which applies in relation to the award.

(4) The number of shares awarded to each employee must be determined in accordance with the lower of—

(a) the market value of the shares at the beginning of the accumulation period, and

(b) the market value of the shares on the acquisition date.

(5) Any surplus partnership share money remaining after the acquisition of shares by the trustees—

(a) may with the agreement of the employee be carried forward to the next accumulation period, and

(b) in any other case must be paid over to the employee as soon as practicable.

(6) The plan must provide that where—

(a) partnership share money has been deducted in an accumulation period, and

(b) the employee ceases to be in relevant employment during that period,

the partnership share money is paid over to the individual as soon as practicable.

(7) The partnership share agreement may provide that, where an accumulation period comes to an end on the occurrence of a specified event, the partnership share money deducted in that period must be paid over to the individual as soon as practicable instead of being applied in acquiring shares.

(8) This paragraph is subject to paragraph 43 (restriction imposed on number of shares awarded).

Restriction imposed on number of shares awarded

43.—(1) The plan may authorise the company to specify the maximum number of shares ("the award maximum") to be included in an award of partnership shares.

A different number may be specified in relation to different awards.

(2) If the plan so authorises the company, it must require partnership share agreements to contain an undertaking by the company to notify the employee of any restriction on the number of shares to be included in an award.

(3) The plan must require the notice to be given—

(a) if there is no accumulation period, before the deduction of the partnership share money relating to the award, and

(b) if there is an accumulation period, before the beginning of the accumulation period relating to the award.

(4) The plan must provide that where the award maximum in respect of an award of partnership shares is smaller than the number of shares which would otherwise be included in the award, the number of partnership shares included in each individual award under paragraph 40(1) or 42(2) shall be reduced proportionately.

SCH. 8

Stopping and re-starting deductions

44.—(1) The plan must provide that an employee may at any time give notice in writing to the company to stop deductions in pursuance of a partnership share agreement.

(2) The plan must also provide that an employee who has stopped deductions may subsequently give notice in writing to the company to re-start deductions in pursuance of the agreement, but may not make up deductions that have been missed.

(3) If the plan makes provision for one or more accumulation periods, it may prevent an employee re-starting deductions more than once in any accumulation period.

(4) The plan must provide that unless a later date is specified in the notice—

(a) the company must within 30 days of receiving a notice within sub-paragraph (1), ensure that no further deductions are made by it under the partnership share agreement;

(b) the company must on receiving a notice within sub-paragraph (2) re-start deductions under the partnership share agreement not later than the re-start date.

(5) For the purposes of sub-paragraph (4)(b) "the re-start date" is the date of the first deduction due under the partnership share agreement more than 30 days after receipt of the notice within sub-paragraph (2).

Withdrawal from partnership share agreement

45.—(1) The plan must provide that an employee may withdraw from a partnership share agreement at any time by notice in writing to the company.

(2) The plan must provide that, unless a later date is specified in the notice, a notice of withdrawal takes effect 30 days after it is received by the company.

(3) The plan must provide that where an employee withdraws from a partnership share agreement, any partnership share money held on his behalf is to be paid over to him as soon as practicable.

Repayment of partnership share money on withdrawal of approval or termination

46.—(1) The plan must provide that where—

(a) the approval of the plan is withdrawn (see paragraph 118), or

(b) a plan termination notice is issued in respect of the plan (see paragraph 120),

any partnership share money held on behalf of an employee is paid over to him.

(2) The plan must require the payment to be made—

(a) in a case within sub-paragraph (1)(a), as soon as practicable after notice of the withdrawal is given to the company, and

(b) in a case within sub-paragraph (1)(b), as soon as practicable after the plan termination notice is notified to the trustees under paragraph 120(2).

Access to partnership shares

47.—(1) The plan must provide that when partnership shares have been awarded to an employee, the employee may at any time withdraw any or all of the partnership shares from the plan.

(2) There may be a charge to tax under paragraph 86 (charge on partnership shares ceasing to be subject to plan).

Meaning of "salary"

48. References in this Part of this Schedule to an employee's "salary" are to such of the emoluments of the employment by reference to which he is eligible to participate in the plan as are liable to be paid under deduction of tax pursuant to section 203 of the Taxes Act 1988 (PAYE), after deducting amounts included by virtue of Chapter II of Part V of that Act (expenses and benefits in kind), or would be so liable apart from this Schedule.

PART VI

MATCHING SHARES

Introduction

49. If the plan provides for matching shares it must comply with the requirements of this Part of this Schedule.

General requirements for matching shares

50.—(1) The plan must provide for the matching shares—

(a) to be shares of the same class and carrying the same rights as the partnership shares to which they relate;

(b) to be awarded on the same day as the partnership shares to which they relate are awarded; and

(c) to be awarded to all employees who participate in the award on exactly the same basis.

(2) Sub-paragraph (1) is subject to paragraph 65 (permitted restrictions: provision for forfeiture).

Ratio of matching shares to partnership shares

51.—(1) The partnership share agreement must specify—

(a) the ratio of matching shares to partnership shares for the time being offered by the company, and

(b) the circumstances and manner in which the ratio may be changed by the company.

(2) The ratio must not exceed 2:1 and must be applied by reference to the number of shares.

(3) A partnership share agreement must provide for the employee to be informed by the company if the ratio offered by the company changes before partnership shares are awarded to him under the agreement.

Application of provisions relating to holding period etc.

52. The provisions of paragraphs 31 and 32 as to the holding period and related matters apply in relation to matching shares as they apply to free shares.

PART VII

REINVESTMENT OF CASH DIVIDENDS

Reinvestment

53.—(1) The plan may provide that where the company so directs—

(a) all cash dividends in respect of plan shares held on behalf of participants must be applied in acquiring further shares on their behalf, or

(b) all cash dividends in respect of plan shares held on behalf of participants who elect to reinvest their dividends must be applied in acquiring further shares on their behalf.

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This is referred to in this Part of this Schedule as "reinvestment" and the further plan shares acquired are referred to in this Schedule as "dividend shares".

(2) The company may revoke a direction.

(3) Where cash dividends in respect of plan shares held on behalf of a participant are not required to be reinvested under the plan, the plan must require the dividends to be paid over to the participant as soon as practicable.

(4) This paragraph is subject to paragraph 54 (limit on amount reinvested).

Limit on amount reinvested

54.—(1) The plan must provide that the total dividend reinvestment in respect of any participant cannot exceed £1,500 in any tax year.

(2) For this purpose "the total dividend reinvestment" in respect of a participant is the sum of—

(a) the amount applied by the trustees in acquiring dividend shares on behalf of the participant under the plan, and

(b) the amount applied by the trustees of other employee share ownership plans that are—

(i) established by the company or an associated company, and

(ii) approved under this Schedule,

in acquiring dividend shares on his behalf.

(3) If the amounts received by the trustees exceed the limit in sub-paragraph (1), the plan must provide for the balance to be paid over to the participant as soon as practicable.

General requirements for dividend shares

55. The plan must provide that dividend shares are shares—

(a) of the same class and carrying the same rights as the shares in respect of which the dividend is paid, and

(b) which are not subject to any provision for forfeiture.

Acquisition of dividend shares

56.—(1) The plan must provide that in exercising their powers in relation to the acquisition of dividend shares the trustees must treat participants fairly and equally.

(2) The plan must provide for the trustees to apply a cash dividend in acquiring further shares on behalf of participants on the acquisition date.

This does not affect the carrying forward under paragraph 58 of any such amount as is mentioned in sub-paragraph (1) of that paragraph (amounts remaining after acquisition of shares).

(3) For this purpose "the acquisition date" means the date set by the trustees in relation to the acquisition of dividend shares, being a date within 30 days after the dividend is received by them.

(4) The number of dividend shares acquired on behalf of each participant must be determined in accordance with the market value of the shares on the acquisition date.

(5) References in this Part of this Schedule to the trustees acquiring dividend shares on behalf of a participant include their appropriating to a participant shares already held by them.

Holding period for dividend shares

57. The provisions of paragraphs 31 and 32 (holding period and related matters) apply in relation to dividend shares as they apply to free shares, except that the holding period must be three years.

Certain amounts not reinvested to be carried forward

58.—(1) Any amount that is not reinvested—

(a) because the amount of the cash dividend to which the participant is entitled is not sufficient to acquire a share, or

(b) because there is an amount remaining after acquiring one or more dividend shares on the participant's behalf,

may be retained by the trustees and carried forward to be added to the amount of the next cash dividend to be reinvested, but shall be held by them so as to be separately identifiable for the purposes of sub-paragraphs (2) and (3).

(2) An amount retained under this paragraph shall be paid over to the participant—

(a) if or to the extent that it is not reinvested within the period of three years beginning with the date on which the dividend was paid, or

(b) if during that period the participant ceases to be in relevant employment, or

(c) if during that period a plan termination notice is issued in respect of the plan.

(3) An amount required to be paid over to the participant under sub-paragraph (2) shall be paid over as soon as practicable.

(4) For the purposes of this paragraph an amount carried forward under this paragraph derived from an earlier cash dividend is treated as reinvested before an amount derived from a later cash dividend.

PART VIII

TYPES OF SHARE THAT MAY BE USED

Introduction

59. The requirements of the following paragraphs must be met with respect to any shares that may be awarded under the plan ("eligible shares")—

paragraph 60 (must be ordinary share capital);

paragraph 61 (requirement as to listing etc.);

paragraph 62 (shares must be fully paid up and not redeemable);

paragraph 63 (only certain kinds of restriction allowed);

paragraph 67 (prohibited companies).

Must be ordinary share capital

60. Eligible shares must form part of the ordinary share capital of—

(a) the company; or

(b) a company which has control of the company; or

(c) a company which either is, or has control of, a company which is a member of a consortium owning either the company or a company having control of the company.

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Requirement as to listing etc.

61. Eligible shares must be—

(a) shares of a class listed on a recognised stock exchange; or

(b) shares in a company which is not under the control of another company; or

(c) shares in a company which is under the control of a company (other than a company which is, or would if resident in the United Kingdom be, a close company) whose shares are listed on a recognised stock exchange.

Shares must be fully paid up and not redeemable

62.—(1) Eligible shares must be—

(a) fully paid up, and

(b) not redeemable.

(2) Shares are not regarded as fully paid up for the purposes of sub-paragraph (1)(a) if there is any undertaking to pay cash to the company at a future date.

(3) For the purposes of sub-paragraph (1)(b) "redeemable" shares include shares that may become redeemable at a future date.

(4) Sub-paragraph (1)(b) does not apply in relation to shares in a co-operative.

(5) In sub-paragraph (4) "co-operative" means a registered industrial and provident society which is a co-operative society.

For this purpose—

"registered industrial and provident society" means a society registered or deemed to be registered under the Industrial and Provident Societies Act 1965 or the Industrial and Provident Societies Act (Northern Ireland) 1969; and

1965 c. 22.
1969 c. 24 (N.I.).

"co-operative society" has the same meaning as in section 1 of the 1965 Act or, as the case may be, the 1969 Act.

Only certain kinds of restriction allowed

63.—(1) Eligible shares must not be subject to any restrictions other than—

(a) those involved in there being a holding period (see paragraphs 31, 52 and 57); or

(b) those affecting all ordinary shares in the company; or

(c) those permitted by—

paragraph 64 (voting rights),

paragraph 65 (provision for forfeiture), or

paragraph 66 (pre-emption conditions).

(2) For this purpose there is a restriction if there is any contract, agreement, arrangement or condition—

(a) by which a person's freedom to dispose of the shares or of any interest in them or of the proceeds of their sale or to exercise any right conferred by them is restricted, or

(b) by which such a disposal or exercise may result in any disadvantage to him or to a person connected with him,

subject to sub-paragraphs (3) and (4).

(3) Any discretion of the directors under the articles of association of the company to refuse to accept the transfer of shares shall be disregarded for the purposes of this paragraph if the directors—

(a) have undertaken to the Inland Revenue not to exercise it in such a way as to discriminate against participants, and

(b) have notified all qualifying employees of the existence of the undertaking.

(4) There shall also be disregarded for the purposes of this paragraph so much of any contract, agreement, arrangement or condition as contains provisions similar in purpose and effect to any of the provisions of the Model Code as (for the time being) set out in the listing rules issued by the competent authority for listing in the United Kingdom under section 74(4) of the Financial Services and Markets Act 2000. 2000 c. 8.

Permitted restrictions: voting rights

64. Eligible shares may be shares carrying no voting rights or limited voting rights.

Permitted restrictions: provision for forfeiture

65.—(1) Free or matching shares may be subject to provision for forfeiture in the following circumstances.

(2) Provision may be made for forfeiture—

(a) on the participant ceasing to be in relevant employment at any time in the forfeiture period,

(b) on the participant withdrawing the shares from the plan in that period, or

(c) in the case of matching shares, on the participant withdrawing the partnership shares in respect of which those shares were awarded from the plan within that period,

otherwise than by reason of an event within paragraph 87(2) (circumstances in which there is no charge to tax on shares ceasing to be subject to plan).

(3) In sub-paragraph (2) "the forfeiture period" means the forfeiture period specified in the plan being a period of not more than three years beginning with the date on which the shares were awarded to the participant.

(4) Forfeiture may not be linked to the performance of any person or persons.

(5) The same provision for forfeiture must apply in relation to all free or matching shares included in the same award under the plan.

(6) In this Schedule "provision for forfeiture" means any provision to the effect that a participant shall cease to be beneficially entitled to the shares on the occurrence of certain events, and references to forfeiture shall be construed accordingly.

Permitted restrictions: pre-emption conditions

66.—(1) If the requirements of this paragraph are met, eligible shares may be subject to provision requiring shares—

(a) that were awarded to an employee under the plan, and

(b) that are held by an employee or a permitted transferee,

to be offered for sale on the employee ceasing to be in relevant employment.

(2) For the purposes of sub-paragraph (1)(b) a "permitted transferee" means a person to whom, under the articles of association of the company, the employee is permitted to transfer the shares.

(3) The requirements of this paragraph are that under the articles of association of the company—

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(a) the same provision applies to all employees of the company or, in the case of a parent company, to all employees of that company or any company of which that company has control;

(b) the shares are required to be offered for sale at a specified consideration; and

(c) anyone disposing of shares of the same class (whether or not as an employee) is required to offer the shares for sale on no better terms.

Prohibited companies

67.—(1) Eligible shares must not be shares—

(a) in an employer company, or

(b) in a company that—

(i) has control of an employer company, and

(ii) is under the control of a person or persons within sub-paragraph (2)(b)(i) in relation to an employer company.

(2) For the purposes of this paragraph a company is "an employer company" if—

(a) the business carried on by it consists substantially in the provision of the services of persons employed by it, and

(b) the majority of those services are provided to—

(i) a person who has, or two or more persons who together have, control of the company, or

(ii) a company associated with the company.

(3) For the purposes of sub-paragraph (2)(b)(ii) a company shall be treated as associated with another company if both companies are under the control of the same person or persons.

(4) For the purposes of sub-paragraphs (1) to (3)—

(a) references to a person include a partnership, and

(b) where a partner, alone or together with others, has control of a company, the partnership shall be treated as having like control of that company.

(5) For the purposes of this paragraph the question whether a person controls a company shall be determined in accordance with section 416(2) to (6) of the Taxes Act 1988.

PART IX

THE TRUSTEES

Establishment of trustees

68.—(1) The plan must provide for the establishment of a body of persons resident in the United Kingdom ("the trustees") who are required by the plan—

(a) in the case of free or matching shares, to acquire shares and appropriate them to employees in accordance with the plan;

(b) in the case of partnership shares, to apply partnership share money in acquiring shares on behalf of employees in accordance with the plan; and

(c) in the case of dividend shares, to apply cash dividends in acquiring shares on behalf of participants in accordance with the plan.

(2) The functions of the trustees with respect to shares held by them must be regulated by a trust ("the plan trust")—

(a) which is constituted under the law of a part of the United Kingdom, and

(b) the terms of which are embodied in an instrument which complies with the requirements of this Part of this Schedule.

(3) The instrument must not contain any terms which are neither essential nor reasonably incidental to complying with the requirements of this Part of this Schedule.

Power of trustees to borrow

69. The trust instrument may provide that the trustees have power to borrow—

(a) to acquire shares for the purposes of the plan, and

(b) for such other purposes as may be specified in the trust instrument.

Duty to give notice of award of shares etc.

70.—(1) The trust instrument must make the following provision regarding notices.

(2) It must provide that, as soon as practicable after any free or matching shares have been awarded to an employee, the trustees shall give him notice of the award—

(a) specifying the number and description of those shares,

(b) stating their market value on the date on which they were awarded to him, and

(c) stating the holding period applicable to them.

(3) It must provide that, as soon as practicable after any partnership shares have been awarded to an employee, the trustees shall give him notice of the award—

(a) specifying the number and description of those shares, and

(b) stating—

(i) the amount of partnership share money applied by the trustees in acquiring the shares on his behalf, and

(ii) their market value on the acquisition date (within the meaning of paragraph 40(2) or, if there is an accumulation period, paragraph 42(3)).

(4) It must provide that, as soon as practicable after any dividend shares have been acquired on behalf of a participant, the trustees shall give him notice of the acquisition—

(a) specifying the number and description of those shares,

(b) stating their market value on the acquisition date (within the meaning of paragraph 56(3)),

(c) stating the holding period applicable to them, and

(d) informing him of any amount carried forward under paragraph 58 (certain amounts not reinvested).

(5) It must provide that, where any foreign cash dividend is received in respect of plan shares held on behalf of a participant, the trustees shall give him notice of the amount of any foreign tax deducted from the dividend before it was paid.

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General duties of trustees

71.—(1) The trust instrument must require the trustees—

(a) to dispose of a participant's plan shares, and

(b) to deal with any right conferred in respect of any of his plan shares to be allotted other shares, securities or rights of any description,

only pursuant to a direction given by or on behalf of the participant.

This is subject to sub-paragraph (3) and to any provision made in the plan in accordance with paragraph 73 (meeting PAYE obligations).

(2) The plan may provide for participants to give such general directions, to such effect and in such terms, as are specified in the plan.

(3) The trust instrument must, in the case of a participant's plan shares that are free, matching or dividend shares, prohibit the trustees from disposing of any of those shares (whether to the participant or otherwise) at any time during the holding period, unless the participant has at that time ceased to be in relevant employment.

This is subject to—

paragraph 32 (holding period: power to authorise trustees to accept general offers etc.);

paragraph 72 (power of trustees to raise funds to subscribe for rights issue);

paragraph 73 (meeting PAYE obligations);

paragraph 121(5) (termination of plan: early removal of shares with participant's consent).

(4) The trust instrument must require the trustees to pay over to the participant as soon as practicable any money or money's worth received by them in respect of or by reference to any of his shares, other than money's worth consisting of new shares within the meaning of paragraph 115 (company reconstructions).

This is subject to—

(a) the provisions of Part VII (reinvestment of cash dividends);

(b) the trustees' obligations under paragraphs 95 and 96 (PAYE: shares ceasing to be subject to the plan and capital receipts); and

(c) the trustees' PAYE obligations.

Power of trustees to raise funds to subscribe for rights issue

72.—(1) The trustees may dispose of some of the rights arising under a rights issue in order to be able to obtain sufficient funds to exercise other such rights.

This power is subject to paragraph 71(1) (duty to act in accordance with participant's directions).

(2) In this paragraph references to rights arising under a rights issue are to rights conferred in respect of a participant's plan shares to be allotted, on payment, other shares or securities or rights of any description in the same company.

Meeting PAYE obligations

73.—(1) The plan must make provision to ensure that, where a PAYE obligation is imposed on the trustees as a result of any of a participant's plan shares ceasing to be subject to the plan, the trustees are able to meet that obligation—

(a) by disposing of—

(i) any of those shares, or

(ii) any of the participant's remaining plan shares (if any), or

(b) by virtue of the participant paying to the trustees a sum equal to the amount required to discharge the obligation.

(2) In sub-paragraph (1) the reference to a PAYE obligation includes an obligation under paragraph 95 (PAYE: shares ceasing to be subject to the plan).

(3) In sub-paragraph (1)(a) the reference to disposing of shares includes the acquisition of the shares by the trustees for the purposes of the trust.

(4) A disposal of any of the participant's plan shares in accordance with provision made under sub-paragraph (1)(a)(ii) may give rise to a charge to tax under—

paragraph 81 (charge on free or matching shares ceasing to be subject to plan);

paragraph 86 (charge on partnership shares ceasing to be subject to plan); or

paragraph 93 (charge on dividend shares ceasing to be subject to plan).

Deemed disposal by trustees on disposal of beneficial interest

74.—(1) If at any time the participant's beneficial interest in any of his shares is disposed of, the shares in question shall be treated for the purposes of this Schedule as having been disposed of at that time by the trustees for the like consideration as was obtained for the disposal of the beneficial interest.

(2) For this purpose there is no disposal of the participant's beneficial interest if and at the time when—

(a) in England and Wales or Northern Ireland, that interest becomes vested in any person on the insolvency of the participant or otherwise by operation of law, or

(b) in Scotland, that interest becomes vested in a judicial factor, in a trustee of the participant's sequestrated estate or in a trustee for the benefit of the participant's creditors.

(3) If a disposal of shares falling within this paragraph is not at arm's length, the proceeds of the disposal shall be taken for the purposes of this Schedule to be equal to the market value of the shares at the time of the disposal.

Duties of trustees in relation to tax liabilities

75.—(1) The trust instrument must require the trustees—

(a) to maintain such records as may be necessary for the purposes of—

(i) their own PAYE obligations, or

(ii) the PAYE obligations of the employer company so far as they relate to the plan,

(b) where the participant becomes liable to income tax under Case V of Schedule D, Schedule E or Schedule F by reason of the occurrence of any event, to inform him of any facts relevant to determining that liability.

(2) For the purposes of this paragraph—

"employer company" has the same meaning as in paragraph 95 (PAYE: shares ceasing to be subject to the plan); and

"PAYE obligations" includes obligations conferred on the trustees by paragraphs 95 and 96 (PAYE: shares ceasing to be subject to plan and capital receipts).

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Acquisition by trustees of shares from employee share ownership trust

76.—(1) The trust instrument must provide that, where there is a qualifying transfer of shares to the trustees, those shares—

(a) must not be awarded to participants under the plan as partnership shares, and

(b) must be included in any award of free or matching shares made after the date of the transfer in priority to other shares available for inclusion in that award.

(2) For the purposes of this paragraph there is a qualifying transfer of shares to the trustees if relevant shares—

(a) are transferred to them by the trustees of an employee share ownership trust, and

(b) the transfer is a qualifying transfer within section 69(3AA) of the Finance Act 1989 (transfer of shares in, or shares purchased from money in, an employee share ownership trust immediately before 21st March 2000).

1989 c. 26.

PART X

INCOME TAX

Introduction

77.—(1) The provisions of this Part of this Schedule apply for income tax purposes in relation to an approved employee share ownership plan.

This is subject to sub-paragraph (2).

(2) Nothing in this Part applies to an individual if, at the time of the award in question, he is not chargeable to tax under Schedule E in respect of the employment by reference to which he meets the requirement of paragraph 14 (the employment requirement) in relation to the plan.

No charge on award of shares etc.

78.—(1) Notwithstanding that the beneficial interest in the shares passes to the employee—

(a) on the award to him of free, matching or partnership shares under the plan, or

(b) on the acquisition on his behalf of dividend shares under the plan,

the value of that interest at the time of the award or acquisition is not treated as income of his chargeable to tax.

(2) An employee is not chargeable to tax under Schedule E by virtue of section 162(1) of the Taxes Act 1988 (deemed loan in case of shares acquired at an under-value) in respect of the award to him of shares under the plan.

This does not affect any charge to tax under section 162(6) of that Act (stop-loss provision).

Capital receipts in respect of participant's shares

79.—(1) Where—

(a) a capital receipt is received by a participant in respect of or by reference to any of his plan shares, and

(b) the plan shares in respect of or by reference to which it is received are—

(i) free, matching or partnership shares that were awarded to the participant fewer than five years before he received the capital receipt, or

(ii) dividend shares that were acquired on his behalf fewer than three years before he received that receipt,

the participant is chargeable to income tax under Schedule E for the tax year in which the capital receipt is received by him on the amount or value of the receipt.

(2) For the purposes of this paragraph any money or money's worth is a "capital receipt" subject to the following provisions.

(3) Money or money's worth is not a capital receipt for the purposes of this paragraph to the extent that—

(a) it constitutes income in the hands of the recipient for the purposes of income tax (or would do so but for this Part of this Schedule), or

(b) it consists of the proceeds of disposal of the shares, or

(c) it consists of new shares within the meaning of paragraph 115 (company reconstructions).

(4) If, pursuant to a direction given by or on behalf of the participant for the purposes of paragraph 72(1), the trustees—

(a) dispose of some of the rights under a rights issue, and

(b) use the proceeds of that disposal to exercise other such rights,

the money or money's worth that constitutes the proceeds of that disposal is not a capital receipt for the purposes of this paragraph.

The references in this sub-paragraph to rights under a rights issue are to rights, conferred in respect of a participant's plan shares, to be allotted, on payment, other shares or securities or rights of any description in the same company.

(5) This paragraph does not apply in relation to a capital receipt referable to the shares of a participant if it is received by the participant's personal representative after his death.

Exclusion of certain charges in relation to participant's shares

80.—(1) There is no charge to tax on the participant under—

(a) section 140A of the Taxes Act 1988 (charge on conditional acquisition of shares), or

(b) section 78 of the Finance Act 1988 (charge on removal of restriction), 1988 c. 39.

when any provision for forfeiture to which the shares are subject, in accordance with paragraph 65 (permitted restrictions: provision for forfeiture), is varied or removed.

(2) A participant is not chargeable to tax under Schedule E by virtue of section 78 of the Finance Act 1988 (charge on removal of restriction) if the chargeable event (within the meaning of that section) is the ending of the holding period in relation to his free, matching or dividend shares.

(3) A participant is not chargeable to tax under Schedule E by virtue of section 79 of that Act (charge on chargeable increase in value) in respect of any shares of his that are subject to the plan at the end of the period for which the chargeable increase is determined for the purposes of that section.

Charge on free or matching shares ceasing to be subject to plan

81.—(1) When free or matching shares cease to be subject to the plan, income tax may be chargeable depending on the period that has elapsed between—

(a) the date on which the shares were awarded to the participant, and

(b) the date on which they cease to be subject to the plan.

(2) If the period is less than three years, the participant is chargeable to tax under Schedule E on the market value of the shares when they cease to be subject to the plan.

(3) If the period is three years or more but less than five years, the participant is chargeable to tax under Schedule E on—

(a) the market value of the shares at the date they were awarded to him, or

(b) the market value of the shares when they cease to be subject to the plan,

whichever is less.

(4) Where the participant is charged to tax under sub-paragraph (3)(a) the tax due shall be reduced by the amount or aggregate amount of any tax paid on any capital receipts within paragraph 79 in respect of those shares.

(5) There is no charge to tax under this paragraph on the forfeiture of free or matching shares.

(6) This paragraph has effect subject to—

paragraph 82 (charge to tax on disposal of beneficial interest in shares during the holding period); and

paragraph 87 (circumstances in which there is no charge to tax on shares ceasing to be subject to plan).

(7) Except as provided by this paragraph and paragraph 82 there is no charge to tax on free or matching shares ceasing to be subject to the plan.

Charge on disposal of beneficial interest during the holding period

82.—(1) Where free or matching shares cease to be subject to the plan by virtue of a participant, in breach of his obligations under paragraph 31(1)(b), assigning, charging or otherwise disposing of his beneficial interest in those shares—

(a) paragraph 81 does not apply, and

(b) the participant is chargeable to income tax under Schedule E on the market value of the shares when they cease to be subject to the plan.

(2) Where the participant is charged to tax under sub-paragraph (1) the tax due shall be reduced by the amount or aggregate amount of any tax paid on any capital receipts within paragraph 79 in respect of those shares.

Partnership share money deducted before tax

83.—(1) Partnership share money deducted from an employee's salary in accordance with a partnership share agreement is not regarded as income of the employee chargeable to tax under Schedule E.

(2) The deduction of partnership share money shall be disregarded for the purpose of ascertaining the amount of—

(a) the employee's remuneration for the purposes of Chapter I of Part XIV of the Taxes Act 1988 (retirement benefit schemes), or

(b) the employee's relevant earnings for the purposes of Chapter III or IV of that Part (retirement annuities or personal pension schemes).

Charge on partnership share money paid over to employee

84.—(1) An individual is chargeable to income tax under Schedule E on any amount paid over to him under—

paragraph 36(4) (deductions in excess of permitted maximum amount);

paragraph 40(4)(b) or 42(5)(b) (surplus partnership share money remaining after acquisition of shares);

paragraph 42(6) (partnership share money paid over on individual leaving relevant employment);

paragraph 42(7) (partnership share money paid over where accumulation period brought to an end by event specified in plan);

paragraph 45(3) (partnership share money paid over on withdrawal from partnership share agreement); or

paragraph 46 (partnership share money paid over on withdrawal of plan approval or termination of plan).

(2) A charge to tax under sub-paragraph (1) arises at the time the amount is paid over.

Charge on cancellation payments in respect of partnership share agreement

85. An individual is chargeable to tax under Schedule E on the amount or value of any money or money's worth received by him in respect of the cancellation of a partnership share agreement entered into by him.

Charge on partnership shares ceasing to be subject to plan

86.—(1) When partnership shares cease to be subject to the plan, income tax may be chargeable depending on the period that has elapsed between—

(a) the acquisition date in respect of those shares (as defined by paragraph 40(2) or, as the case may be, 42(3)), and

(b) the date on which they cease to be subject to the plan.

(2) If the period is less than three years, the employee is chargeable to income tax under Schedule E on an amount equal to the market value of the shares when they cease to be subject to the plan.

(3) If the period is three years or more but less than five years, the employee is chargeable to income tax under Schedule E on—

(a) the amount of partnership share money used to acquire the shares, or

(b) the market value of the shares when they cease to be subject to the plan,

whichever is less.

(4) Where the participant is charged to tax under sub-paragraph (3)(a) the tax due shall be reduced by the amount or aggregate amount of any tax paid on any capital receipts within paragraph 79 in respect of those shares.

(5) This paragraph has effect subject to paragraph 87 (circumstances in which there is no charge on shares ceasing to be subject to plan).

(6) Except as provided by this paragraph, there is no charge to income tax on the employee on partnership shares ceasing to be subject to the plan.

Circumstances in which there is no charge on shares ceasing to be subject to plan

87.—(1) There is no charge to tax on shares ceasing to be subject to the plan on the occurrence of any of the following events.

(2) Those events are the participant ceasing to be in relevant employment—

(a) because of injury or disability;

(b) on being dismissed by reason of redundancy;

(c) by reason of a transfer to which the Transfer of Undertakings (Protection of Employment) Regulations 1981 apply; S.I. 1981/1794.

(d) by reason of a change of control or other circumstances ending the associated company status of the company by which he is employed;

(e) by reason of his retirement on or after he reaches retirement age; or

(f) on his death.

(3) In sub-paragraph (2)(b) "redundancy" has the same meaning as in the Employment Rights Act 1996 or the Employment Rights (Northern Ireland) Order 1996. 1996 c. 18. S.I. 1996/1919 (N.I. 16).

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(4) In sub-paragraph (2)(e) "retirement age" means the retirement age specified in the plan, which—

(a) must be the same for men and women, and

(b) must be not less than 50.

Dividends etc. in respect of unappropriated shares

88.—(1) This paragraph applies to income of the trustees consisting of dividends or other distributions in respect of shares held by them in relation to which the requirements of Part VIII are met.

(2) Income to which this paragraph applies is income to which section 686 of the Taxes Act 1988 (accumulation and discretionary trusts: special rates of tax) applies only if and when—

(a) the period applicable to the shares under the following provisions comes to an end without the shares being awarded to a participant in accordance with the plan, or

(b) if earlier, the shares are disposed of by the trustees.

(3) Subject to sub-paragraph (4), the period applicable to the shares is the period of two years beginning with the date on which the shares were acquired by the trustees.

(4) If at the time of the acquisition of the shares by the trustees none of the shares in the company in question are readily convertible assets, the period within which the shares must be awarded is—

(a) five years beginning with the date on which the shares were acquired by the trustees, or

(b) if within that period the shares in question become readily convertible assets, two years beginning with the date on which they did so,

whichever ends first.

(5) For the purposes of determining whether shares are awarded to a participant within the period applicable under the above provisions, shares acquired by the trustees at an earlier time are taken to be awarded to a participant before shares of the same class acquired by the trustees at a later time.

(6) For the purposes of this paragraph shares which are subject to provision for forfeiture are treated as acquired by the trustees if and when the forfeiture occurs.

(7) In this paragraph references to the shares being awarded include references to shares being acquired on behalf of a participant as dividend shares.

Reinvestment of cash dividend on behalf of participant

89.—(1) The amount applied by the trustees in acquiring dividend shares on behalf of a participant is not treated as income of the participant for any tax purposes.

(2) The participant has no entitlement to a tax credit in respect of the amounts of dividends so applied.

(3) Sub-paragraphs (1) and (2) do not affect—

(a) any charge under paragraph 93(1) (charge on dividend shares ceasing to be subject to plan), or

(b) any entitlement to a tax credit in respect of the amount so charged.

(4) Section 234A(4) of the Taxes Act 1988 (information relating to distributions to be provided by nominee) shall not apply in relation to any amount applied by the trustees in acquiring dividend shares on behalf of a participant.

This is subject to paragraph 93(4).

Repayment of excess cash dividend

90. Section 234A(4) to (11) of the Taxes Act 1988 (information relating to distributions to be provided by nominee) shall apply in relation to the balance of any cash dividend paid over to the participant under paragraph 54(3) as if it were a payment to which subsection (4)(b) of that section applies.

Treatment of cash dividend retained for reinvestment

91.—(1) An amount retained under paragraph 58(1) (amount of cash dividend not reinvested) shall not be treated as income of the participant for any tax purposes.

(2) The participant has no entitlement to a tax credit in respect of any such amount.

(3) This paragraph does not affect any charge—

(a) under paragraph 92 (treatment of cash dividend retained and then later paid out), or

(b) paragraph 93 (charge on dividend shares ceasing to be subject to plan),

or any tax credit in respect of an amount so charged.

Treatment of cash dividend retained and then later paid out

92.—(1) Where a cash dividend is paid over to a participant under paragraph 58(2) (cash dividend paid over if not reinvested), the participant is chargeable to tax on that amount—

(a) under Schedule F, or

(b) to the extent that the dividend is a foreign cash dividend, under Case V of Schedule D,

for the tax year in which the dividend is paid over to him.

(2) For the purposes of determining the tax credit (if any) to which the participant is entitled under section 231 of the Taxes Act 1988 (tax credits for certain recipients of qualifying distributions), the reference in subsection (1) of that section to the tax credit fraction in force when the distribution is made shall be read as a reference to the fraction in force when the dividend is paid over to him.

(3) Section 234A(4) to (11) of the Taxes Act 1988 (information relating to distributions to be provided by nominee) shall apply in relation to an amount paid under paragraph 58(2) as if—

(a) it were a payment to which subsection (4)(b) of that section applies, and

(b) the cash dividend had been paid when the payment was paid over to the participant under paragraph 58(2).

Charge on dividend shares ceasing to be subject to plan

93.—(1) If dividend shares cease to be subject to the plan before the end of the period of three years beginning with the date on which the shares were acquired on his behalf, the participant is chargeable to tax on the amount of the relevant dividend—

(a) under Schedule F, or

(b) to the extent that the amount represents a foreign cash dividend, under Case V of Schedule D,

for the tax year in which the shares cease to be subject to the plan.

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For this purpose "the relevant dividend" is the cash dividend applied to acquire those shares on the participant's behalf.

(2) For the purposes of determining the tax credit (if any) to which the participant is entitled under section 231 of the Taxes Act 1988 (tax credits for certain recipients of qualifying distributions), the reference in subsection (1) of that section to the tax credit fraction in force when the distribution is made shall be read as a reference to the fraction in force when the relevant dividend is paid over to him.

(3) Where the participant is charged to tax under this paragraph the tax due shall be reduced by the amount or aggregate amount of any tax paid on any capital receipts within paragraph 79 in respect of those shares.

For this purpose "the tax due" means the amount of tax due after deduction of the tax credit determined under sub-paragraph (2).

(4) Section 234A(4) to (11) of the Taxes Act 1988 (information relating to distributions to be provided by nominee) shall apply in relation to the relevant dividend as if it were a payment to which subsection (4)(b) of that section applies.

(5) This paragraph has effect subject to paragraph 87 (circumstances in which there is no charge on shares ceasing to be subject to plan).

(6) Except as provided by this paragraph there is no charge to tax on dividend shares ceasing to be subject to the plan.

PAYE: shares ceasing to be subject to plan

94. Where as a result of shares ceasing to be subject to the plan a participant is chargeable to tax under this Part of this Schedule, subsection (3) of section 203F of the Taxes Act 1988 (PAYE: tradeable assets) shall have effect as if the reference in that subsection to the amount of income likely to be chargeable to tax under Schedule E in respect of the provision of the asset were a reference to the amount on which tax is likely to be chargeable under this Part of this Schedule by virtue of the shares ceasing to be subject to the plan.

PAYE: shares ceasing to be subject to the plan

95.—(1) Sub-paragraphs (2) to (5) apply where as a result of any shares ("the relevant shares") ceasing to be subject to the plan—

(a) a participant is chargeable to income tax under Schedule E in accordance with this Part of this Schedule, and

(b) an obligation to make a PAYE deduction arises in respect of that charge.

(2) The trustees must pay to the employer company a sum which is sufficient to enable the employer company to discharge that obligation.

This is subject to sub-paragraphs (3) and (7).

(3) Sub-paragraph (2) only applies where, or to the extent that, the plan does not require the participant to pay the employer company a sum that is sufficient to discharge the obligation mentioned in sub-paragraph (1)(b).

(4) Section 203J(1) of the Taxes Act 1988 (sections 203B to 203I: accounting for tax) shall have effect as if it required the deduction of income tax to be made from any sum or sums received by the employer—

(a) from the trustees under sub-paragraph (2), or

(b) from the participant in accordance with the plan, as mentioned in sub-paragraph (3).

(5) After making the necessary PAYE deduction from the sum or sums received as mentioned in sub-paragraph (4), the employer company shall pay any remaining amounts to the participant.

(6) For the purposes of this paragraph "the employer company" means a company—

(a) of which the participant is an employee at the time when the relevant shares cease to be subject to the plan, and

(b) to whom the PAYE regulations (within the meaning of section 203L(3) of the Taxes Act 1988) at that time apply.

(7) Where, as a result of any shares ceasing to be subject to the plan, a participant is chargeable to income tax under Schedule E in accordance with this Part and either—

(a) there is no company which falls within sub-paragraph (6), or

(b) the Inland Revenue are of the opinion that it is impracticable for the company which falls within that sub-paragraph to make a PAYE deduction and accordingly direct that this sub-paragraph shall apply,

then sub-paragraph (2) shall not apply and the trustees shall make a PAYE deduction in respect of an amount equal to that on which income tax is payable as if the participant were a former employee of the trustees.

(8) In a case where sub-paragraph (7) applies, section 203C of the Taxes Act 1988 (PAYE: employee of non-UK employer) does not apply.

(9) Where—

(a) a participant disposes of his beneficial interest in any of his plan shares to the trustees, and

(b) the trustees are deemed by virtue of paragraph 74 to have disposed of the shares in question,

this paragraph shall apply as if the consideration payable by the trustees to the participant on the disposal had been received by the trustees as the proceeds of disposal of plan shares.

(10) For the purposes of this paragraph "PAYE deduction" means a deduction required by regulations under section 203 of the Taxes Act 1988.

PAYE: capital receipts

96.—(1) Where the trustees receive a sum of money which constitutes (or forms part of) a capital receipt in respect of which a participant is chargeable to income tax under Schedule E, in accordance with this Part of this Schedule, when it is received by him—

(a) the trustees shall pay out of that sum of money to the employer company an amount equal to that on which income tax is so payable, and

(b) the employer company shall then pay over that amount to the participant, but in so doing shall make a PAYE deduction.

This is subject to sub-paragraph (3).

(2) For the purposes of this paragraph "the employer company" means the company—

(a) of which the participant is an employee at the time the trustees receive the sum of money referred to in sub-paragraph (1), and

(b) to whom the PAYE regulations (within the meaning of section 203L(3) of the Taxes Act 1988) at that time apply.

(3) Where the trustees receive a sum of money to which sub-paragraph (1) applies but—

(a) there is no company which falls within sub-paragraph (2), or

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(b) the Inland Revenue are of the opinion that it is impracticable for the company which falls within that sub-paragraph to make a PAYE deduction and accordingly direct that this sub-paragraph shall apply,

then, in paying over to the participant the capital receipt, the trustees shall make a PAYE deduction in respect of an amount equal to that on which income tax is payable as mentioned in sub-paragraph (1) as if the participant were a former employee of the trustees.

(4) In a case where sub-paragraph (3) applies, section 203C of the Taxes Act 1988 (PAYE: employee of non-UK employer) does not apply.

(5) For the purposes of this paragraph "PAYE deduction" means a deduction required by regulations under section 203 of the Taxes Act 1988.

PART XI

CAPITAL GAINS TAX

Introduction

97. The provisions of this Part apply for capital gains tax purposes in relation to an approved employee share ownership plan.

Gains accruing to trustees

98.—(1) Any gain accruing to the trustees is not a chargeable gain if the shares—

(a) are shares in relation to which the requirements of Part VIII are met, and

(b) are awarded to employees, or acquired on their behalf as dividend shares, in accordance with the plan within the relevant period.

(2) If the shares are readily convertible assets at the time they are acquired by the trustees, the relevant period is the period of two years beginning with the date on which the shares are acquired by the trustees.

(3) If at the time of their acquisition by the trustees the shares are not readily convertible assets, the relevant period is—

(a) the period of five years beginning with the date on which the shares were acquired, or

(b) if within that period the shares in question become readily convertible assets, the period of two years beginning with the date on which they did so,

whichever ends first.

(4) For the purposes of determining whether shares are awarded to employees within the relevant period, shares acquired by the trustees at an earlier time are taken to be awarded to employees before shares of the same class acquired by the trustees at a later time.

This is subject to paragraph 76(1) (treatment of shares acquired from an employee share ownership trust).

Participant absolutely entitled as against trustees

99.—(1) A participant is treated for capital gains tax purposes as absolutely entitled as against the trustees to any shares awarded to him under the plan.

(2) This applies notwithstanding anything in the plan or the trust instrument.

Different classes of shares

100.—(1) For the purposes of Chapter I of Part IV of the Taxation of Chargeable Gains Act 1992 (identification of shares etc.) a participant's plan shares are treated, so long as they are subject to the plan, as of a different class from any shares (which would otherwise be treated as of the same class) that are not plan shares. 1992 c. 12.

(2) For the purposes of that Chapter, any shares transferred to the trustees of the plan trust by a qualifying transfer that have not been awarded to participants under the plan shall (notwithstanding that they would otherwise fall to be treated as of the same class) be treated as of a different class from any shares held by the trustees that were not transferred to them by a qualifying transfer.

(3) In sub-paragraph (2) "qualifying transfer" has the meaning given in paragraph 76 (acquisition by trustees of shares from employee share ownership trust).

No chargeable gain on shares ceasing to be subject to the plan

101.—(1) Shares which cease to be subject to the plan are treated as having been disposed of and immediately reacquired by the participant at market value.

(2) Any gain accruing on that disposal is not a chargeable gain.

Treatment of forfeited shares

102.—(1) If any of the participant's plan shares are forfeited, they are treated as having been disposed of by the participant and acquired by the trustees at market value at the date of forfeiture.

(2) Any gain accruing on that disposal is not a chargeable gain.

Acquisition by trustees of shares from profit sharing scheme

103.—(1) Where the trustees acquire shares from the trustees of an approved profit sharing scheme, the disposal and the acquisition by the trustees are treated as being made for such consideration as to secure that neither a gain nor a loss accrues on the disposal.

(2) In such a case the relevant period for the purposes of paragraph 98 is determined as if the shares had been acquired by the trustees at the time they were acquired by the trustees of the other trust.

This does not affect the date on which the trustees are treated as acquiring the shares for the purposes of taper relief.

Disposal of rights under rights issue

104.—(1) Any gain accruing on the disposal of rights under paragraph 72 (power of trustees to raise funds to subscribe for rights issue) is not a chargeable gain.

(2) Sub-paragraph (1) does not apply to a disposal of rights unless similar rights are conferred in respect of all ordinary shares in the company.

PART XII

CORPORATION TAX DEDUCTIONS

Introduction

105. References in this Part of this Schedule to deductions are to deductions by a company in calculating for the purposes of corporation tax the profits of a trade carried on by it.

This is subject to paragraph 114 (application of provisions to expenses of management of investment companies etc.).

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Deduction for providing free or matching shares

106.—(1) Where, under an approved employee share ownership plan, shares are awarded to employees as free or matching shares by reason of their employment with a company, a deduction is allowed under this paragraph to that company.

(2) Any such deduction—

(a) is of an amount equal to the market value of the shares at the time they are acquired by the trustees, and

(b) must be made for the period of account in which the shares are awarded to employees in accordance with the plan.

(3) Except as provided by sub-paragraph (1), no deduction may be made by that company or any associated company in respect of the provision of those shares.

This is subject to paragraphs 111 (deduction for costs of setting up the plan) and 112 (deductions for contributions to running expenses of plan).

(4) Where the shares are awarded under a group plan, the market value of the shares at the time they are acquired by the trustees shall for the purposes of this paragraph be taken to be the relevant proportion of the total market value of the shares included in the award.

For this purpose "the relevant proportion" means the proportion that the number of shares in the award awarded to the employees of the company concerned bears to the total number of shares in the award.

(5) In determining the market value of any shares for the purposes of this paragraph, if shares have been acquired by the trustees on different days it shall be assumed that those acquired on an earlier day are awarded to employees under the plan before those acquired by the trustees on a later day.

(6) If a deduction is made under this paragraph by a company, no deduction may be made by any other company under this paragraph in respect of the provision of the shares.

(7) This paragraph has effect subject to paragraph 108 (cases in which no deduction is allowed).

Deduction for additional expenses in providing partnership shares

107.—(1) Where under an approved employee share ownership plan—

(a) partnership shares are awarded to employees by reason of their employment with a company, and

(b) the market value of those shares at the time they are acquired by the trustees exceeds the partnership share money paid by the participants to acquire those shares,

a deduction is allowed under this paragraph to that company.

(2) Any such deduction—

(a) is of an amount equal to the amount of the excess referred to in sub-paragraph (1)(b), and

(b) must be made for the period of account in which the shares are awarded to employees in accordance with the plan.

(3) Except as provided by sub-paragraph (1), no deduction may be made by that company or any associated company in respect of the provision of those shares.

This is subject to paragraphs 111 (deduction for costs of setting up the plan) and 112 (deductions for contributions to running expenses of plan).

(4) If a deduction is made under this paragraph by a company, no deduction may be made by any other company under this paragraph in respect of the provision of the shares.

(5) This paragraph has effect subject to paragraph 108 (cases in which no deduction is allowed).

Cases in which no deduction is allowed

108.—(1) No deduction is allowed under paragraph 106 or 107 in the following cases.

(2) No deduction is allowed in respect of shares awarded to an individual who is not a Schedule E taxpayer at the date the shares are awarded to him under the plan.

A "Schedule E taxpayer" means an individual who—

(a) is chargeable to tax under Schedule E in respect of emoluments from the employment by reference to which he is eligible to participate in the award, or

(b) would be so chargeable if any such emoluments were remitted to the United Kingdom.

(3) No deduction is allowed in respect of shares that are liable to depreciate substantially in value for reasons that do not apply generally to shares in the company.

(4) No deduction is allowed if a deduction has been made—

(a) by the company, or

(b) by an associated company of the company,

in respect of the provision of the same shares for this or another trust.

This applies whatever the nature or purpose of the other trust and whatever the basis on which the deduction was made.

(5) For the purposes of determining whether the same shares have been provided to more than one trust, if shares have been acquired by the trustees of the plan trust on different days it shall be assumed that those acquired on an earlier day are awarded under the plan before those acquired by the trustees on a later day.

No deduction for expenses in providing dividend shares

109.—(1) No deduction is allowed for expenses in providing shares that are acquired on behalf of individuals under an approved employee share ownership plan as dividend shares.

(2) This is subject to paragraph 112 (deductions for contributions to running expenses of plan).

Treatment of forfeited shares

110. If any of a participant's plan shares are forfeited—

(a) the shares are treated for the purposes of this Part as acquired by the trustees—

(i) when the forfeiture occurs, and

(ii) for no consideration, and

(b) no deduction is allowed under paragraph 106 or 107 in respect of any subsequent award of those shares under the plan.

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Deduction for costs of setting up the plan

111.—(1) A deduction is allowed under this paragraph for expenses incurred by a company in establishing an employee share ownership plan which is approved by the Inland Revenue.

(2) No deduction may be made under this paragraph if—

(a) any employee acquires rights under the plan, or

(b) the trustees acquire any shares for the purposes of the plan,

before the Inland Revenue approve the plan.

(3) If Inland Revenue approval of the plan is given more than nine months after the end of that period of account in which the expenses are incurred, the expenses are treated for the purposes of this paragraph as incurred in the period in which the approval is given.

(4) No other deduction is allowed in respect of expenses for which a deduction is allowed under this paragraph.

Deductions for contributions to running expenses of plan

112.—(1) Nothing in this Part of this Schedule affects any deduction for expenses incurred by a company in contributing to the expenses of the trustees in operating an approved employee share ownership plan.

(2) For this purpose the expenses of the trustees in operating the plan—

(a) do not include expenses in acquiring shares for the purposes of the trust, other than incidental acquisition costs, but

(b) do include the payment of interest on money borrowed by them for that purpose.

(3) In sub-paragraph (2)(a) "incidental acquisition costs" means any fees, commission, stamp duty and similar incidental costs attributable to the acquisition of the shares.

Withdrawal of deductions on withdrawal of approval

113.—(1) If approval of an employee share ownership plan is withdrawn the Inland Revenue may by notice to a company direct that the benefit of any deductions under paragraph 106 (deduction for providing free or matching shares) or 107 (deduction for contributing to additional expenses in providing partnership shares) in relation to the plan is also withdrawn.

(2) The effect of the direction is that the aggregate amount of the deductions is treated as a trading receipt of that company for the period of account in which the Inland Revenue give notice of the withdrawal of approval.

Application of provisions to expenses of management of investment companies etc.

114.—(1) The provisions of this Part apply in relation to—

(a) investment companies, and

(b) companies to which section 75 of the Taxes Act 1988 (management expenses) applies by virtue of section 76 of that Act (insurance companies),

in accordance with the following provisions.

(2) The provisions of this Part which allow a deduction in calculating the profits of a trade apply to treat amounts as disbursed as expenses of management.

(3) Paragraph 113(2) (effect of direction as to withdrawal of deductions) applies as if the reference to a trading receipt for the period of account in which

the Inland Revenue give notice of the withdrawal of approval were a reference to profits or gains chargeable to tax under Case VI of Schedule D arising when the Inland Revenue give notice of the withdrawal.

PART XIII

SUPPLEMENTARY PROVISIONS

Company reconstructions

115.—(1) This paragraph applies where there occurs in relation to any of the participant's plan shares ("the original holding")—

(a) a transaction which results in a new holding being equated with the original holding for the purposes of capital gains tax, or

(b) a transaction that would have that result but for the fact that what would be the new holding consists of or includes a qualifying corporate bond,

other than a transaction within sub-paragraph (2).

A transaction in relation to which this paragraph applies is referred to below as a "company reconstruction".

(2) Where an issue of shares of any of the following descriptions (in respect of which a charge to income tax arises) is made as part of a company reconstruction, those shares shall be treated for the purposes of this paragraph as not forming part of the new holding—

(a) redeemable shares or securities issued as mentioned in section 209(2)(c) of the Taxes Act 1988;

(b) share capital issued in circumstances such that section 210(1) of that Act applies;

(c) share capital to which section 249 of that Act applies.

(3) In this paragraph—

"corresponding shares", in relation to any new shares, means the shares in respect of which the new shares are issued or which the new shares otherwise represent;

"new shares" means shares comprised in the new holding which were issued in respect of, or otherwise represent, shares comprised in the original holding;

"original holding" has the meaning given by sub-paragraph (1).

(4) Subject to the following provisions of this paragraph, in relation to an employee share ownership plan, references in this Schedule to a participant's plan shares shall be construed, after the time of the company reconstruction, as being or, as the case may be, as including references to any new shares.

(5) For the purposes of this Schedule—

(a) a company reconstruction shall be treated as not involving a disposal of shares comprised in the original holding,

(b) the date on which any new shares are to be treated as having been awarded to the participant shall be that on which the corresponding shares were awarded,

(c) the conditions in Part VIII shall be treated as fulfilled with respect to any new shares if they were (or were treated as) fulfilled with respect to the corresponding shares, and

(d) the provisions of Part X (income tax) and Part XI (capital gains tax) shall apply in relation to the new shares as they would have applied to the corresponding shares.

Where the corresponding shares were dividend shares, the reference in paragraph (b) to the shares being awarded shall be read as a reference to the shares being acquired on behalf of the participant.

(6) Sub-paragraphs (4) and (5) are subject to paragraph 116 (treatment of shares acquired under rights issue).

(7) For the purposes of this Schedule if, as part of a company reconstruction, trustees become entitled to a capital receipt, their entitlement to the capital receipt shall be taken to arise before the new holding comes into being.

(8) In the context of a new holding, any reference in this Schedule to shares includes securities and rights of any description which form part of the new holding for the purposes of Chapter II of Part IV of the Taxation of Chargeable Gains Act 1992.

1992 c. 12.

Treatment of shares acquired under rights issue

116.—(1) Where the trustees exercise rights under a rights issue conferred in respect of a participant's plan shares, any shares or securities or rights allotted as a result shall be treated for the purposes of this Schedule as if they were plan shares—

(a) identical to the shares in respect of which the rights were conferred, and

(b) appropriated to, or acquired on behalf of, the participant under the plan in the same way and at the same time as those shares.

This is subject to sub-paragraphs (2) to (4).

(2) Where the funds used by the trustees to exercise rights under a rights issue are provided otherwise than by virtue of the exercise by the trustees of their powers under paragraph 72 (power of trustees to raise funds to subscribe for rights issue)—

(a) any shares, securities or rights allotted are not plan shares, and

(b) sections 127 to 130 of the Taxation of Chargeable Gains Act 1992 shall not apply in relation to them.

(3) Sub-paragraph (1) does not apply in relation to rights arising under a rights issue unless similar rights are conferred in respect of all ordinary shares in the company.

(4) Where sub-paragraph (1) does not apply by virtue of sub-paragraph (3)—

(a) any shares, securities or rights allotted are not plan shares, and

(b) sections 127 to 130 of the Taxation of Chargeable Gains Act 1992 shall not apply in relation to them.

(5) In this paragraph references to rights arising under a rights issue are to be construed in accordance with paragraph 72(2).

Power to require information

117.—(1) The Inland Revenue may by notice require any person to provide them with such information as they reasonably require for the performance of their functions under this Schedule and as the person to whom the notice is addressed has or can reasonably obtain.

(2) The power conferred by this paragraph extends, in particular, to—

(a) information to enable the Inland Revenue—

(i) to decide whether to approve an employee share ownership plan or withdraw an approval already given, or

(ii) to determine the liability to tax, including capital gains tax, of any person who has participated in a plan; and

(b) information about the administration of a plan and any proposed alteration of the terms of a plan.

(3) The notice must require the information to be provided within a specified time, which must not be less than three months.

(4) In section 98 of the Taxes Management Act 1970 (penalties in connection with returns, etc.), in the first column of the table, after the final entry insert— 1970 c. 9.

"paragraph 117 of Schedule 8 to the Finance Act 2000".

Withdrawal of approval

118.—(1) If any disqualifying event occurs in relation to an approved employee share ownership plan, the Inland Revenue may by notice to the company withdraw the approval with effect from the time at which the disqualifying event occurred or such later time as the Inland Revenue may specify.

(2) The following are disqualifying events—

(a) a contravention in relation to the operation of the plan of any of the requirements of this Schedule, the plan itself or the plan trust;

(b) any alteration being made in a key feature of the plan, or in the terms of the plan trust, without the approval of the Inland Revenue;

(c) if the plan provides for performance allowances in accordance with paragraph 30 (method two), the setting, in respect of an award of shares, of performance targets that, at the time they are set in accordance with the plan, cannot reasonably be viewed as being comparable;

(d) any alteration being made in the share capital of the company whose shares are the subject of the plan, or in the rights attaching to any shares of that company, that materially affects the value of participants' plan shares;

(e) shares of a class of which shares have been awarded to participants receiving different treatment in any respect from the other shares of that class;

(f) the trustees, the company or, in the case of a group plan, a company which is or has been a participating company failing to furnish any information which they are or it is required to furnish under paragraph 117.

(3) For the purposes of sub-paragraph (2)(b)—

(a) an alteration is an alteration of a "key feature" of the plan if it relates to a provision that is necessary in order to meet the requirements of this Schedule; and

(b) the Inland Revenue shall not withhold their approval unless it appears to them that the plan as proposed to be altered would not now be approved on an application under paragraph 4.

(4) For the purposes of sub-paragraph (2)(c) performance targets are comparable if they are comparable in terms of the likelihood of their being met by the performance units to which they apply.

(5) Sub-paragraph (2)(e) applies, in particular, to different treatment in respect of—

(a) the dividend payable;

(b) repayment;

(c) the restrictions attaching to the shares; or

(d) any offer of substituted or additional shares, securities or rights of any description in respect of the shares.

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This is subject to sub-paragraph (6).

(6) Sub-paragraph (2)(e) does not apply—

(a) where the difference in treatment arises from—

(i) a key feature of the plan, or

(ii) any of the participants' shares being subject to provision for forfeiture, or

(b) on the ground only that shares which have been newly issued receive, in respect of dividends payable with respect to a period beginning before the date on which they were issued, treatment less favourable than that accorded to shares issued before that date.

(7) The withdrawal of approval of an employee share ownership plan does not affect the operation of this Schedule in relation to shares awarded to participants in the plan before the time with effect from which approval was withdrawn.

References in this Schedule to an approved employee share ownership plan in relation to such shares are to a plan that was approved at the time the shares were awarded.

Appeal against withdrawal of approval

119.—(1) The company may appeal against a decision of the Inland Revenue—

(a) to withdraw approval of an employee share ownership plan, or

(b) to give a direction under paragraph 113 (withdrawal of corporation tax deductions on withdrawal of approval), or

(c) to refuse approval under paragraph 118(2)(b) (approval of alteration of plan or plan trust).

(2) The appeal lies to the Special Commissioners.

(3) Notice of appeal must be given to the Inland Revenue within 30 days after notice of their decision is given to the company.

Termination of plan

120.—(1) The plan may provide for the company to issue a plan termination notice in respect of the plan in such circumstances as are specified in the plan.

(2) The plan must provide that, where a plan termination notice is issued, a copy of the notice is to be given, without delay, to—

(a) the Inland Revenue,

(b) the trustees, and

(c) each individual—

(i) who has plan shares, or

(ii) who has entered a partnership share agreement which was in force immediately before the notice was issued.

Effect of plan termination notice

121.—(1) This paragraph applies where the company has issued a plan termination notice under paragraph 120.

(2) No further shares may be awarded to individuals under the plan.

(3) The trustees must remove the plan shares from the plan as soon as practicable after—

(a) the end of the notice period, or

(b) if later, the first date on which the shares may be removed from the plan without giving rise to a charge to income tax under Part X of this Schedule on the participant on whose behalf they are held.

Paragraph 46 (repayment of partnership share money) and paragraph 58(2) (cash dividend paid over if not reinvested) provide for the payment to employees of money held on their behalf.

(4) In sub-paragraph (3) "the notice period" means the period of three months beginning with the date on which the requirements imposed by the plan in accordance with paragraph 120(2) (copy of termination notice to Inland Revenue, participants etc.) are met in respect of the plan termination notice.

(5) The trustees may remove the participant's shares from the plan at an earlier date with the participant's consent.

(6) Any consent given by the participant before he receives a copy of the plan termination notice shall be disregarded for this purpose.

(7) The trustees must as soon as practicable after the plan termination notice is issued pay to an individual any money held on his behalf.

(8) In this paragraph references to the trustees removing the plan shares from the plan are to their—

(a) transferring the shares to the participant on behalf of whom they are held, or to another person, at his direction, or

(b) disposing of the shares and accounting (or holding themselves ready to account) for the proceeds to the participant or to another person at his direction.

(9) Where the participant has died, the references in sub-paragraph (8) to the participant shall be read as references to his personal representatives.

Meaning of shares being withdrawn from or ceasing to be subject to plan

122.—(1) For the purposes of this Schedule shares are withdrawn from the plan when—

(a) they are transferred by the trustees to the participant, or another person, on the direction of the participant,

(b) the participant assigns, charges or otherwise disposes of his beneficial interest in the shares, or

(c) they are disposed of by the trustees, on the direction of the participant, in circumstances where the trustees account (or hold themselves ready to account) for the proceeds to the participant or to another person.

(2) Where the participant has died, the references in sub-paragraph (1) to the participant shall be read as references to his personal representatives.

(3) For the purposes of this Schedule plan shares cease to be subject to the plan when—

(a) they are withdrawn from the plan,

(b) the participant to whom the shares were awarded ceases to be in relevant employment at a time when the shares are subject to the plan, or

(c) the trustees dispose of the shares under provision made in accordance with paragraph 73 (meeting PAYE obligations).

(4) Where an individual participates in an award of partnership shares, if he ceases to be in relevant employment at any time during the acquisition period relating to that award, he shall be treated for the purposes of sub-paragraphs (3) and (7) as ceasing to be in such employment immediately after the shares are awarded to him.

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(5) In sub-paragraph (4) "the acquisition period" in relation to an award means—

(a) where there was no accumulation period, the period beginning with the deduction of the partnership share money and ending with the acquisition date (within the meaning of paragraph 40(2)); and

(b) where there was an accumulation period, the period beginning with the end of that period and ending immediately before the acquisition date (within the meaning of paragraph 42(3)).

(6) For the purposes of determining the charge to income tax (if any) arising on any of the participant's shares ceasing to be subject to the plan—

(a) shares shall be taken to cease to be subject to the plan in the order in which they were awarded to the participant under the plan,

(b) where shares are awarded to the participant on the same day, the shares shall be treated as ceasing to be subject to the plan in the order which gives rise to the lowest charge to income tax on the participant.

(7) Where a participant ceases to be in relevant employment his plan shares shall be treated as ceasing to be subject to the plan on the date of leaving.

Meaning of participant ceasing to be in relevant employment

123.—(1) This paragraph explains what is meant by a participant ceasing to be in relevant employment.

(2) Relevant employment means employment by the company or any associated company.

(3) A participant does not cease to be in relevant employment if he remains in the employment of the company or any associated company.

Exercise of functions conferred on "the Inland Revenue"

124. References in this Schedule to "the Inland Revenue" are to any officer of the Board.

Determination of market value

125.—(1) For the purposes of this Schedule the "market value" of shares has the same meaning as, for the purposes of the Taxation of Chargeable Gains Act 1992, it has by virtue of Part VIII of that Act.

1992 c. 12.

This is subject to paragraph 24(3) (determination of value of shares subject to restriction or risk of forfeiture).

(2) Where for the purposes of this Schedule the market value of shares on any date falls to be determined, the Inland Revenue and the trustees may agree that it shall be determined by reference to such date or dates, or to an average of the values on a number of dates, as may be provided in the agreement.

Meaning of "associated company"

126.—(1) For the purposes of this Schedule one company is an "associated company" of another company if—

(a) one has control of the other, or

(b) both are under the control of the same person or persons.

(2) For the purposes of this paragraph the question of whether a person controls a company shall be determined in accordance with section 416(2) to (6) of the Taxes Act 1988.

(3) This paragraph is subject to paragraph 67(3).

Jointly owned companies

127.—(1) For the purposes of the provisions of this Schedule relating to group plans, each joint owner of a jointly owned company is treated as controlling—

(a) the jointly owned company, and

(b) any company controlled by that company.

This paragraph does not apply for the purposes of paragraph 61(b) (requirement that plan shares are in a company not under another company's control).

(2) A "jointly owned company" means a company—

(a) of which 50% of the issued share capital is owned by one person and 50% by another, and

(b) which is not controlled by any one person.

(3) A jointly owned company may not be a participating company in more than one group plan.

Meaning of "readily convertible asset"

128.—(1) For the purposes of this Schedule "readily convertible asset" has the same meaning as in section 203F of the Taxes Act 1988 (PAYE: tradeable assets).

This is subject to sub-paragraph (2).

(2) In determining for the purposes of this Schedule whether shares are readily convertible assets any market for the shares that—

(a) is created by virtue of the trustees acquiring shares for the purposes of the plan, and

(b) exists solely for the purposes of the plan,

shall be disregarded.

Minor definitions

129.—(1) In this Schedule—

"approved employee share ownership plan" means an employee share ownership plan approved under this Schedule;

"approved profit sharing scheme" means a profit sharing scheme approved under Schedule 9 to the Taxes Act 1988;

"articles of association", in relation to a company, includes any other written agreement between the shareholders of the company;

"company" means a body corporate;

"control", unless otherwise indicated, has the same meaning as in section 840 of the Taxes Act 1988;

"foreign cash dividend" means a cash dividend paid in respect of plan shares in a company not resident in the United Kingdom;

"group of companies" means a company and any other companies of which it has control, and "group company" has a corresponding meaning;

"ordinary share capital" has the meaning given in section 832(1) of the Taxes Act 1988;

"participant's plan shares", in relation to an employee share ownership plan, means plan shares that have been awarded to an individual participant;

"PAYE obligations" means obligations of any person under—

(a) sections 203 to 203L of the Taxes Act 1988, or

(b) regulations under section 203 of that Act;

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"plan shares", in relation to a plan, means—

(a) free, partnership or matching shares that have been awarded to participants under the plan,

(b) dividend shares that have been acquired on behalf of participants under the plan, and

(c) shares in relation to which paragraph 115(5) applies (company reconstructions: new shares)),

that remain subject to the plan;

"qualifying corporate bond" has the meaning given by section 117 of the Taxation of Chargeable Gains Act 1992; 1992 c. 12.

"tax year" means a year of assessment.

(2) Section 839 of the Taxes Act 1988 (connected persons) applies for the purposes of this Schedule.

(3) For the purposes of this Schedule references to "shares" include fractions of shares forming part of the share capital of a company registered in a foreign country the law of which recognises such fractions.

(4) For the purposes of this Schedule a company is a member of a consortium owning another company if it is one of a number of companies—

(a) which between them beneficially own not less than three-quarters of the other company's ordinary share capital, and

(b) each of which beneficially owns not less than one-twentieth of that capital.

Index of defined expressions

130. In this Schedule the following expressions are defined or otherwise explained by the provisions indicated—

approved employee share ownership plan	paragraph 129(1) (and see paragraph 118(7))
approved profit sharing scheme	paragraph 129(1)
articles of association	paragraph 129(1)
associated company	paragraph 126 (and see paragraph 67(3))
award of shares	paragraph 3(1)
ceasing to be in relevant employment (in relation to a participant)	paragraph 123
ceasing to be subject to plan (in relation to shares)	paragraph 122
company	paragraph 129(1)
the company (in relation to an employee share ownership plan)	paragraph 1(4)
connected person	paragraph 129(2)
consortium (member of)	paragraph 129(4)
control	paragraph 129(1) (and see paragraph 127)
deduction (in Part XII)	paragraph 105
dividend shares	paragraph 53(1)
eligible shares (in Part VIII)	paragraph 59
employee share ownership plan	paragraph 1(1)
foreign cash dividend	paragraph 129(1)
forfeiture (provision for)	paragraph 65(6)
free shares	paragraph 1(1)(a)
group of companies	paragraph 129(1)
group plan	paragraph 2(1)
holding period	paragraph 31
the Inland Revenue	paragraph 124
market value (of shares)	paragraph 125

matching shares	paragraph 1(2)
ordinary share capital	paragraph 129(1)
parent company	paragraph 2(1)
participant (in relation to an employee share ownership plan)	paragraph 3(3)
participant's plan shares	paragraph 129(1) (and see paragraph 115(4))
participating company (in relation to a group plan)	paragraph 2(2)
participation in an award of shares	paragraph 3(2)
partnership share agreement	paragraph 34
partnership shares	paragraph 1(1)(b)
PAYE obligations	paragraph 129(1)
performance allowance	paragraph 25
plan shares	paragraph 129(1) (and see paragraphs 115 and 116)
the plan trust	paragraph 68(2)
qualifying corporate bond	paragraph 129(1)
qualifying employee	paragraph 8(4)
readily convertible asset	paragraph 128
reinvestment (in Part VII)	paragraph 53(1)
relevant employment	paragraph 123(2)
salary (in Part V)	paragraph 48
shares	paragraph 129(3) (and in the context of a new holding paragraph 115(8))
tax year	paragraph 129(1)
the trustees	paragraph 68(1)
withdrawal of shares from plan	paragraph 122(1)

SCHEDULE 9

Section 48.

NEW SCHEDULE 7C TO THE TAXATION OF CHARGEABLE GAINS ACT 1992

The Schedule inserted after Schedule 7B to the Taxation of Chargeable Gains Act 1992 is as follows— 1992 c. 12.

"SCHEDULE 7C

RELIEF FOR TRANSFERS TO APPROVED SHARE PLANS

Introductory

1.—(1) A person ('the claimant') who makes a disposal of shares ('the disposal') to the trustees of the plan trust of an employee share ownership plan ('the plan') is entitled to claim relief under paragraph 5 if—

(a) the conditions in paragraph 2 are fulfilled, and

(b) paragraph 3(1) or (2) applies.

(2) Sub-paragraph (1) does not apply to a company that makes a disposal of shares.

(3) In this paragraph the references to a disposal of shares include a disposal of an interest in shares.

Conditions relating to the disposal

2.—(1) The first condition is that, at the time of the disposal, the plan is approved under Schedule 8 to the Finance Act 2000.

(2) The second condition is that the relevant shares meet the requirements in Part VIII of that Schedule (types of shares that may be used in plan) in relation to the plan.

For this purpose that Part applies as if paragraph 61(a) and (c) (listed shares and shares in a company under the control of a company whose shares are listed) were omitted.

(3) The third condition is that, at any time in the entitlement period, the trustees hold, for the beneficiaries of the plan trust, shares in the relevant company that—

(a) constitute not less than 10% of the ordinary share capital of the company, and

(b) carry rights to not less than 10% of—

(i) any profits available for distribution to shareholders of the company, and

(ii) any assets of that company available for distribution to its shareholders in the event of a winding up.

(4) For the purposes of sub-paragraph (3), shares that have been appropriated to, or acquired on behalf of, an individual under the plan shall continue to be treated as held by the trustees of the plan trust for the beneficiaries of that trust until such time as they cease to be subject to the plan (within the meaning of Schedule 8 to the Finance Act 2000).

(5) The fourth condition is that, at all times in the proscribed period, there are no unauthorised arrangements under which the claimant or a person connected with him may be entitled to acquire (directly or indirectly) from the trustees of the plan trust any shares, or an interest in or right deriving from any shares.

(6) For the purposes of this paragraph—

'ordinary share capital' has the meaning given in section 832(1) of the Taxes Act;

'the relevant company' means the company of whose share capital the relevant shares form part; and

'the relevant shares' means the shares that are, or an interest in which is, the subject of the disposal.

Reinvestment of disposal proceeds

3.—(1) This sub-paragraph applies if the claimant obtains consideration for the disposal and, at any time in the acquisition period, all of the amount or value of the consideration is applied by him in making an acquisition of assets or an interest in assets ('replacement assets') which—

(a) are, immediately after the time of the acquisition, chargeable assets in relation to the claimant, and

(b) are not shares in, or debentures issued by, the relevant company or a company which is (at the time of the acquisition) in the same group as the relevant company;

but the preceding provisions of this sub-paragraph shall have effect without the words ', at any time in the acquisition period,' if the acquisition is made pursuant to an unconditional contract entered into in the acquisition period.

(2) This sub-paragraph applies if—

(a) sub-paragraph (1) would have applied but for the fact that part only of the amount or value mentioned in that sub-paragraph is applied as there mentioned, and

(b) all the amount or value so mentioned except for a part which is less than the amount of the gain (whether all chargeable gain or not) accruing on the disposal is so applied.

(3) In sub-paragraph (1)(b)—

'the relevant company' has the meaning given in paragraph 2(6); and

'group' shall be construed in accordance with section 170.

Provision supplementary to paragraphs 2 and 3

4.—(1) This paragraph applies for the purposes of paragraphs 2 and 3.

(2) The entitlement period is the period beginning with the disposal and ending on the expiry of 12 months beginning with the date of the disposal.

(3) The acquisition period is the period beginning with the disposal and ending on the expiry of six months beginning with—

(a) the date of the disposal, or

(b) if later, the date on which the third condition (set out in paragraph 2(3)) is first fulfilled.

(4) The proscribed period is the period beginning with the disposal and ending on—

(a) the date of the acquisition, or

(b) if later, the date on which the third condition (set out in paragraph 2(3)) is first fulfilled.

(5) All arrangements are unauthorised unless they only allow shares to be appropriated to or acquired on behalf of an individual under the plan.

The relief

5.—(1) Where the claimant is entitled to claim relief under this paragraph and paragraph 3(1) applies, he shall, on making a claim in the period of 2 years beginning with the acquisition, be treated for the purposes of this Act—

(a) as if the consideration for the disposal were (if otherwise of a greater amount or value) of such amount as would secure that on the disposal neither a gain nor a loss accrues to him, and

(b) as if the amount or value of the consideration for the acquisition were reduced by the excess of the amount or value of the actual consideration for the disposal over the amount of the consideration which the claimant is treated as receiving under paragraph (a).

(2) Where the claimant is entitled to claim relief under this paragraph and paragraph 3(2) applies, he shall, on making a claim in the period of 2 years beginning with the acquisition, be treated for the purposes of this Act—

(a) as if the amount of the gain accruing on the disposal were reduced to the amount of the part mentioned in paragraph 3(2)(b), and

(b) as if the amount or value of the consideration for the acquisition were reduced by the amount by which the gain is reduced under paragraph (a) above.

(3) Nothing in sub-paragraph (1) or (2) shall affect the treatment for the purposes of this Act of the other party to the disposal or of the other party to the acquisition.

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(4) The provisions of this Act fixing the amount of the consideration deemed to be given for a disposal or acquisition shall be applied before the preceding provisions of this paragraph are applied.

Dwelling-houses: special provision

6.—(1) Sub-paragraph (2) applies where—

(a) a claim is made under paragraph 5,

(b) immediately after the time of the acquisition mentioned in paragraph 3 and apart from this paragraph, any replacement asset was a chargeable asset in relation to the claimant,

(c) the asset is a dwelling-house or part of a dwelling-house or land, and

(d) there was a time in the period beginning with the acquisition and ending with the time when paragraph 5(1) or (2) falls to be applied such that, if the asset (or an interest in it) were disposed of at that time, it would be within section 222(1) and the individual there mentioned would be the claimant or the claimant's spouse.

(2) In such a case the asset shall be treated as if, immediately after the time of the acquisition mentioned in paragraph 3, it was not a chargeable asset in relation to the claimant.

(3) Sub-paragraph (4) applies where—

(a) the provisions of paragraph 5(1) or (2) have been applied,

(b) any replacement asset which, immediately after the time of the acquisition mentioned in paragraph 3 and apart from this paragraph, was a chargeable asset in relation to the claimant consists of a dwelling-house or part of a dwelling-house or land, and

(c) there is a time after paragraph 5(1) or (2) has been applied such that, if the asset (or an interest in it) were disposed of at that time, it would be within section 222(1) and the individual there mentioned would be the claimant or the claimant's spouse.

(4) In such a case—

(a) the asset shall be treated as if, immediately after the time of the acquisition mentioned in paragraph 3, it was not a chargeable asset in relation to the claimant and adjustments shall be made accordingly, but

(b) any gain treated as accruing in consequence of the application of paragraph (a) shall be treated as accruing at the time mentioned in sub-paragraph (3)(c) or, if there is more than one such time, at the earliest of them.

(5) Sub-paragraph (6) applies where—

(a) a claim is made under paragraph 5,

(b) immediately after the time of the acquisition mentioned in paragraph 3 and apart from this paragraph, any replacement asset was a chargeable asset in relation to the claimant,

(c) the asset was an option to acquire (or to acquire an interest in) a dwelling-house or part of a dwelling-house or land,

(d) the option has been exercised, and

(e) there was a time in the period beginning with the exercise of the option and ending with the time when paragraph 5(1) or (2) falls to be applied such that, if the asset acquired on exercise of the

option were disposed of at that time, it would be within section 222(1) and the individual there mentioned would be the claimant or the claimant's spouse.

(6) In such a case the option shall be treated as if, immediately after the time of the acquisition mentioned in paragraph 3, it was not a chargeable asset in relation to the claimant.

(7) Sub-paragraph (8) applies where—

(a) the provisions of paragraph 5(1) or (2) have been applied,

(b) any replacement asset which, immediately after the time of the acquisition mentioned in paragraph 3 and apart from this paragraph, was a chargeable asset in relation to the claimant consisted of an option to acquire (or to acquire an interest in) a dwelling-house or part of a dwelling-house or land,

(c) the option has been exercised, and

(d) there is a time after paragraph 5(1) or (2) has been applied such that, if the asset acquired on exercise of the option were disposed of at that time, it would be within section 222(1) and the individual there mentioned would be the claimant or the claimant's spouse.

(8) In such a case—

(a) the option shall be treated as if, immediately after the time of the acquisition mentioned in paragraph 3, it was not a chargeable asset in relation to the claimant and adjustments shall be made accordingly, but

(b) any gain treated as accruing in consequence of the application of paragraph (a) shall be treated as accruing at the time mentioned in sub-paragraph (7)(d) or, if there is more than one such time, at the earliest of them.

(9) References in this paragraph to an individual include a person entitled to occupy under the terms of a settlement.

Shares: special provision

7.—(1) Sub-paragraph (2) applies where—

(a) a claim is made under paragraph 5,

(b) immediately after the time of the acquisition mentioned in paragraph 3 and apart from this paragraph, any replacement asset was a chargeable asset in relation to the claimant,

(c) the asset consists of shares, and

(d) relief is claimed under Chapter III of Part VII of the Taxes Act (enterprise investment scheme) at any time in the period beginning with the acquisition and ending when paragraph 5(1) or (2) falls to be applied.

(2) In such a case the asset shall be treated as if, immediately after the time of the acquisition mentioned in paragraph 3, it was not a chargeable asset in relation to the claimant.

(3) Sub-paragraph (4) applies where—

(a) the provisions of paragraph 5(1) or (2) have been applied,

(b) any replacement asset which, immediately after the time of the acquisition mentioned in paragraph 3 and apart from this paragraph, was a chargeable asset in relation to the claimant consists of shares, and

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(c) at any time after paragraph 5(1) or (2) has been applied relief is claimed in respect of the asset under Chapter III of Part VII of the Taxes Act (enterprise investment scheme).

(4) In such a case the asset shall be treated as if, immediately after the time of the acquisition mentioned in paragraph 3, it was not a chargeable asset in relation to the claimant and adjustments shall be made accordingly.

Meaning of 'chargeable asset'

8. For the purposes of this Schedule an asset is a chargeable asset in relation to the claimant at a particular time if, were the asset to be disposed of at that time, any gain accruing to him on the disposal would be a chargeable gain, and either—

(a) at that time he is resident or ordinarily resident in the United Kingdom, or

(b) he would be chargeable to capital gains tax under section 10(1) (non-resident with United Kingdom branch or agency) in respect of the gain,

unless (were he to dispose of the asset at that time) the claimant would fall to be regarded for the purposes of any double taxation relief arrangements as not liable in the United Kingdom to tax on any gains accruing to him on the disposal.".

Section 57.

SCHEDULE 10

BENEFITS IN KIND: DEREGULATORY AMENDMENTS

Introduction

1. Chapter II of Part V of the Taxes Act 1988 (provisions relating to the Schedule E charge: benefits in kind, etc.) is amended as follows.

Accommodation, supplies or services used in performing duties of employment

2.—(1) After section 155 (exceptions from the general charge) insert—

"Accommodation, supplies or services used in performing duties of employment.

155ZA.—(1) Section 154 does not apply to a benefit consisting in the provision of accommodation, supplies or services used by the employee in performing the duties of his employment if the following conditions are met.

(2) Where the benefit is provided on premises occupied by the employer or other person providing it, the only condition is that any use of it for private purposes by the employee or members of his family or household is not significant.

(3) Where the benefit is provided otherwise than on premises occupied by the employer or other person providing it, the conditions are—

(a) that the sole purpose of providing the benefit is to enable the employee to perform the duties of his employment,

(b) that any use of it for private purposes is not significant, and

(c) that it is not an excluded benefit.

(4) The Treasury may make provision by regulations as to what is an excluded benefit for the purposes of subsection (3)(c) above.

The regulations may provide that a benefit is an excluded benefit only if such conditions as may be prescribed are met as to the terms on which, and persons to whom, it is provided.

(5) Subject to any such regulations, the provision of any of the following is an excluded benefit (whatever the terms and whoever it is provided to)—

(a) a motor vehicle, boat or aircraft;

(b) a benefit that involves—

(i) the extension, conversion or alteration of any living accommodation, or

(ii) the construction, extension, conversion or alteration of a building or other structure on land adjacent to and enjoyed with such accommodation.

(6) For the purposes of this section—

(a) use "for private purposes" means any use that is not use in performing the duties of the employee's employment; and

(b) use that is at the same time use in performing the duties of an employee's employment and use for private purposes counts as use for private purposes.".

(2) In section 154(2) and (3), after "155" insert ", 155ZA".

Power to provide by regulations for exemption of minor benefits

3.—(1) After section 155ZA (inserted by paragraph 2(1) above), insert—

"Power to provide for exemption of minor benefits.

155ZB.—(1) The Treasury may make provision by regulations for exempting from section 154 such minor benefits as may be specified in the regulations.

(2) Any exemption conferred by regulations under this section is conditional on the benefit being made available to the employer's employees generally on similar terms.".

(2) In section 154(2), after "155ZA," (inserted by paragraph 2(2) above) insert "155ZB,".

Beneficial loans: exception of loan where whole of interest qualifies for relief

4.—(1) After section 161 (exceptions from the charge to tax on beneficial loan arrangements), insert—

"Treatment of qualifying loans.

161A.—(1) In this Chapter a "qualifying loan" means a loan made to a person where, assuming interest is paid on the loan (whether or not it is in fact paid), the whole or part of the interest paid on it for the year—

(a) is eligible for relief under section 353 or would be so eligible but for subsection (2) of that section, or

(b) is deductible in computing the amount of the profits to be charged—

(i) under Case I or II of Schedule D in respect of a trade, profession or vocation carried on by him, or

(ii) under Schedule A in respect of a Schedule A business carried on by him.

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(2) Section 160(1) does not apply to a loan in any year in which, on the assumption mentioned in subsection (1) above, the whole of the interest paid on it is eligible for relief or deductible as mentioned in that subsection.".

(2) In section 160—

(a) subsection (1C) shall cease to have effect, and

(b) in subsection (5), after "161" insert ", 161A".

Beneficial loans: loans on ordinary commercial terms

5.—(1) After section 161A (inserted by paragraph 4(1) above) insert—

"Beneficial loans: loans on ordinary commercial terms.

161B.—(1) Section 160(1) does not apply to a loan on ordinary commercial terms.

(2) Schedule 7A to this Act has effect as to what is meant by a loan on ordinary commercial terms.".

(2) After Schedule 7 insert—

"SCHEDULE 7A

BENEFICIAL LOANS: LOANS ON ORDINARY COMMERCIAL TERMS

Introduction

1. For the purposes of section 161B(1) a loan 'on ordinary commercial terms' means a loan—

(a) made by a person ('the lender') in the ordinary course of a business carried on by him which includes—

(i) the lending of money, or

(ii) the supplying of goods or services on credit, and

(b) in relation to which the requirements of paragraph 2, 3 or 4 below are met.

Requirements relating to original loan

2.—(1) This paragraph applies to any loan and the relevant time for the purposes of this paragraph is the time the loan was made.

(2) The requirements of this paragraph are—

(a) that at the relevant time comparable loans were available to all those who might be expected to avail themselves of the services provided by the lender in the course of his business;

(b) that a substantial proportion of the relevant loans were made to members of the public;

(c) that the loan in question and comparable loans generally made by the lender at or about the relevant time to members of the public are held on the same terms; and

(d) that if those terms differ from those applicable immediately after the relevant time they were imposed in the ordinary course of the lender's business.

(3) For the purposes of this paragraph a loan is comparable to another loan if it is made for the same or similar purposes and on the same terms and conditions.

(4) The relevant loans for the purposes of sub-paragraph (2)(b) are—

(a) the loan in question, and

(b) comparable loans made by the lender at or about the relevant time.

(5) In determining for the purposes of this paragraph whether any loans made by any person before 1st June 1994 are made on the same terms or conditions, or held on the same terms, there shall be left out of account any amounts, by way of fees, commission or other incidental expenses, incurred for the purpose of obtaining any of those loans by the persons to whom they are made.

Requirements relating to loan varied before 6th April 2000

3.—(1) This paragraph applies to a loan that has been varied before 6th April 2000 and the relevant time for the purposes of this paragraph is the time of the variation.

(2) The requirements of this paragraph are—

(a) that a substantial proportion of the relevant loans were made to members of the public;

(b) that the loan in question and relevant loans generally made by the lender at or about the relevant time to members of the public are held on the same terms; and

(c) that if those terms differ from those applicable immediately after the relevant time they were imposed in the ordinary course of the lender's business.

(3) The relevant loans for the purposes of sub-paragraph (2)(a) are—

(a) the loan in question;

(b) any existing loans which were varied at or about the time of the variation of the loan in question so as to be held on the same terms as that loan after it was varied;

(c) any new loans made by the lender, at or about that time, which are held on those terms.

Requirements relating to loan varied on or after 6th April 2000

4.—(1) The requirements of this paragraph apply to a loan that has been varied on or after 6th April 2000 and the relevant time for the purposes of this paragraph is the time of the variation.

(2) The first requirement is that at the relevant time members of the public that had loans from the lender for similar purposes had a right to vary their loans on the same terms and conditions as applied in relation to the variation of the loan in question.

(3) The second requirement is that any existing loans so varied and the loan in question as varied are held on the same terms.

(4) The third requirement is that if those terms differ from the terms applicable immediately after the relevant time, they were imposed in the ordinary course of the lender's business.

(5) The fourth requirement is that a substantial proportion of the relevant loans were made to members of the public.

(6) The relevant loans for the purposes of sub-paragraph (5) are—

(a) the loan in question;

(b) any existing loans which were varied at or about the time of the variation of the loan in question so as to be held on the same terms as that loan after it was varied;

(c) any new loans made by the lender, at or about that time, which are held on those terms.

SCH. 10

Disregard of certain penalties, fees, etc.

5. Amounts incurred by the person to whom a loan is made—

(a) on penalties or interest or similar amounts incurred as a result of varying the loan, and

(b) on fees, commission or other incidental expenses, incurred for the purpose of obtaining the loan,

shall be left out of account in determining for the purposes of paragraph 3 or 4 whether rights to vary loans are exercisable on the same terms and conditions or loans are held on the same terms.

Meaning of 'member of the public'

6. For the purposes of this Schedule a 'member of the public' means a member of the public at large with whom the lender deals at arm's length.".

(3) In section 160(5)—

(a) after "161A" (inserted by paragraph 4(2)) insert ", 161B", and

(b) for "Schedule 7" substitute "Schedules 7 and 7A".

(4) In section 161, subsections (1A) and (1B) shall cease to have effect.

Beneficial loans: apportionment of benefit in case of joint loan etc.

6. In Schedule 7 to the Taxes Act 1988 (taxation of benefit from loans obtained by reason of employment), after paragraph 5 insert—

"Apportionment of cash equivalent in case of joint loan etc.

5A.—(1) Where in any year there are two or more employees chargeable to tax in respect of the same loan—

(a) the cash equivalent of the benefit of the loan (determined in accordance with this Schedule) shall be apportioned between them in a fair and reasonable manner, and

(b) the portion allocated to each employee shall be treated as the cash equivalent of the benefit of the loan so far as he is concerned.

(2) For the purposes of determining the cash equivalent in such a case, the references in paragraph 5 above to the employee shall be construed as references to all the chargeable employees.".

Section 59.

SCHEDULE 11

CARS AVAILABLE FOR PRIVATE USE

1.—(1) Schedule 6 to the Taxes Act 1988 (taxation of directors and others in respect of cars) is amended as follows.

(2) For paragraphs 1 to 5 (which make provision for determining the cash equivalent of the benefit) substitute—

"Cash equivalent

1.—(1) The cash equivalent of the benefit is the appropriate percentage for the year of the price of the car as regards the year.

(2) This is subject to paragraphs 6 and 7 below (reductions for periods when car unavailable and payments for use of car).

The appropriate percentage

2. The appropriate percentage for the year is determined in accordance with paragraphs 3 to 5G below.

Car with CO_2 emissions figure

3.—(1) This paragraph applies where—

(a) the car—

(i) is first registered on or after 1st January 1998 but before 1st October 1999, and

(ii) when so registered conformed to a vehicle type with an EC type-approval certificate, or had a UK approval certificate, that specifies a CO_2 emissions figure in terms of grams per kilometre driven, or

(b) the car—

(i) is first registered on or after 1st October 1999, and

(ii) is so registered on the basis of an EC certificate of conformity or UK approval certificate that specifies a CO_2 emissions figures in terms of grams per kilometre driven.

(2) In this paragraph references to 'the applicable CO_2 emissions figure' are—

(a) if the car is within sub-paragraph (1)(a) above, to the figure mentioned in paragraph (ii) of that sub-paragraph, and

(b) if the car is within sub-paragraph (1)(b) above—

(i) where the EC certificate of conformity or UK approval certificate specifies only one CO_2 emissions figure, that figure, and

(ii) where it specifies more than one, the figure specified as the CO_2 emissions (combined) figure.

This is subject to paragraph 5 (bi-fuel cars) and paragraph 5A (disabled drivers).

(3) Where the applicable CO_2 emissions figure does not exceed the lower threshold for the year the appropriate percentage for the year is 15% ('the basic percentage').

(4) Where the applicable CO_2 emissions figure exceeds the lower threshold for the year, the appropriate percentage for the year is whichever is the smaller of—

(a) the basic percentage increased by 1% for each 5 grams per kilometre by which the applicable CO_2 emissions figure exceeds the lower threshold for the year, and

(b) 35%.

(5) This paragraph is subject to paragraph 5D (diesel car supplement) and any regulations under paragraph 5E (power to provide for discounts).

The lower threshold

4.—(1) For the purposes of paragraph 3 above the lower threshold is ascertained from the following Table—

TABLE

Year of assessment	*Lower threshold (in g/km)*
2002-03	165
2003-04	155
2004-05 and subsequent years of assessment	145

(2) The Treasury may by order provide for a lower threshold different from that provided for in the Table in sub-paragraph (1) above to apply for years of assessment beginning on or after 6th April 2005 or such later date as may be specified in the order.

(3) For the purposes of paragraph 3 above the applicable CO_2 emissions figure (if it is not a multiple of five) is rounded down to the nearest multiple of five.

Bi-fuel cars

5. Where the car—

(a) is first registered on or after 1st January 2000, and

(b) is so registered on the basis of an EC certificate of conformity, or UK approval certificate, that specifies separate CO_2 emissions figures in terms of grams per kilometre driven for different fuels,

then, for the purposes of paragraph 3 above, 'the applicable CO_2 emissions figure' is the lowest figure specified or, if there is more than one figure specified in relation to each fuel, the lowest CO_2 emissions (combined) figure specified.

Automatic cars made available to disabled drivers

5A.—(1) Sub-paragraph (2) below applies where—

(a) paragraph 3 above (car with CO_2 emissions figure) applies to the car,

(b) the car has automatic transmission,

(c) at any time in the year when the car is available to the employee, he holds a disabled person's badge, and

(d) by reason of his disability he must, if he wants to drive a car, drive a car that has automatic transmission.

For this purpose the car is not at any time available to the employee by reason only of its being made available to a member of his family or household.

(2) If the applicable CO_2 figure for the car ('the relevant car') is more than it would have been if the car had been an equivalent manual car, paragraph 3 above shall have effect as if the applicable CO_2 emissions figure in relation to the relevant car were the same as that in relation to an equivalent manual car.

(3) For this purpose 'an equivalent manual car' means a car that—

(a) is first registered at or about the same time as the relevant car, and

(b) does not have automatic transmission, but otherwise is the closest variant available of the make and model of the relevant car.

(4) For the purposes of this paragraph a car has automatic transmission if—

(a) the driver of the car is not provided with any means whereby he may vary the gear ratio between the engine and the road wheels independently of the accelerator and the brakes, or

(b) he is provided with such means, but they do not include a clutch pedal or lever that he may operate manually.

(5) In this paragraph—

'the applicable CO_2 emissions figure' has the same meaning as in paragraph 3 above; and

'disabled person's badge' has the meaning given in section 168AA(3).

'EC certificate of conformity', 'EC type-approval certificate' and 'UK approval certificate'

5B. In this Schedule—

'EC certificate of conformity' means a certificate of conformity issued by a manufacturer under any provision of the law of a Member State implementing Article 6 of Council Directive 70/156/EEC, as amended;

'EC type-approval certificate' means a type-approval certificate issued under any provision of the law of a Member State implementing Council Directive 70/156/EEC, as amended; and

'UK approval certificate' means a certificate issued under—

(a) section 58(1) or (4) of the Road Traffic Act 1988, or 1988 c. 52.

(b) Article 31A(4) or (5) of the Road Traffic (Northern Ireland) Order 1981. S.I. 1981/154 (N.I. 1).

Car with no CO_2 emissions figure

5C.—(1) This paragraph applies where—

(a) the car is first registered on or after 1st January 1998, and

(b) paragraph 3 above does not apply.

(2) If the car has an internal combustion engine with one or more reciprocating pistons, the appropriate percentage for the year is ascertained from the following Table—

TABLE

Cylinder capacity of car in cubic centimetres	*Appropriate percentage*
1,400 or less	15%
More than 1,400 but not more than 2,000	25%
More than 2,000	35%

For this purpose a car's cylinder capacity is the capacity of its engine calculated as for the purposes of the Vehicle Excise and Registration Act 1994. 1994 c. 22.

(3) If sub-paragraph (2) above does not apply the appropriate percentage for the year is—

(a) 15%, if the car is an electrically propelled vehicle, and

(b) 35%, in any other case.

(4) This paragraph is subject to paragraph 5D (diesel car supplement) and any regulations under paragraph 5E (power to provide for discounts) below.

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Diesel car supplement

5D.—(1) This paragraph applies where the car—

(a) is propelled solely by diesel, and

(b) is first registered on or after 1st January 1998.

(2) The appropriate percentage for the year is whichever is the smaller of—

(a) the percentage which is 3% greater than the appropriate percentage for the year ascertained in accordance with paragraphs 2 to 5C above, and

(b) 35%.

(3) In sub-paragraph (1) 'diesel' means any diesel fuel within the definition in Article 2 of Directive 98/70/EC of the European Parliament and of the Council.

(4) This paragraph is subject to any regulations under paragraph 5E below (power to provide for discounts).

Discounts

5E. The Treasury may by regulations provide for the value of the appropriate percentage as determined in accordance with paragraphs 2 to 5D above to be reduced by such amount as may be prescribed in the regulations, in such circumstances and subject to such conditions as may be so prescribed.

Car registered before 1st January 1998

5F.—(1) This paragraph applies where the car was first registered before 1st January 1998.

(2) Where the car has an internal combustion engine with one or more reciprocating pistons, the appropriate percentage for the year is ascertained from the following Table—

TABLE

Cylinder capacity of car in cubic centimetres	*Appropriate percentage*
1,400 or less	15%
More than 1,400 but not more than 2,000	22%
More than 2,000	32%

For this purpose a car's cylinder capacity is the capacity of its engine calculated as for the purposes of the Vehicle Excise and Registration Act 1994.

1994 c. 22.

(3) Where sub-paragraph (2) above does not apply, the appropriate percentage for the year is—

(a) 15%, if the car is an electrically propelled vehicle, and

(b) 32%, in any other case.

Electrically propelled vehicle

5G. For the purposes of this Schedule, a vehicle is not an electrically propelled vehicle unless—

(a) it is propelled solely by electrical power, and

(b) that power is derived from—

(i) a source external to the vehicle, or

(ii) an electrical storage battery which is not connected to any source of power when the vehicle is in motion.".

(3) In paragraph 6 (reduction for periods when car is unavailable) for the words from "("the full" to the end substitute—

"multiplied by the fraction—

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

where—

A is the number of days in the year on which the car is available; and

B is the number of days in the year.".

(4) At the end of paragraph 10 (general interpretation) add—

"This is subject to paragraph 5A(1) above.".

2. In section 168AB of the Taxes Act 1988 (equipment etc. to enable car to run on road fuel gas), after subsection (3) insert—

"(4) This section does not apply in relation to cars to which paragraph 5 of Schedule 6 to this Act applies (bi-fuel cars taxed by reference to CO_2 emissions figure).".

SCHEDULE 12

Section 60.

PROVISION OF SERVICES THROUGH AN INTERMEDIARY

PART I

APPLICATION OF THIS SCHEDULE

Engagements to which this Schedule applies

1.—(1) This Schedule applies where—

(a) an individual ("the worker") personally performs, or is under an obligation personally to perform, services for the purposes of a business carried on by another person ("the client"),

(b) the services are provided not under a contract directly between the client and the worker but under arrangements involving a third party ("the intermediary"), and

(c) the circumstances are such that, if the services were provided under a contract directly between the client and the worker, the worker would be regarded for income tax purposes as an employee of the client.

(2) In sub-paragraph (1)(a) "business" includes any activity carried on—

(a) by a government or public or local authority (in the United Kingdom or elsewhere), or

(b) by a body corporate, unincorporated body or partnership.

(3) The reference in sub-paragraph (1)(b) to a "third party" includes a partnership or unincorporated body of which the worker is a member.

(4) The circumstances referred to in sub-paragraph (1)(c) include the terms on which the services are provided, having regard to the terms of the contracts forming part of the arrangements under which the services are provided.

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(5) The fact that the worker holds an office with the client does not affect the application of this Schedule.

Worker treated as receiving Schedule E income

2.—(1) If, in the case of an engagement to which this Schedule applies, in any tax year—

(a) the conditions specified in paragraph 3, 4 or 5 are met in relation to the intermediary, and

(b) the worker, or an associate of the worker—

(i) receives from the intermediary, directly or indirectly, a payment or other benefit that is not chargeable to tax under Schedule E, or

(ii) has rights entitling him, or which in any circumstances would entitle him, to receive from the intermediary, directly or indirectly, any such payment or other benefit,

the intermediary is treated as making to the worker in that year, and the worker is treated as receiving in that year, a payment chargeable to income tax under Schedule E ("the deemed Schedule E payment").

(2) The deemed Schedule E payment is treated as made at the end of the tax year, unless paragraph 12 applies (earlier date of deemed payment in certain cases).

(3) A single payment is treated as made in respect of all engagements in relation to which the intermediary is treated as making a payment to the worker in the tax year.

These are referred to in this Schedule as "the relevant engagements" in relation to a deemed Schedule E payment.

Conditions of liability where intermediary is a company

3.—(1) Where the intermediary is a company the conditions are that the intermediary is not an associated company of the client that falls within sub-paragraph (2) and either—

(a) the worker has a material interest in the intermediary, or

(b) the payment or benefit mentioned in paragraph 2(1)(b)—

(i) is received or receivable by the worker directly from the intermediary, and

(ii) can reasonably be taken to represent remuneration for services provided by the worker to the client.

(2) An associated company of the client falls within this sub-paragraph if it is such a company by reason of the intermediary and the client both being under the control—

(a) of the worker, or

(b) of the worker and another person.

(3) A worker is treated as having a material interest in a company if—

(a) the worker, alone or with one or more associates of his, or

(b) an associate of the worker, with or without other such associates,

has a material interest in the company.

(4) For this purpose a material interest means—

(a) beneficial ownership of, or the ability to control, directly or through the medium of other companies or by any other indirect means, more than 5% of the ordinary share capital of the company; or

(b) possession of, or entitlement to acquire, rights entitling the holder to receive more than 5% of any distributions that may be made by the company; or

(c) where the company is a close company, possession of, or entitlement to acquire, rights that would in the event of the winding up of the company, or in any other circumstances, entitle the holder to receive more than 5% of the assets that would then be available for distribution among the participators.

(5) In sub-paragraph (4)(c) "participator" has the meaning given by section 417(1) of the Taxes Act 1988.

Conditions of liability where intermediary is a partnership

4.—(1) Where the intermediary is a partnership the conditions are as follows.

(2) In relation to payments or benefits received or receivable by the worker as a member of the partnership the conditions are—

(a) that the worker, alone or with one or more relatives, is entitled to 60% or more of the profits of the partnership; or

(b) that most of the profits of the partnership concerned derive from the provision of services under engagements to which this Schedule applies—

(i) to a single client, or

(ii) to a single client together with associates of that client; or

(c) that under the profit sharing arrangements the income of any of the partners is based on the amount of income generated by that partner by the provision of services under engagements to which this Schedule applies.

In paragraph (a) "relative" means husband or wife, parent or remoter forebear, child or remoter issue, or brother or sister.

(3) In relation to payments or benefits received or receivable by the worker otherwise than as a member of the partnership, the conditions are that the payment or benefit—

(a) is received or receivable by the worker directly from the intermediary, and

(b) can reasonably be taken to represent remuneration for services provided by the worker to the client.

Conditions of liability where intermediary is an individual

5. Where the intermediary is an individual the conditions are that the payment or benefit—

(a) is received or receivable by the worker directly from the intermediary, and

(b) can reasonably be taken to represent remuneration for services provided by the worker to the client.

Exception of certain payments subject to deduction of tax

6. This Schedule does not apply to payments subject to deduction of tax under section 555 of the Taxes Act 1988 (payments to non-resident entertainers and sportsmen).

PART II

THE DEEMED SCHEDULE E PAYMENT

Calculation of deemed Schedule E payment

7. The amount of the deemed Schedule E payment for a tax year is calculated as follows:

Step One

Find the total amount of all payments and other benefits received by the intermediary in that year in respect of the relevant engagements, and reduce that amount by 5%.

Step Two

Add the amount of any payments and other benefits received by the worker in that year in respect of the relevant engagements, otherwise than from the intermediary, that—

(a) are not chargeable to income tax under Schedule E, and

(b) would be so chargeable if the worker were employed by the client.

Step Three

Deduct the amount of any expenses met in that year by the intermediary that would have been deductible from the emoluments of the employment if the worker had been employed by the client and the expenses had been met by the worker out of those emoluments.

Step Four

Deduct the amount of any capital allowances in respect of expenditure incurred by the intermediary that could have been claimed by the worker under section 27 of the Capital Allowances Act 1990 (plant and machinery: extension of allowances to employments etc.) if the worker had been employed by the client and had incurred the expenditure.

1990 c. 1.

Step Five

Deduct any contributions made in that year for the benefit of the worker by the intermediary to a scheme approved under Chapter I or Chapter IV of Part XIV of the Taxes Act 1988 that if made by an employer for the benefit of an employee would not be chargeable to income tax as income of the employee.

This does not apply to excess contributions made and later repaid.

Step Six

Deduct the amount of any employer's national insurance contributions paid by the intermediary for that year in respect of the worker.

Step Seven

Deduct the amount of any payments or other benefits received in that year by the worker from the intermediary—

(a) in respect of which the worker is chargeable to income tax under Schedule E, and

(b) which do not represent items in respect of which a deduction was made under Step Three.

If the result at this point is nil or a negative amount, there is no deemed Schedule E payment.

Step Eight

Find the amount that together with employer's national insurance contributions on it is equal to the amount resulting from Step Seven.

Step Nine

The result is the amount of the deemed Schedule E payment.

Treatment of payments made under construction industry scheme

8. Where section 559 of the Taxes Act 1988 applies (sub-contractors in the construction industry: payments to be made under deduction), the intermediary is treated for the purposes of Step One of the calculation in paragraph 7 as receiving the amount that would have been received had no deduction been made under that section.

Apportionments

9. For the purposes of calculating the deemed Schedule E payment any necessary apportionment shall be made on a just and reasonable basis of amounts received by the intermediary that are referable—

(a) to the services of more than one worker, or

(b) partly to the services of the worker and partly to other matters.

Application of Schedule E rules

10.—(1) The following provisions apply in relation to the calculation of the deemed Schedule E payment.

(2) A "payment or other benefit" includes anything that, if received by an employee for performing the duties of an employment within Schedule E—

(a) would be an emolument of the employment, or

(b) would be chargeable to tax as an emolument of the employment.

(3) The amount of a payment or other benefit is taken to be—

(a) in the case of a payment or cash benefit, the amount received, and

(b) in the case of a non-cash benefit, the cash equivalent of the benefit.

(4) The cash equivalent of a non-cash benefit is taken to be whichever is the greater of—

(a) the amount that would be chargeable to tax under section 19(1) of the Taxes Act 1988 if the benefit were an emolument chargeable to tax under Case I of Schedule E, and

(b) the cash equivalent determined in accordance with the rules in section 596B of that Act.

(5) A payment or benefit is treated as received—

(a) in the case of a payment or cash benefit, when payment is made of or on account of the payment or benefit;

(b) in the case of a non-cash benefit, when it it is used or enjoyed.

Application of Income Tax Acts in relation to deemed Schedule E payment

11.—(1) The Income Tax Acts (in particular, the PAYE provisions) apply in relation to the deemed Schedule E payment as follows.

(2) They apply as if—

(a) the worker were employed by the intermediary, and

(b) the relevant engagements were undertaken by the worker in the course of performing the duties of that employment.

(3) The worker is not chargeable to tax in respect of the deemed Schedule E payment if, or to the extent that, by reason of any combination of the following factors—

(a) the worker being resident, ordinarily resident or domiciled outside the United Kingdom,

(b) the client being resident or ordinarily resident outside the United Kingdom, or

(c) the services in question being provided outside the United Kingdom,

he would not be chargeable to tax under Schedule E if the client employed the worker, the worker performed the services in the course of that employment and the deemed Schedule E payment were a payment by the client of emoluments from that employment.

(4) The deemed Schedule E payment is treated as an emolument of that employment—

(a) for the purpose of determining whether it is employment to which Chapter II of Part V of the Taxes Act 1988 applies (benefits in kind: provisions applicable to higher-paid employment); and

(b) for the purposes of section 198 of that Act (deductions for necessary expenses defrayed out of emoluments).

(5) Where the intermediary is a partnership or unincorporated association, the deemed Schedule E payment is treated as received by the worker in his personal capacity and not as income of the partnership or association.

(6) Where—

(a) the worker is resident in the United Kingdom,

(b) the services in question are provided in the United Kingdom, and

(c) the client or employer carries on business in the United Kingdom,

the intermediary is treated as having a place of business in the United Kingdom, whether or not it in fact does so.

(7) The deemed Schedule E payment is treated as relevant earnings of the worker for the purposes of section 644 of the Taxes Act 1988 (relevant earnings for purposes of permissible pension contributions).

PART III

SUPPLEMENTARY PROVISIONS

Earlier date of deemed Schedule E payment in certain cases

12.—(1) If in any tax year—

(a) a deemed Schedule E payment is treated as made, and

(b) before the date on which the payment would be treated as made under paragraph 2(2) any relevant event (as defined below) occurs in relation to the intermediary,

the deemed Schedule E payment for that year is treated as having been made immediately before that event or, if there is more than one, immediately before the first of them.

(2) Where the intermediary is a company the following are relevant events—

(a) where the worker is a member of the company, his ceasing to be such a member;

(b) where the worker holds an office with the company, his ceasing to hold such an office;

(c) where the worker is employed by the company, his ceasing to be so employed.

(3) Where the intermediary is a partnership the following are relevant events—

(a) the dissolution of the partnership or the partnership ceasing to trade or a partner ceasing to act as such;

(b) where the worker is employed by the partnership, his ceasing to be so employed.

(4) Where the intermediary is an individual and the worker is employed by him, it is a relevant event if the worker ceases to be so employed.

(5) The fact that the deemed Schedule E payment is treated as made before the end of the tax year does not affect what receipts and other matters are taken into account in calculating its amount.

Relief in case of distributions by intermediary

13.—(1) A claim for relief may be made under this paragraph where the intermediary—

(a) is a company,

(b) is treated as making a deemed Schedule E payment in any tax year, and

(c) either in that tax year (whether before or after that payment is treated as made), or in a subsequent tax year, makes a distribution.

(2) A claim for relief under this paragraph must be made by the intermediary by notice in writing given to the Inland Revenue.

(3) If on a claim being made the Inland Revenue are satisfied that relief should be given in order to avoid a double charge to tax, they shall give such relief by way of amending any assessment, by discharge or repayment of tax, or otherwise, as appears to them appropriate.

(4) Relief under this paragraph shall be given by treating the amount of the distribution as reduced, not the amount of the deemed Schedule E payment.

(5) The Inland Revenue shall exercise the power conferred by this paragraph so as to secure that so far as practicable relief is given by setting the amount of a deemed Schedule E payment—

(a) against relevant distributions of the same tax year before those of other years,

(b) against relevant distributions received by the worker before those received by another person, and

(c) against relevant distributions of earlier years before those of later years.

(6) Where the amount of a distribution is reduced under this paragraph, the amount of any associated tax credit is reduced accordingly.

Provisions applicable to multiple intermediaries

14.—(1) The following provisions apply where in the case of an engagement to which this Schedule applies the arrangements involve more than one relevant intermediary—

paragraph 15 (avoidance of double-counting);

paragraph 16 (joint and several liability for PAYE deductions)

(2) In this paragraph and paragraphs 15 and 16 "relevant intermediary" means an intermediary in relation to which the conditions specified in paragraph 3, 4 or 5 are met.

(3) Except as provided by paragraphs 15 and 16, the provisions of this Schedule apply separately in relation to each relevant intermediary.

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Multiple intermediaries: avoidance of double-counting

15.—(1) This paragraph applies where a payment or other benefit has been made or provided, directly or indirectly, from one relevant intermediary to another in respect of the engagement.

(2) In that case, the amount taken into account in relation to any intermediary in Step One or Step Two of the calculation in paragraph 7 shall be reduced to such extent as is necessary to avoid double-counting having regard to the amount so taken into account in relation to any other intermediary.

Multiple intermediaries: joint and several liability for PAYE deductions

16.—(1) All relevant intermediaries in relation to an engagement to which this Schedule applies are jointly and severally liable, subject to sub-paragraph (2), to account for any amount required under the PAYE provisions to be deducted from a deemed Schedule E payment treated as made by any of them—

(a) in respect of that engagement, or

(b) in respect of that engagement together with other engagements.

(2) An intermediary is not so liable if it has not received any payment or benefit in respect of that engagement or any such other engagement as is mentioned in sub-paragraph (1)(b).

Calculation of profits of intermediary: deduction for deemed Schedule E payment

17.—(1) In calculating for tax purposes the profits of a business carried on by an intermediary that is treated as making in connection with that business a deemed Schedule E payment, a deduction is allowed for—

(a) the amount of the payment, and

(b) the amount of any employer's national insurance contributions paid by the intermediary in respect of it.

(2) The deduction allowed by this paragraph must be taken into account for the period of account in which the deemed Schedule E payment is treated as made.

(3) No deduction in respect of the matters mentioned in sub-paragraph (1) may be made except in accordance with this paragraph.

Calculation of profits of intermediary: special rules for partnerships

18.—(1) The following provisions apply in calculating for tax purposes the profits of a business carried on by a partnership that is treated as making in connection with that business a deemed Schedule E payment.

(2) The amount of the deduction allowed under paragraph 17 is limited to the amount that reduces the profits of the partnership for the tax year to nil.

(3) To the extent that in any tax year the expenses of the partnership in connection with the relevant engagements exceed the sum of—

(a) the amounts that would be deductible for the purposes of Schedule E if the worker had been employed by the client and the expenses had been incurred by the worker, and

(b) 5% of the amount taken into account in Step One of the calculation in paragraph 7 as the intermediary's receipts in respect of the relevant engagements,

they shall be left out of account in calculating the profits of the business.

Meaning of "associate"

19.—(1) In this Schedule "associate"—

(a) in relation to an individual, has the meaning given by section 417(3) and (4) of the Taxes Act 1988, subject to the following provisions of this paragraph;

(b) in relation to a company, means a person connected with the company within the meaning of section 839 of the Taxes Act 1988; and

(c) in relation to a partnership, means any associate of a member of the partnership.

(2) Where an individual has an interest in shares or obligations of the company as a beneficiary of an employee benefit trust, the trustees are not regarded as associates of his by reason only of that interest except in the following circumstances.

(3) The exception is where—

(a) the individual, either on his own or with any one or more of his associates, or

(b) any associate of his, with or without other such associates,

has at any time on or after 14th March 1989 been the beneficial owner of, or able (directly or through the medium of other companies or by any other indirect means) to control more than 5% of the ordinary share capital of the company.

(4) In this paragraph "employee benefit trust" has the meaning given by paragraph 7 of Schedule 8 to the Taxes Act 1988.

(5) Sub-paragraphs (9) to (12) of that paragraph apply for the purposes of this paragraph in relation to an individual as they apply for the purposes of that paragraph in relation to an employee.

(6) In sub-paragraph (3) "associate" does not include the trustees of an employee benefit trust by reason only that the individual has an interest in shares or obligations of the trust.

Meaning of "the Inland Revenue"

20. References in this Schedule to "the Inland Revenue" are to any officer of the Board.

Interpretation

21.—(1) In this Schedule—

"associate" has the meaning given by paragraph 19;

"associated company" has the meaning given by section 416 of the Taxes Act 1988;

"business" means any trade, profession or vocation and includes a Schedule A business;

"company" means a body corporate or unincorporated association, and does not include a partnership;

"employer's national insurance contributions" means secondary Class 1 or Class 1A national insurance contributions;

"engagement to which this Schedule applies" means any such engagement as is mentioned in paragraph 1(1);

"national insurance contributions" means contributions under Part I of the Social Security Contributions and Benefits Act 1992 or Part I of the Social Security Contributions and Benefits (Northern Ireland) Act 1992; 1992 c. 4. 1992 c. 7.

"PAYE provisions" means provisions of—

(a) section 203 of the Taxes Act 1988 or regulations under that section, or

(b) sections 203A to 203L of that Act;

"tax year" means a year of assessment.

(2) References in this Schedule to payments or benefits received or receivable from a partnership or unincorporated association include payments or benefits to which a person is or may be entitled in his capacity as a member of the partnership or association.

(3) For the purposes of this Schedule—

(a) anything done by or in relation to an associate of an intermediary is treated as done by or in relation to the intermediary, and

(b) a payment or other benefit provided to a member of an individual's family or household is treated as provided to the individual.

The reference in paragraph (b) to an individual's family or household has the same meaning as in Chapter II of Part V of the Taxes Act 1988 (provisions relating to the Schedule E charge): see section 168(4) of that Act.

(4) For the purposes of this Schedule a man and a woman living together as husband and wife are treated as if they were married to each other.

Transitional provisions: general

22.—(1) This Schedule has effect for the tax year 2000-01 and subsequent years and applies in relation to services performed, or to be performed, on or after 6th April 2000.

(2) Payments or other benefits in respect of such services received before that date shall be treated as if received in the tax year 2000-01.

Transitional provisions: deemed discontinuance of business

23.—(1) This paragraph applies where an individual or partnership—

(a) is carrying on a business at the beginning of the year 2000-01, and

(b) is treated as making one or more deemed Schedule E payments for that year in connection with that business.

(2) Where this paragraph applies the individual or partnership may elect that—

(a) the business shall be deemed to have been permanently discontinued at the end of the year 1999-00, and

(b) a new business shall be deemed to have been set up and commenced on 6th April 2000.

(3) Notwithstanding the deemed discontinuance, the old business and the new business shall be treated as the same for the purposes of section 385 of the Taxes Act 1988 (carry-forward of losses against subsequent profits).

(4) Any such election as is mentioned in sub-paragraph (2) must be made by being included in a return made and delivered on or before the due date.

(5) In the case of an election by an individual—

(a) the reference in sub-paragraph (4) to a return is to a return under section 8 of the Taxes Management Act 1970 (personal returns), and

1970 c. 9.

(b) the "due date" means the day specified in relation to the return under subsection (1A) of that section.

(6) In the case of an election by a partnership—

(a) the reference in sub-paragraph (4) to a return is to a return under section 12AA(2) or (3) of that Act (partnership returns), and

(b) the "due date" means the day specified in relation to the return under subsection (2) or, as the case may be, subsection (3) of that section.

Saving for provisions relating to agency workers

24. Nothing in this Schedule affects the operation of section 134 of the Taxes Act 1988 (workers supplied by agencies).

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Section 61.

OCCUPATIONAL AND PERSONAL PENSION SCHEMES

PART I

AMENDMENTS OF THE TAXES ACT 1988

Introductory

1. Amend the Taxes Act 1988 as follows.

Exception of certain life policies from chargeable events legislation

2.—(1) Amend section 539 as follows.

(2) In subsection (2) (exception for certain policies of life insurance) at the end of paragraph (c) insert "; or

(d) to any policy of life insurance held in connection with a personal pension scheme, within the meaning of Chapter IV of Part XIV, for the time being approved under that Chapter".

(3) This paragraph has effect for the year 2000-01 and subsequent years of assessment.

No charge to tax under section 591C on conversion under Schedule 23ZA

3.—(1) Amend section 591C as follows.

(2) In subsection (1) (charge to tax where approval of scheme ceases to have effect) after "ceases to have effect" insert "otherwise than by virtue of paragraph 3(2)(a) of Schedule 23ZA".

Definition of "retirement benefits scheme"

4.—(1) Amend section 611 as follows.

(2) In subsection (1) (which defines "retirement benefits scheme" for the purposes of Chapter I and specifies certain schemes which are excluded) after "but does not include" insert "(a)" and at the end add "; or

(b) any scheme providing such benefits which is an approved personal pension scheme under Chapter IV of this Part".

(3) In subsection (3) (power to treat retirement benefits scheme as two or more separate such schemes for the purposes of Chapter I)—

(a) omit "retirement benefits" in both places; and

(b) after "for the purposes of this Chapter" insert "and Chapter IV of this Part".

(4) In subsection (4)(a) (classes or descriptions of employees with different employers) for "employees" substitute "scheme members".

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(5) In subsection (6) (definition of "scheme member") at the end of paragraph (b) add "; or

(c) if the scheme is an approved personal pension scheme under Chapter IV of this Part, any other person who is a member of the scheme.".

Interpretation of Chapter IV of Part XIV

5.—(1) Amend section 630 as follows.

(2) In subsection (1) (definitions) in the definition of "approved"—

(a) in paragraph (a) (approved schemes), after "scheme" insert "(other than an approved retirement benefits scheme)"; and

(b) in paragraph (b) (approved arrangements), after "means" insert "(i)" and at the end of the sub-paragraph so formed add "; or

(ii) made in accordance with a scheme which is for the time being an approved converted scheme but which was, when the arrangements were made, an approved retirement benefits scheme;".

(3) In subsection (1), in the definition of "pension date" after "means" insert "(subject to section 638ZA)".

(4) Insert the following definitions at the appropriate places in subsection (1)—

(a) "'approved converted scheme' means an approved personal pension scheme which is such a scheme by virtue of paragraph 3(2)(b) of Schedule 23ZA;";

(b) "'approved retirement benefits scheme' means a retirement benefits scheme approved under Chapter I of this Part;";

(c) "'the earnings threshold' for any year of assessment is £3,600;";

(d) "'higher level contributions', in the case of any year of assessment, means contributions in excess of the earnings threshold for the year;";

(e) "'the personal pension fund', in the case of any personal pension arrangement and an individual, means the accrued rights to which the individual is entitled conferring prospective entitlement to benefits under the arrangement;";

(f) "'retirement benefits scheme' has the same meaning as in Chapter I of this Part (see section 611);".

(5) After subsection (1) insert—

"(1A) The Treasury may by order amend the definition of "the earnings threshold" in subsection (1) above for any year of assessment by varying the amount there specified.".

(6) In subsection (2) (annual amount of annuity which would have been purchasable)—

(a) in paragraph (a), for the words from "fund" to "him" substitute "personal pension fund"; and

(b) at the end add—

"Where a lump sum falls to be paid on the date in question, the reference is to the value of the personal pension fund after allowing for that payment.".

(7) Omit subsection (3) (whose effect is reproduced by sub-paragraphs (4)(e) and (6)).

(8) Paragraphs (c) and (d) of sub-paragraph (4) have effect for the year 2001-02 and subsequent years of assessment.

Approval of personal pension schemes

6.—(1) Amend section 631 as follows.

(2) In subsection (2) (discretion to grant or refuse approval, subject to restrictions in sections 632 to 638A) after "638A" add "(and, where applicable, Schedule 23ZA)".

(3) After subsection (2) insert—

"(2A) An application for approval of a personal pension scheme may, if the Board think fit, be granted subject to conditions.".

(4) In subsection (3) (notice of grant or refusal of an application) after "and" insert—

"(a) in the case of a grant subject to conditions, the notice shall state that the grant is so subject and shall specify the conditions; and

(b)".

(5) Sub-paragraphs (3) and (4) have effect in relation to applications for approval granted on or after 6th April 2001.

Conversion of certain approved retirement benefits schemes

7. After section 631 insert—

"Conversion of certain approved retirement benefits schemes.

631A. Schedule 23ZA to this Act (which makes provision for or in connection with the conversion of certain retirement benefits schemes approved under Chapter I of this Part into personal pension schemes approved under this Chapter) shall have effect.".

Eligibility to make contributions

8.—(1) After section 632 insert—

"Eligibility to make contributions.

632A.—(1) The Board shall not approve a personal pension scheme if it permits, in relation to arrangements made by a member in accordance with the scheme, the acceptance of—

(a) contributions by the member, or

(b) contributions by an employer of the member,

at a time when the member is not eligible to make contributions.

(2) The Board shall not approve a personal pension scheme unless it makes provision for ensuring, in relation to any such arrangements, that any contributions accepted at a time when the member is not eligible to make contributions are repaid—

(a) to the member, to the extent of his contributions; and

(b) as to the remainder, to his employer.

(3) The following provisions of this section, and the provisions of section 632B, have effect for determining for the purposes of subsections (1) and (2) above the times at which a member is eligible to make contributions (and, for those purposes, a member is not eligible to make contributions at any other time).

(4) A member is eligible to make contributions at any time during a year of assessment for which he has actual net relevant earnings.

(5) A member who does not have actual net relevant earnings for a year of assessment ('the relevant year') is eligible to make contributions at any time during that year if—

(a) for at least some part of the year he does not hold an office or employment to which section 645 applies; and

(b) the condition in any of subsections (6) to (9) below is satisfied.

(6) Condition A is that at some time in the relevant year the member is resident and ordinarily resident in the United Kingdom.

(7) Condition B is that the member—

(a) at some time during the five years of assessment preceding the relevant year, has been resident and ordinarily resident in the United Kingdom; and

(b) was resident and ordinarily resident in the United Kingdom when he made the personal pension arrangements in question.

(8) Condition C is that at some time in the relevant year the member is a person who performs duties which, by virtue of section 132(4)(a), are treated as being performed in the United Kingdom.

(9) Condition D is that at some time in the relevant year the member is the spouse of a person who performs such duties as are mentioned in subsection (8) above.

Eligibility to make contributions: concurrent membership.

632B.—(1) A member who would not, apart from this section, be eligible to make contributions during a year of assessment shall be eligible to make contributions at any time during that year if—

(a) throughout the year he holds an office or employment to which section 645 applies;

(b) the condition in any of subsections (6) to (9) of section 632A is satisfied in his case as respects the year;

(c) he is not, and has not been, a controlling director of a company at any time in the year or in any of the five years of assessment preceding it;

(d) for at least one of the five years of assessment preceding the year, the aggregate of his grossed-up remuneration from each office and each employment held on 5th April in that preceding year does not exceed the remuneration limit for the relevant year; and

(e) the total relevant contributions made in the year do not exceed the earnings threshold for the year.

(2) For the purposes of paragraphs (c) and (d) of subsection (1) above, no account shall be taken of any year of assessment earlier than the year 2000-01.

(3) For the purposes of paragraph (c) of subsection (1) above, a person is a controlling director of a company at any time if at that time—

(a) he is a director, as defined by section 612(1); and

(b) he is within paragraph (b) of section 417(5) in relation to the company.

(4) For the purposes of paragraph (d) of subsection (1) above—

(a) "grossed up", in relation to a person's remuneration from an office or employment, means increased by being multiplied by a figure determined in accordance with an order made by the Treasury (or left unchanged, if that figure is unity);

(b) "remuneration" shall be construed in accordance with an order made by the Treasury;

(c) "the remuneration limit" for any year of assessment is £30,000;

(d) "the relevant year" means the year of assessment first mentioned in subsection (1) above.

The Treasury may by order amend the definition of "the remuneration limit" in paragraph (c) above for any year of assessment by varying the amount there specified.

(5) For the purposes of paragraph (e) of subsection (1) above and the following provisions of this section, "the total relevant contributions", in the case of a year of assessment, means the aggregate amount of the contributions made in the year—

(a) by the member in question, and

(b) by any employer of his,

under arrangements made by the member under the scheme in question, together with the aggregate amounts of such contributions under other approved personal pension arrangements made by that member.

(6) If—

(a) in the case of a member, the total relevant contributions in a year of assessment, apart from this subsection, exceed the earnings threshold for the year, and

(b) but for that, the member would be eligible to make contributions by virtue of subsection (1) above at any time in that year,

the repayment required by subsection (2) of section 632A is repayment of the relevant excess contributions only (so that the condition in subsection (1)(e) above becomes satisfied).

(7) In subsection (6) above "the relevant excess contributions" means—

(a) to the extent that a contribution is the first which caused the total relevant contributions in the year to exceed the earnings threshold for the year, that contribution; and

(b) all subsequent contributions in the year.

(8) The Treasury may by order make provision requiring any person who claims to be eligible to make contributions by virtue of this section to provide to—

(a) the Board,

(b) an officer of the Board, or

(c) the scheme administrator of the personal pension scheme concerned,

such declarations, certificates or other evidence in support of the claim as may be specified or described in, or determined in accordance with, the order.

(9) A person shall only be eligible to make contributions by virtue of this section in a year of assessment if he complies with any requirements imposed by order under subsection (8) above.".

(2) This paragraph has effect on and after 6th April 2001.

Insurance against risks relating to non-payment of contributions

9.—(1) Amend section 633 (benefits allowed to be provided by approved schemes) as follows.

(2) Omit subsection (2) (approval of schemes making provision for insurance against certain risks not to be prevented by subsection (1)).

(3) This paragraph has effect in relation to insurance under a contract of insurance made on or after 6th April 2001.

Income withdrawals: the relevant date

10.—(1) Amend section 634A as follows.

(2) In subsection (4) (which, for each successive period of twelve months beginning with the member's pension date, imposes limits on income withdrawals by reference to the annual amount of the annuity purchasable on the relevant reference date)—

(a) for "beginning with his pension date" substitute "in each valuation period"; and

(b) for "on the relevant reference date" substitute—

"(a) in the case of the initial period, on the relevant reference date; and

(b) in the case of any subsequent valuation period, on a particular day in the period of sixty days ending with the relevant reference date".

(3) For subsection (5) (the relevant reference date) substitute—

"(5) For the purposes of this section, in the case of any arrangements the relevant reference date—

(a) for the period beginning with the member's pension date ('the initial period'), is that pension date; and

(b) for each succeeding period, is the first day of the period;

and, subject to subsection (5D) below, any period mentioned in paragraph (a) or (b) above (a 'valuation period') is a period of three years.".

(4) After subsection (5) insert—

"(5A) Where—

(a) a member has made an election under subsection (1) above in respect of two or more personal pension arrangements under the same personal pension scheme, and

(b) in the case of one or more of those arrangements, the relevant reference date for any valuation period after the initial period would not, apart from this subsection, coincide with a date which

is (or, but for the ending of the period of deferral, would be) the relevant reference date for a valuation period in the case of the arrangements with the earliest pension date,

the relevant reference date for any valuation period other than the initial period, and the valuation period to which that date relates, shall, if the scheme or the arrangements so require, be determined in the case of all those arrangements on the assumption that the pension date is in each case the same as in the case of the arrangements with the earliest pension date.

(5B) In determining in accordance with subsection (5A) above the relevant reference date and the valuation period to which it relates, in the case of any arrangements ('the relevant arrangements'), there shall be left out of account any arrangements in whose case the period of deferral ended—

(a) before the actual pension date in the case of the relevant arrangements; or

(b) before the date on which the relevant arrangements first become subject to such a requirement as is mentioned in subsection (5A) above.

(5C) But where, in the case of any arrangements,—

(a) the relevant reference date for any valuation period falls to be determined, in accordance with the assumption in subsection (5A) above, by reference to the pension date for any other arrangements, and

(b) the period of deferral in the case of those other arrangements comes to an end,

the same pension date shall continue to be assumed under that subsection for that and any subsequent valuation period, notwithstanding the coming to an end of the period of deferral in the case of those other arrangements (and references in subsection (5A) to the arrangements with the earliest pension date shall be construed accordingly).

(5D) Where, in the case of any personal pension arrangements, in consequence of subsection (5A) above the relevant reference date for any valuation period ('the later date') falls less than three years after the relevant reference date for the previous valuation period ('the earlier date')—

(a) the valuation period beginning with the earlier date shall end with the day before the later date; and

(b) subsection (4) above shall apply in relation to any portion of the period which remains after the completion of any successive periods of twelve months as if it were a period of twelve months.".

(5) Sub-paragraphs (2)(a) and (3) have effect on and after 1st October 2000.

(6) Sub-paragraphs (2)(b) and (4) have effect in relation to personal pension arrangements—

(a) under any personal pension scheme to which approval under Chapter IV of Part XIV of the Taxes Act 1988 is given on or after 1st October 2000; or

(b) under any existing approved scheme amended on or after that date, with the approval of the Board under that Chapter, for the purpose of—

(i) conforming to the amendment made by sub-paragraph (2)(b), or

(ii) imposing such a requirement as is mentioned in the subsection (5A) inserted by sub-paragraph (4),

as the case may be.

(7) In this paragraph "existing approved scheme" means a personal pension scheme approved under Chapter IV of Part XIV of the Taxes Act 1988 before 1st October 2000.

Income withdrawals: purchase of two or more annuities

11.—(1) Amend section 634A as follows.

(2) After subsection (1) insert—

"(1A) The Board shall not refuse to approve a personal pension scheme by reason only that it makes provision for arrangements under the scheme which enable a member who makes such an election as is mentioned in subsection (1) above to apply different parts of the personal pension fund at different times in the purchase of different annuities satisfying the conditions in section 634 (whether commencing on the same day or on different days).".

(3) In subsection (4) (which regulates income withdrawals by reference to the annual amount of the annuity purchasable on the relevant reference date etc) in paragraph (b) (which is inserted by paragraph 10(2)(b))—

(a) after "in the case of any subsequent valuation period," insert "(i)"; and

(b) at the end add ", or

(ii) immediately after the last qualifying annuitisation,

whichever is the later".

(4) After subsection (4) insert—

"(4A) For the purposes of subsection (4) above—

(a) "annuitisation" means the application of part of the personal pension fund in the purchase of an annuity satisfying the conditions in section 634; and

(b) an annuitisation is a "qualifying annuitisation", in relation to any such period of twelve months as is mentioned in subsection (4) above, if it has taken place—

(i) in an earlier such period, but

(ii) since the relevant reference date.".

(5) In subsection (5D) (which is inserted by paragraph 10) in paragraph (b), for "subsection (4)" substitute "subsections (4) and (4A)".

(6) This paragraph has effect on and after 6th April 2001.

Income withdrawals after death of member

12.—(1) Amend section 636A as follows.

(2) After subsection (1) insert—

"(1A) The Board shall not refuse to approve a personal pension scheme by reason only that it makes provision for arrangements under the scheme which enable a person who makes such an election as is mentioned in subsection (1) above to apply different parts of the personal pension fund at different times in the purchase of different annuities satisfying the conditions in section 636 (whether commencing on the same day or on different days).".

(3) In subsection (5) (which regulates income withdrawals by reference to the annual amount of the annuity purchasable on the relevant reference date) for "on the relevant reference date" substitute—

"(a) in the case of the first period of three years, on the relevant reference date; and

(b) in the case of any succeeding period of three years, on a particular day in the period of sixty days ending with the relevant reference date".

(4) In subsection (5) (as so amended) in paragraph (b)—

(a) after "three years," insert "(i)"; and

(b) at the end add ", or

(ii) immediately after the last qualifying annuitisation,

whichever is the later".

(5) After subsection (5) insert—

"(5A) For the purposes of subsection (5) above—

(a) 'annuitisation' means the application of part of the personal pension fund in the purchase of an annuity satisfying the conditions in section 636; and

(b) an annuitisation is a 'qualifying annuitisation', in relation to any such period of twelve months as is mentioned in subsection (5) above, if it has taken place—

(i) in an earlier such period, but

(ii) since the relevant reference date.".

(6) Sub-paragraph (3), and sub-paragraph (1) so far as relating to that sub-paragraph, have effect on and after 1st October 2000.

(7) The other provisions of this paragraph have effect on and after 6th April 2001.

Other restrictions on approval

13.—(1) Amend section 638 as follows.

(2) In subsection (3)(a) (limit on aggregate contributions in any year) after "does not exceed" insert "the earnings threshold for that year or, if greater,"

(3) In subsection (4) (the permitted maximum) omit—

(a) in the words preceding paragraph (a), "the aggregate of";

(b) paragraph (b) (which refers to relief by virtue of section 642, abolished by this Schedule); and

(c) the word "and" immediately preceding that paragraph.

(4) After subsection (7A) (prohibition of contributions or transfer payments after pension date) insert—

"(7B) Subsection (7A) above shall have effect subject to and in accordance with section 638ZA.".

(5) After subsection (8) add—

"(9) The Board may only approve a personal pension scheme if it prohibits the acceptance of contributions in any form other than—

(a) the payment of monetary sums; or

(b) the transfer, subject to the conditions in subsection (12) below, of eligible shares in a company;

and any reference in this Chapter to the payment of contributions includes a reference to the making of contributions in accordance with paragraph (b) above.

(10) For the purposes of this Chapter, the amount of a contribution made by way of a transfer of shares shall be the aggregate market value of the shares at the date of the transfer.

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(11) For the purposes of subsection (9)(b) above, 'eligible shares' means shares—

(a) which the member has exercised the right to acquire, or

(b) which have been appropriated to the member,

in accordance with the provisions of a savings-related share option scheme, an approved profit-sharing scheme or an employee share ownership plan.

(12) The conditions mentioned in subsection (9)(b) above are—

(a) in relation to shares which the member has exercised his right to acquire in accordance with the provisions of a savings-related share option scheme, that the transfer of the shares as contributions under the personal pension scheme takes place before the expiry of the period of 90 days following the exercise of that right;

(b) in relation to shares appropriated to the member in accordance with the provisions of an approved profit-sharing scheme or an employee share ownership plan, that the transfer of the shares as contributions under the personal pension scheme takes place before the expiry of the period of 90 days following the date when the member directed the trustees of the approved profit-sharing scheme or employee share ownership plan to transfer the ownership of the shares to him or, if earlier, the release date in relation to the shares.

(13) In this section—

'approved profit-sharing scheme' has the same meaning as in section 186;

'employee share ownership plan' has the same meaning as in Schedule 8 to the Finance Act 2000;

'market value' shall be construed in accordance with section 272 of the Taxation of Chargeable Gains Act 1992;

1992 c. 12.

'savings-related share option scheme' has the same meaning as in Schedule 9 (see paragraph 1(1) of that Schedule).".

(6) Sub-paragraph (2) has effect for the year 2001-02 and subsequent years of assessment.

(7) Sub-paragraph (3) has effect in relation to contributions paid in the year 2001-02 or any subsequent year of assessment.

(8) Sub-paragraph (5) has effect in relation to contributions in the year 2001-02 or any subsequent year of assessment.

Multiple pension dates etc

14.—(1) After section 638 insert—

"Personal pension arrangements with more than one pension date etc.

638ZA.—(1) This section applies where a personal pension scheme makes provision for a personal pension arrangement under the scheme to make provision—

(a) for the payment of more than one annuity satisfying the conditions in section 634 or 636 (a 'qualifying annuity') and for different such annuities to commence, or be capable of commencing, on different days;

(b) for elections such as are mentioned in section 634A(1) or 636A(1) ('elections for deferral') to be capable of being made at different times in relation to different portions of the personal pension fund; and

(c) for a qualifying lump sum to be payable in connection with—

(i) each qualifying annuity (other than one purchased pursuant to section 634A, 636 or 636A); and

(ii) each election for deferral such as is mentioned in section 634A(1).

(2) The Board shall not refuse to approve a personal pension scheme by reason only that it makes such provision as is mentioned in subsection (1) above if they are satisfied that it makes provision in conformity with the provisions of this section.

(3) In this section—

'income withdrawal fund' means a portion of the personal pension fund which is specified or described in an election for deferral as the portion of that fund to which the election relates;

'qualifying lump sum' means a lump sum satisfying the conditions of section 635 (as that section has effect by virtue of and in accordance with this section);

'the relevant date', in relation to any qualifying annuity or election for deferral, means the date determined in accordance with the arrangement on which—

(a) the qualifying annuity commences; or

(b) the member makes the election for deferral.

(4) In the application of section 635 in relation to a qualifying lump sum, for the condition in subsection (3) there shall be substituted the conditions in subsections (5) and (6) below (as read with subsection (7) below).

(5) The first condition is that the lump sum must not exceed one-third of—

(a) the difference between—

(i) the value of the portion of the personal pension fund applied in the provision of the qualifying annuity in connection with which the lump sum is paid, determined as at the date on which that portion is so applied, and

(ii) the value, determined as at that date, of so much of that portion as represents protected rights, or

(b) the value, as at the relevant date, of the income withdrawal fund which relates to the election for deferral in connection with it is paid,

as the case may be.

(6) The second condition is that the lump sum must not represent any of the value, at the time when the lump sum is paid, of any protected rights.

(7) In subsections (5) and (6) above, 'protected rights' means any of the member's rights under the personal pension arrangement which are protected rights for the purposes of the Pension Schemes Act 1993 or the Pension Schemes (Northern Ireland) Act 1993.

1993 c. 48.
1993 c. 49.

(8) Where a qualifying annuity commences, this Chapter and the personal pension scheme concerned shall have effect, as from the relevant date, as if there had been a separate personal pension arrangement and—

(a) the annuity, and any qualifying lump sum payable in connection with it, were benefits provided for by that separate arrangement (instead of by the personal pension arrangement by which it was actually provided (in this subsection referred to as 'the relevant arrangement'));

(b) the portion of the personal pension fund applied in the provision of the annuity, together with the amount of any qualifying lump sum payable in connection with the annuity, had been the personal pension fund in the case of that separate arrangement (and were excluded from the personal pension fund in the case of the relevant arrangement);

(c) any election for the annuity, or for such a qualifying lump sum, had been made under that separate arrangement (instead of under the relevant arrangement); and

(d) except in the case of an annuity satisfying the conditions in section 636, the relevant date were the pension date in relation to that separate arrangement (and were not, by reference to that annuity, the pension date in relation to the relevant arrangement).

(9) Where, in the case of any personal pension arrangement (in this subsection referred to as 'the relevant arrangement'), an election for deferral is made, this Chapter and the personal pension scheme concerned shall have effect, as from the relevant date, as if there had been, and continued to be, a separate personal pension arrangement and—

(a) the income withdrawal fund which relates to the election, together with the amount of any qualifying lump sum payable in connection with the election, had been the personal pension fund in the case of that separate arrangement (and were excluded from the personal pension fund in the case of the relevant arrangement);

(b) the election for deferral, and any election for such a qualifying lump sum, had been made under that separate arrangement (instead of under the relevant arrangement);

(c) the election for deferral had been made in respect of the whole of the income withdrawal fund which relates to the election; and

(d) except in the case of an election such as is mentioned in section 636A(1), the relevant date were the pension date in relation to that separate arrangement (and were not, by reference to that election, the pension date in relation to the relevant arrangement).".

(2) This paragraph has effect on and after 6th April 2001.

Tax relief on member's contributions

15.—(1) Amend section 639 as follows.

(2) For subsections (1) and (2) substitute—

"(1) An individual who pays a contribution under approved personal pension arrangements made by him shall be entitled to relief under this section in respect of the contribution.

(1A) Subsection (1) above is subject to the other provisions of this Chapter.

(1B) The total amount of contributions in respect of which relief may be given to an individual under this section for any year of assessment must not exceed—

(a) the permitted maximum for the year, as defined in section 638(4), or

(b) the earnings threshold for the year,

whichever is the greater.

(2) Any relief under this section shall be given in accordance with—

(a) subsections (3) and (4) below, and

(b) where applicable, subsection (5A) below.

(2A) Relief in accordance with subsections (3) and (4) below shall be subject to such conditions as the Board may prescribe in regulations.".

(3) For subsection (3) substitute—

"(3) An individual who is entitled to relief under this section in respect of a contribution shall be entitled, on making the payment, to deduct and retain out of it a sum equal to income tax on the contribution at the basic rate for the year of assessment in which the payment is made.".

(4) For subsection (4) substitute—

"(4) Where a sum is deducted under subsection (3) above from a contribution—

(a) the scheme administrator shall allow the deduction on receipt of the residue;

(b) the individual paying the contribution shall be acquitted and discharged of so much money as is represented by the deduction as if the sum had been actually paid; and

(c) the sum deducted shall be treated as income tax paid by the scheme administrator.".

(5) After subsection (4) insert—

"(4A) Where payment of a contribution under approved personal pension arrangements is received—

(a) the scheme administrator shall be entitled to recover from the Board, in accordance with regulations, an amount which by virtue of subsection (4)(c) above is treated as income tax paid by him; and

(b) any amount so recovered shall be treated for the purposes of the Tax Acts in like manner as the payment of the contribution to which it relates.".

(6) In subsection (5) (regulations for carrying subsections (3) and (4) into effect)—

(a) for "(3) and (4)" substitute "(3) to (4A)"; and

(b) in paragraph (a), for "(4)(b)" substitute "(4A)(a)".

(7) After subsection (5) insert—

"(5A) Where—

(a) an individual is entitled to relief under this section in respect of contributions paid in any year of assessment, and

(b) apart from this subsection, income tax at the higher rate is chargeable in respect of any part of his total income for the year,

the basic rate limit for that year shall in his case be increased by the addition of the amount of the contributions in respect of which he is entitled to relief under this section.

(5B) Relief in accordance with subsection (5A) above shall be given only on a claim made for the purpose.".

(8) In subsection (7) (relief not to be given under section 639 and any other provision of the Income Tax Acts in respect of same contribution) for "under this section is claimed and allowed" substitute "is given under this section".

(9) This paragraph has effect in relation to contributions paid in the year 2001-02 or any subsequent year of assessment.

Maximum amount of deductions

16.—(1) Amend section 640 as follows.

(2) In subsection (1) (maximum deduction or set off under section 639(1) to be 17.5 per cent. of net relevant earnings)—

(a) for "that may be deducted or set off" substitute "of contributions in respect of which relief may be given"; and

(b) after "shall be" insert—

"(a) an amount equal to the earnings threshold for that year; or

(b) if greater,".

(3) Amend subsection (3) (limitation on deduction or set off of certain life assurance contributions) in accordance with sub-paragraphs (4) and (5).

(4) For the words from the beginning to "section 637" substitute—

"(3) Without prejudice to subsection (1) above, where any contributions are paid in a year of assessment by an individual to secure benefits satisfying the conditions in section 637, the maximum amount of those contributions in respect of which relief may be given by virtue of section 639(1)".

(5) For "shall be 5 per cent. of the individual's net relevant earnings for that year" substitute "shall be an amount equal to 10 per cent. of the aggregate amount of the relevant pension contributions made in that year by the individual and an employer of his".

(6) After subsection (3) insert—

"(3A) In subsection (3) above "relevant pension contribution" means a contribution paid towards securing benefits falling within paragraph (a), (b) or (c) of section 633(1) under arrangements made under a personal pension scheme on or after 6th April 2001.".

(7) In subsection (4) (reduction of maximum deduction or set off where employer makes contributions) for "that may be deducted or set off" substitute "of contributions in respect of which relief may be given by virtue of section 639(1)".

(8) Sub-paragraphs (2), (4) and (7) have effect in relation to contributions paid in the year 2001-02 or any subsequent year of assessment.

(9) Sub-paragraphs (5) and (6) have effect in relation to contributions paid to secure benefits satisfying the conditions in section 637 of the Taxes Act 1988 where the contract of life assurance concerned is made on or after 6th April 2001.

Carry-back of contributions

17. No election shall be made under section 641 in respect of contributions paid on or after 6th April 2001.

Election for contributions to be treated as paid in previous year

18.—(1) After section 641 insert—

"Election for contributions to be treated as paid in previous year.

641A.—(1) A person who pays a contribution under approved personal pension arrangements on or before the 31st January in any year of assessment may, at or before the time when he pays the contribution, irrevocably elect that the contribution, or part of it, shall be treated as paid in the preceding year of assessment.

(2) Where an election is made under this section in respect of a contribution or part of a contribution, the other provisions of this Chapter shall have effect as if the contribution or part had been paid in the year specified in the election and not in the year in which it was actually paid.".

(2) This paragraph has effect in relation to contributions paid in the year 2001-02 or any subsequent year of assessment.

Abolition of carry-forward of relief

19. No relief shall be given by virtue of section 642 (carry-forward of relief) in the year 2001-02 or any subsequent year of assessment.

Earnings from pensionable employment

20.—(1) Amend section 645 as follows.

(2) In subsection (3) (definition of "a relevant superannuation scheme") omit the word "and" immediately preceding paragraph (c) and at the end of that paragraph add "; and

(d) which is not an approved converted scheme".

Meaning of "net relevant earnings"

21.—(1) Amend section 646 as follows.

(2) In subsection (5) (cases where the whole or part of a deduction under subsection (2)(d) falls to be made from income other than relevant earnings) for "an amount is deducted or set off under section 639(1) against the net relevant earnings" substitute "the basic rate limit is increased in accordance with section 639(5A) in the case".

(3) In subsection (6) (reduction of net relevant earnings in subsequent years) for "under section 639(1)" substitute "in accordance with section 639(5A)".

(4) Omit subsection (7) (net relevant earnings to be computed without regard to any deduction or set off under section 639(1)).

(5) This paragraph has effect for the year 2001-02 and subsequent years of assessment.

Presumption of same level of relevant earnings etc for 5 years

22.—(1) After section 646A insert—

"Presumption of same level of relevant earnings etc for 5 years.

646B.—(1) This section applies where an individual (the 'relevant member') who is or becomes a member of a personal pension scheme provides to the scheme administrator the requisite evidence of the relevant amounts for any year of

assessment (the 'basis year').

(2) For the purposes of this section, the 'relevant amounts' for any year of assessment are the amounts which need to be known in order to calculate the relevant member's net relevant earnings for that year.

(3) The basis year need not be a year of assessment in which the relevant member is a member of the personal pension scheme concerned.

(4) Where this section applies, it shall be presumed for the purposes of this Chapter in the case of the relevant member and the personal pension scheme concerned that, for each of the five years of assessment following the basis year, the relevant amounts (and, accordingly, the relevant member's net relevant earnings) are the same as for the basis year.

(5) Subsection (4) above is subject to—

(a) subsections (6) to (9) below; and

(b) such conditions or exceptions as may be prescribed.

(6) For the purposes of this section, the requisite evidence provided for a later basis year (the 'later basis year') supersedes the requisite evidence provided for an earlier basis year (the 'earlier basis year').

(7) Subsection (6) above has effect subject to, and in accordance with, subsections (8) and (9) below.

(8) If—

(a) the actual net relevant earnings for the later basis year,

exceed

(b) the actual net relevant earnings for the earlier basis year,

the supersession effected by subsection (6) above has effect as respects the later basis year and subsequent years of assessment (and subsection (4) above applies accordingly).

(9) Where the condition in subsection (8) above is not satisfied, the supersession effected by subsection (6) above has effect only as respects years of assessment later than the last of the five years of assessment following the earlier basis year (and subsection (4) above applies accordingly).

(10) It is immaterial for the purposes of this section whether the requisite evidence for a later year of assessment is provided before or after, or at the same time as, the requisite evidence for an earlier year of assessment.

(11) This section is subject to section 646D.

Provisions supplementary to section 646B.

646C.—(1) In this section and section 646B, 'requisite evidence' means evidence—

(a) of such a description as may be prescribed;

(b) in such form as may be prescribed; and

(c) satisfying such conditions as may be prescribed.

(2) Regulations may make further provision in connection with requisite evidence.

(3) The provision that may be made by regulations under subsection (2) above includes provision for or in connection with the provision, use, retention, production or inspection of, or of copies of,—

(a) requisite evidence;

(b) books, documents or other records relating to any requisite evidence; or

(c) extracts from requisite evidence or from such books, documents or other records.

(4) Any power to make regulations under this section or section 646B includes power to make different provision for different cases or different purposes.

(5) In this section and section 646B—

'prescribed' means specified in or determined in accordance with regulations;

'regulations' means regulations made by the Board.".

(2) Sub-paragraph (1) above has effect in relation to presumptions for the year 2001-02 and subsequent years of assessment.

Higher level contributions after cessation of actual relevant earnings: modification of section 646B

23.—(1) After section 646C insert—

"Higher level contributions after cessation of actual relevant earnings: modification of section 646B.

646D.—(1) This section applies where a member of a personal pension scheme—

(a) has no actual relevant earnings in a year of assessment (the 'break year'); but

(b) had actual relevant earnings in the preceding year of assessment (the 'cessation year'); and

(c) was entitled to make higher level contributions under arrangements under the scheme in any one or more of the six years of assessment preceding the break year (the 'reference years').

(2) In the application of the presumption in subsection (4) of section 646B for any qualifying post-cessation year, in a case where this section applies, the basis year may be any one of the reference years for which the member provides or has provided the requisite evidence—

(a) notwithstanding anything in subsections (6) to (9) of that section; and

(b) whether or not the qualifying post-cessation year is included among the five years of assessment following the basis year.

(3) If the member provides or has provided the requisite evidence for two or more of the reference years, he may by notice in writing to the scheme administrator nominate that one of those years which is to be the basis year by virtue of subsection (2) above.

(4) In this section 'post-cessation year', in the case of the member concerned, means any of the five years of assessment following the cessation year.

(5) For the purposes of this section any post-cessation year is a 'qualifying' post-cessation year unless—

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(a) it is a year for which the member has any actual relevant earnings;

(b) it is a year throughout which the member holds an office or employment to which section 645 applies; or

(c) it immediately follows a post-cessation year which is not a qualifying post-cessation year.

(6) Subsection (5) above is without prejudice to the further application of this section in relation to the member if the conditions in subsection (1) above are again fulfilled.

(7) In this section—

'the basis year' shall be construed in accordance with section 646B;

'the requisite evidence' has the same meaning as in that section.".

(2) This paragraph has effect where the break year is the year 2001-02 or any subsequent year of assessment.

Appeals

24.—(1) Amend section 651 as follows.

(2) In subsection (1)(a) (appeal against refusal of application under section 631) after "section 631" insert "or paragraph 3 of Schedule 23ZA".

Old transitional provisions

25.—(1) Amend section 655 as follows.

(2) In subsection (1)(a) (reduction of relief under section 639 where relief is given for certain qualifying premiums) for "that may be deducted or set off" substitute "of contributions in respect of which relief may be given".

(3) This paragraph has effect for the year 2001-02 and subsequent years of assessment.

Benefits under approved pension arrangements not to be income of settlor

26.—(1) Amend section 660A (income arising under settlement where settlor retains an interest) as follows.

(2) Omit subsection (7) (irrevocable allocation of certain pension rights between spouses not to be regarded as settlement).

(3) In subsection (9) (descriptions of income to which subsection (1) does not apply) at the end of paragraph (b) add "; or

(c) a benefit under an approved pension arrangement".

(4) After subsection (10) add—

"(11) In this section 'approved pension arrangement' means—

(a) an approved scheme or exempt approved scheme;

(b) a relevant statutory scheme;

(c) a retirement benefits scheme set up by a government outside the United Kingdom for the benefit, or primarily for the benefit, of its employees;

(d) a contract or scheme which is approved under Chapter III of Part XIV (retirement annuities);

(e) a personal pension scheme which is approved under Chapter IV of that Part;

(f) an annuity purchased for the purpose of giving effect to rights under a scheme falling within any of paragraphs (a) to (c) and (e) above;

(g) any pension arrangements of any description which may be prescribed by regulations made by the Secretary of State.

(12) In subsection (11) above 'approved scheme', 'exempt approved scheme', 'relevant statutory scheme' and 'retirement benefits scheme' have the same meaning as in Chapter I of Part XIV.".

(5) This paragraph has effect for the year 2001-02 and subsequent years of assessment.

Conversion of certain approved retirement benefits schemes

27. After Schedule 23 insert—

"SCHEDULE 23ZA Section 631A.

CONVERSION OF CERTAIN APPROVED RETIREMENT BENEFITS SCHEMES

Interpretation

1.—(1) In this Schedule—

'the date of the change' shall be construed in accordance with paragraph 3(2) below;

'eligible scheme' shall be construed in accordance with paragraph 2(4) below;

'the personal pension provisions of this Act' means this Schedule and the other provisions of Chapter IV of Part XIV;

'prescribed' (except in paragraph 2(3)(c)) means specified in, or determined in accordance with, regulations;

'regulations' means regulations made by the Board.

(2) Any power conferred by this Schedule to make regulations includes power to make different provision for different cases or different purposes.

Eligible schemes

2.—(1) This Schedule applies to any retirement benefits scheme which is for the time being approved under Chapter I of Part XIV.

(2) Sub-paragraph (1) above is subject to the following provisions of this paragraph.

(3) This Schedule applies to a retirement benefits scheme only if—

(a) it is an occupational pension scheme, as defined in section 1 of the Pension Schemes Act 1993 or section 1 of the Pensions Schemes (Northern Ireland) Act 1993; 1993 c. 48. 1993 c. 49.

(b) it is a money-purchase scheme, as defined in section 181 of the Pension Schemes Act 1993 or section 176 of the Pensions Schemes (Northern Ireland) Act 1993;

(c) any documents relating to the scheme which are prescribed under section 631(1) are such that, subject to approval under paragraph 3 below, the scheme is capable of being an approved personal pension scheme for the purposes of Chapter IV of Part XIV as from the date of the change; and

(d) such other conditions as may be prescribed are satisfied in the case of the scheme.

(4) Any retirement benefits scheme to which this Schedule applies is referred to in this Schedule as an 'eligible scheme'.

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Approval of eligible schemes as approved personal pension schemes

3.—(1) The trustees of an eligible scheme may at any time on or after 1st October 2000 apply to the Board for approval of the scheme under this paragraph.

(2) If an application under sub-paragraph (1) above is granted, the eligible scheme shall, as from such date as the Board may specify in granting the application (the 'date of the change'),—

(a) irrevocably cease to be approved, and to be capable of approval, under Chapter I of Part XIV; and

(b) become an approved personal pension scheme (and subject accordingly to section 631(4) and the other provisions of Chapter IV of Part XIV).

(3) The date of the change must not be earlier than 6th April 2001.

(4) An application under sub-paragraph (1) above shall be in such form, shall contain such information, and shall be accompanied by such documents, in such form, and prepared as at such time, as the Board may prescribe.

(5) The Board may at their discretion grant or refuse an application under sub-paragraph (1) above.

(6) The Board's discretion under sub-paragraph (5) above shall be subject to the restrictions set out in sections 632 to 638A and this Schedule.

(7) The Board shall give notice to the applicant of the grant or refusal of an application.

(8) A notice under sub-paragraph (7) above shall, in the case of a refusal, state the grounds for the refusal.

(9) If, at any time after the making of an application under sub-paragraph (1) above, the eligible scheme concerned ceases to be approved under Chapter I of Part XIV otherwise than by virtue of the operation of sub-paragraph (2)(a) above, the scheme shall not, by virtue of that application, become an approved personal pension scheme.

Excessive funding of certain individual members

4.—(1) The Board may refuse or withhold approval under paragraph 3 above in the case of an eligible scheme of a prescribed description if or so long as they are not satisfied that prescribed requirements will be fulfilled with respect to—

(a) the value of any prescribed benefits which may be provided for or in respect of an individual member of a prescribed description, and

(b) the value of the assets held for the purpose of providing benefits for or in respect of that member,

if approval under paragraph 3 above is granted.

(2) Regulations may make provision for or in connection with cases where the value mentioned in paragraph (b) of sub-paragraph (1) above exceeds, or exceeds by more than a prescribed percentage, the value mentioned in paragraph (a) of that sub-paragraph.

(3) The provision that may be made by virtue of sub-paragraph (2) above includes provision for or in connection with eliminating or reducing any such excess within a prescribed period by one or more prescribed methods.

(4) Regulations may make provision for the purposes of this paragraph for or in connection with—

(a) the valuation of benefits; or

(b) the valuation of assets.

(5) The provision that may be made by virtue of sub-paragraph (4)(a) or (b) above includes provision with respect to, or in connection with,—

(a) the person by whom any such valuation is to be made;

(b) the method or principles of valuation to be used;

(c) certification of any such valuations and of any prescribed matters relating to or connected with them;

(d) any facts, matters or assumptions by reference to which any such valuation is to be made;

(e) any tables to be used for the purpose of making any such valuation;

(f) the basis on which any such tables are to be prepared;

(g) the manner in which any such tables are to be applied.

(6) The methods or principles of valuation and the tables that may be prescribed by virtue of sub-paragraph (5) above include methods or principles or, as the case may be, tables published by the Government Actuary for any purposes of the personal pension provisions of this Act.

Directions as to contributions between valuation and date of change etc.

5.—(1) The Board may give directions for or in connection with—

(a) prohibiting the making of contributions during the post-valuation period, or

(b) restricting the amount of the contributions that may be made during that period,

by or in respect of members of a converting scheme.

(2) Directions under sub-paragraph (1) above—

(a) may be given in respect of schemes generally, schemes of a particular description or any particular scheme or schemes; and

(b) may make different provision in relation to different schemes or different members.

(3) Any directions under sub-paragraph (1) above must be complied with by—

(a) the trustees and managers, or administrators, of any scheme to which the directions relate;

(b) any member of such a scheme to whom the directions relate; and

(c) any person who is the employer of such a member.

(4) If there is any contravention of, or failure to comply with, directions under sub-paragraph (1) above, the Board may—

(a) refuse or withhold approval of the conversion application in question; or

(b) revoke or vary any approval granted or any conditions pending the satisfaction of which approval is withheld.

(5) Sub-paragraph (4) above is without prejudice to any other powers of the Board.

(6) In this paragraph—

'conversion application', in the case of a converting scheme, means the application under paragraph 3(1) above in respect of the scheme;

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'converting scheme' means a scheme in respect of which an application under paragraph 3(1) above has been made and not withdrawn or finally refused;

'the post-valuation period', in the case of a converting scheme, means the period which—

(a) begins with the day as at which any valuation for the purposes of paragraph 4 above is made in connection with the conversion application; and

(b) ends with the day preceding the date of the change (or, if earlier, the date on which the conversion application is withdrawn or finally refused).

(7) For the purposes of this paragraph, an application is 'finally refused' when it has been refused by the Board and—

(a) the time for appealing under section 651 against the refusal has expired without such an appeal being made; or

(b) an appeal under that section against the refusal has been withdrawn or finally disposed of in a way which affirms refusal of the application.

(8) Any directions under this paragraph must be given in writing.

Scheme rules to allow changes for purpose of conversion

6. An approved retirement benefits scheme shall be taken to include provisions allowing the making of changes to any provisions of the scheme for the purpose of enabling the scheme to become an eligible scheme, notwithstanding anything to the contrary in any provision of the scheme.".

PART II

TRANSITIONAL PROVISIONS

Schemes approved before 6th April 2001 deemed to contain certain provisions

28.—(1) This paragraph applies to any personal pension scheme which is or has been approved under Chapter IV of Part XIV of the Taxes Act 1988 before 6th April 2001 (an "existing approved scheme").

(2) An existing approved scheme shall be deemed to include provision prohibiting, in relation to arrangements made by a member in accordance with the scheme, the acceptance of—

(a) contributions by the member, or

(b) contributions by an employer of the member,

at a time when the member is not eligible to make contributions.

(3) An existing approved scheme shall be deemed to include provision, in relation to arrangements made by a member in accordance with the scheme, requiring that contributions accepted at a time when the member is not eligible to make contributions are repaid—

(a) to the member, to the extent of his contributions, and

(b) as to the remainder, to his employer,

except that, in a case falling within subsection (6) of section 632B of the Taxes Act 1988, the contributions required to be repaid shall be determined in accordance with that subsection (and their repayment shall have the like consequence).

(4) An existing approved scheme shall be taken to include provisions prohibiting the scheme from making provision for any benefit so far as consisting of insurance against a risk relating to the non-payment of contributions where—

(a) the benefit, so far as so consisting, does not fall within one or more of the paragraphs of section 633(1) of the Taxes Act 1988; and

(b) the insurance is under a contract of insurance made on or after 6th April 2001.

(5) Sections 646B to 646D of the Taxes Act 1988, and any regulations made under those sections, override any provision of an existing approved scheme to the extent that it conflicts with them.

(6) An existing approved scheme shall be deemed to include provision entitling any member who is eligible to make contributions in a year of assessment under arrangements made by him under the scheme to make contributions in that year up to the earnings threshold for the year.

(7) Nothing in sub-paragraph (6) authorises the making, in the case of any member, of total contributions in a year of assessment which exceed the earnings threshold for the year or, if greater, the permitted maximum for the year.

(8) In this paragraph—

"approved personal pension arrangements" has the same meaning as in Chapter IV of Part XIV of the Taxes Act 1988 (see section 630(1) of that Act);

"earnings threshold" has the same meaning as in Chapter IV of Part XIV of the Taxes Act 1988 (see section 630(1) of that Act);

"eligible to make contributions" shall be construed in accordance with sections 632A and 632B of the Taxes Act 1988;

"the permitted maximum" has the same meaning as in section 638(3) of the Taxes Act 1988;

"personal pension scheme" has the same meaning as in Chapter IV of Part XIV of the Taxes Act 1988 (see section 630(1) of that Act);

"total contributions", in the case of a member and a year of assessment, means the aggregate amount of the contributions made in the year by the member and any employer of his under the approved personal pension arrangements in question, together with the aggregate amounts of such contributions under other approved personal pension arrangements made by that member.

Deemed requisite evidence for the presumptions

29.—(1) This paragraph applies where, in the case of any individual and any arrangements made by him under an approved personal pension scheme,—

(a) the conditions in regulations 5 and 6 of the Personal Pension Schemes (Relief at Source) Regulations 1988 ("the 1988 Regulations") are satisfied for one or more of the five years of assessment preceding the year 2001-02; S.I. 1988/1013.

(b) the particulars specified in regulation 5(2)(e) of the 1988 Regulations have been furnished for a year of assessment ("the relevant year") for which those conditions are satisfied and which is one of those five years of assessment; and

(c) such a certificate as is specified in regulation 6(2)(a) of the 1988 Regulations has been furnished at some time during, or not later than 60 days after the end of, such a year of assessment.

(2) Where this paragraph applies, it shall be assumed for the purposes of sections 646B to 646D of the Taxes Act 1988—

(a) that the individual has provided the scheme administrator with the requisite evidence of the relevant amounts for the relevant year; and

(b) that the relevant amounts for that year are the amounts stated in, or deduced from, the relevant particulars and certificates.

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(3) In sub-paragraph (2) above, "the relevant particulars and certificates" means the latest particulars and certificates furnished under regulations 5 and 6 of the 1988 Regulations by reference to which the relevant year is a year for which the conditions prescribed in those regulations are satisfied.

Applications for approval

30.—(1) An application to the Board for their approval under Chapter IV of Part XIV of the Taxes Act 1988 of—

(a) a personal pension scheme, or

(b) an amendment to a personal pension scheme approved under that Chapter,

may not be made before 1st October 2000 if the scheme or amendment makes or includes any provision such that the Board could not give their approval apart from the amendments made to the Taxes Act 1988 by the relevant provisions of this Schedule.

(2) For the purposes of sub-paragraph (1) the relevant provisions of this Schedule are any provisions of this Schedule other than paragraphs 10 and 12(3).

Section 62.

SCHEDULE 14

ENTERPRISE MANAGEMENT INCENTIVES

PART I

INTRODUCTORY

Qualifying options

1.—(1) In this Schedule a "qualifying option" means an option—

(a) in relation to which the requirements of this Schedule are met at the time the option is granted, and

(b) of which notice is given to the Inland Revenue in accordance with paragraph 2.

(2) The requirements of this Schedule are—

(a) the general requirements in Part II of this Schedule,

(b) that the company whose shares are the subject of the option is a qualifying company (see Part III of this Schedule),

(c) that the individual to whom the option is granted is an eligible employee in relation to that company (see Part IV of this Schedule),

(d) that the option is granted to the employee by reason of his employment—

(i) with that company, or

(ii) if that company is a parent company, with that company or another group company, and

(e) the requirements of Part V of this Schedule as to the terms of the option, the circumstances in which it is granted and other matters.

(3) In this Schedule, in relation to an option—

(a) references to "the relevant company" are to the company whose shares are the subject of the option, and

(b) references to "the employer company" are to the company by reference to which the requirement in sub-paragraph (2)(d) is met.

Notice of option to be given to Inland Revenue

2.—(1) For an option to be a qualifying option notice of the option must be given to the Inland Revenue within 30 days after the grant of the option.

(2) The notice must—

(a) be given by the employer company, and

(b) be in a form required or authorised by the Inland Revenue.

(3) The notice must contain, or be supported by, such information as the Inland Revenue may require for the purpose of determining whether the requirements of this Schedule are met.

(4) The notice must also contain—

(a) a declaration by a director, or the secretary, of the employer company—

(i) that in his opinion the requirements of this Schedule are met in relation to the option, and

(ii) that the information provided is to the best of his knowledge correct and complete, and

(b) a declaration by the individual to whom the option was granted that he meets the requirement of paragraph 29 (commitment of working time) in relation to the option.

Correction of notice by Revenue

3.—(1) The Inland Revenue may amend a notice given under paragraph 2 so as to correct obvious errors or omissions in the notice.

(2) A correction under this paragraph is made by notice to the employer company.

(3) No such correction may be made more than nine months after the day on which the notice under paragraph 2 was given to the Inland Revenue.

(4) A correction under this paragraph is of no effect if the employer company within three months from the date of issue of the notice of correction gives notice rejecting the correction.

Notice of enquiry

4.—(1) The Inland Revenue may enquire into an option of which notice is given under paragraph 2 if they give notice to the employer company of their intention to do so in accordance with this paragraph.

(2) Where notice is given under paragraph 2, the Inland Revenue may enquire into whether paragraph 29 (commitment of working time) is met by the individual to whom the option was granted if they give him notice of their intention to do so in accordance with this paragraph.

(3) The Inland Revenue shall give a copy of any notice under sub-paragraph (2) to the employer company.

(4) Notice of enquiry may be given at any time within the period of 12 months beginning with the end of the period of 30 days mentioned in paragraph 2(1) (the period within which notice under that paragraph must be given).

(5) Notice of enquiry may be given at any time if the Inland Revenue discover that any of the information provided in or in connection with the notice under paragraph 2 was false or misleading in a material particular.

(6) An option that has been the subject of one notice of enquiry under sub-paragraph (1) or (2) may not be the subject of another notice under the same sub-paragraph, unless it is given by virtue of sub-paragraph (5).

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Completion of enquiry

5.—(1) An enquiry under paragraph 4(1) is completed when the Inland Revenue by notice inform the employer company that they have completed their enquiry and state their decision whether the requirements of this Schedule are met in relation to the option.

(2) If the Inland Revenue conclude that the requirements of this Schedule are not met, they must also give notice of that decision to the individual to whom the option was granted.

(3) An enquiry under paragraph 4(2) is completed when the Inland Revenue by notice inform the individual concerned and the employer company that they have completed their enquiry and state their decision whether the requirement of paragraph 29 (commitment of working time) is met by that individual in relation to the option.

(4) References in this Part to a "closure notice" are to a notice under sub-paragraph (1) or (3).

(5) A closure notice takes effect when it is issued.

(6) An application may be made by—

(a) the employer company, or

(b) in a case within paragraph 4(2), the individual concerned,

for a direction that the Inland Revenue give a closure notice within a specified period.

(7) An application under sub-paragraph (6) must be made to the General Commissioners or, if the applicant so elects (in accordance with section 46(1) of the Taxes Management Act 1970), to the Special Commissioners.

1970 c. 9.

(8) Any such application shall be heard and determined in the same way as an appeal.

(9) The Commissioners hearing the application shall give a direction unless they are satisfied that the Inland Revenue have reasonable grounds for not giving a closure notice within a specified period.

Effect of enquiry

6.—(1) If the Inland Revenue do not give notice of enquiry, the requirements of this Schedule are taken to be met in relation to the option.

(2) If the Inland Revenue do give notice of enquiry, their decision stated in the closure notice is conclusive as to whether the requirements of this Schedule are met in relation to the option, subject—

(a) if their decision is that the requirements are not met, to the outcome of any appeal against that decision;

(b) if their decision is that the requirements are met, to the outcome of any further enquiry under paragraph 4(5) (enquiry arising from discovery of false or misleading information).

(3) This paragraph does not affect the provisions of paragraphs 47 to 53 (which relate to disqualifying events).

Appeals

7.—(1) The employer company may appeal against a decision of the Inland Revenue—

(a) that notice of the grant of the option was not given in accordance with paragraph 2, or

(b) that the requirements of this Schedule are not met in relation to the option.

(2) An individual may appeal against a decision of the Inland Revenue that he does not meet the requirement of paragraph 29 (commitment of working time).

(3) Notice of the appeal must be given to the Inland Revenue within 30 days after the closure notice is given to the employer company or individual.

(4) The appeal lies to the General Commissioners or, if the employer company or individual so elects (in accordance with section 46(1) of the Taxes Management Act 1970), to the Special Commissioners. 1970 c. 9.

PART II

GENERAL REQUIREMENTS

Introduction

8. An option is not a qualifying option unless the requirements of this Part of this Schedule are met as to—

(a) the purpose for which the option is granted (see paragraph 9),

(b) the maximum entitlement of an employee (see paragraph 10), and

(c) the maximum number of employees who can hold qualifying options (see paragraph 11).

Purpose of granting the option

9. An option is a qualifying option only if it is granted for commercial reasons in order to recruit or retain a key employee in a company, and not as part of a scheme or arrangement the main purpose, or one of the main purposes, of which is the avoidance of tax.

Maximum entitlement of employee

10.—(1) An employee may not hold unexercised qualifying options which—

(a) are in respect of shares with a total value of more than £100,000, and

(b) were granted by reason of his employment—

(i) with one company, or

(ii) with two or more companies which are members of the same group.

(2) An option is not a qualifying option if the limit in sub-paragraph (1) is already exceeded at the time it is granted.

(3) If the grant of an option causes that limit to be exceeded, the option is not a qualifying option so far as it relates to the excess.

(4) Where by reason of his employment with one company, an employee has been granted qualifying options in respect of shares with a total value of £100,000 (whether or not they have been exercised or released), any further option granted by reason of his employment with—

(a) that company, or

(b) if it is a member of a group, any company that is a member of that group,

within three years of the date of the grant of the last qualifying option is not a qualifying option.

(5) Where, by reason of his employment with two or more companies which are members of the same group, an employee has been granted qualifying options in respect of shares with a total value of £100,000 (whether or not they have been exercised or released), any further option granted, by reason of his employment with any member of that group, within three years of the date of the grant of the last qualifying option is not a qualifying option.

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(6) Where, at the time an option is granted to an employee, he holds unexercised CSOP options granted by reason of his employment with—

(a) the employer company, or

(b) if that company is a member of a group, any member of that group,

those options shall be treated for the purposes of this paragraph as if they were unexercised qualifying options.

For this purpose a "CSOP option" is an option to acquire shares under a scheme approved under Schedule 9 to the Taxes Act 1988 by reference to the requirements of Part IV of that Schedule (non-savings-related share option schemes).

(7) For the purposes of this paragraph—

(a) the value of shares means the market value at the time the option is granted of shares of the same class as those that may be acquired by exercise of the option; and

(b) an option is treated as granted in respect of the maximum number of shares that may be acquired under it.

(8) For the purposes of this paragraph the market value of shares subject to restrictions or risk of forfeiture shall be determined as if there were no such restriction or risk.

For this purpose shares are "subject to risk of forfeiture" if the interest that may be acquired is only conditional within the meaning of section 140C of the Taxes Act 1988.

Number of employees who may hold qualifying options

11. Not more than 15 employees may hold qualifying options in respect of shares in the relevant company at the same time.

PART III

QUALIFYING COMPANIES

Introduction

12. A qualifying company is a company in relation to which the requirements of this Part of this Schedule are met as to—

(a) independence (see paragraph 13),

(b) having only qualifying subsidiaries (see paragraph 14),

(c) gross assets (see paragraph 16), and

(d) trading activities (see paragraph 17).

The independence requirement

13.—(1) The independence requirement is that the company is not—

(a) a 51% subsidiary of another company, or

(b) under the control of another company (or of another company and any other person connected with that other company), without being a 51% subsidiary of that other company,

and that no arrangements are in existence by virtue of which the company could become such a subsidiary or fall under such control.

(2) For the purposes of this requirement arrangements with a view to a qualifying exchange of shares (within the meaning of paragraph 60) shall be disregarded.

(3) In this paragraph "control" has the meaning given by section 840 of the Taxes Act 1988.

The qualifying subsidiaries requirement

14.—(1) A company that has one or more subsidiaries is not a qualifying company unless every subsidiary of the company is a qualifying subsidiary.

(2) For this purpose—

(a) "subsidiary" means any company which the company controls, either on its own or together with any person connected with it, and

(b) the question whether a person controls a company shall be determined in accordance with section 416(2) to (6) of the Taxes Act 1988.

Meaning of "qualifying subsidiary"

15.—(1) A company ("the subsidiary") is a qualifying subsidiary of another company ("the company") if the following conditions are met.

(2) The conditions are—

(a) that the company or another of its subsidiaries possesses not less than 75% of the issued share capital of, and not less than 75% of the voting power in, the subsidiary;

(b) that the company or another of its subsidiaries would—

(i) in the event of a winding up of the subsidiary, or

(ii) in any other circumstances,

be beneficially entitled to receive not less than 75% of the assets of the subsidiary which would then be available for distribution to the shareholders of the subsidiary;

(c) that the company or another of its subsidiaries is beneficially entitled to not less than 75% of any profits of the subsidiary which are available for distribution to the shareholders of the subsidiary;

(d) that no person other than the company or another of its subsidiaries has control of the subsidiary within the meaning of section 840 of the Taxes Act 1988; and

(e) that no arrangements are in existence by virtue of which the conditions in paragraphs (a) to (d) would cease to be met.

(3) The subsidiary shall not be regarded, at a time when it or another company is being wound up, as having ceased on that account to be a company in relation to which the conditions in sub-paragraph (2) are met if—

(a) the conditions in that sub-paragraph would be met apart from the winding up, and

(b) the winding up is for commercial reasons and is not part of a scheme or arrangement the main purpose of which, or one of the main purposes of which, is the avoidance of tax.

(4) The subsidiary shall not be regarded, at any time when arrangements are in existence for the disposal by the company or (as the case may be) by another subsidiary of the company of all its interest in the subsidiary in question, as having ceased on that account to be a qualifying subsidiary if the disposal is to be for commercial reasons and not part of a scheme or arrangement the main purpose of which, or one of the main purposes of which, is the avoidance of tax.

The gross assets requirement

16.—(1) The gross assets requirement in the case of a single company is that the value of the company's gross assets does not exceed £15 million.

(2) The gross assets requirement in the case of a parent company is that the consolidated value of the group assets does not exceed £15 million.

(3) The consolidated value of the group assets means the aggregate value of the gross assets of the group, disregarding any that consist in rights against, or shares in or securities of, another company in the group.

The trading activities requirement

17.—(1) The trading activities requirement in the case of a single company is that the company—

(a) disregarding any incidental purposes, exists wholly for the purpose of carrying on one or more qualifying trades, and

(b) is carrying on a qualifying trade or preparing to do so.

(2) The trading activities requirement in the case of a parent company is that—

(a) the business of the group does not consist wholly or as to a substantial part in the carrying on of non-qualifying activities, and

(b) at least one group company—

(i) disregarding any incidental purposes, exists wholly for the purpose of carrying on one or more qualifying trades, and

(ii) is carrying on a qualifying trade or preparing to do so.

(3) The business of the group means what would be the business of the group if the activities of the group companies taken together were regarded as one business.

(4) For the purposes of determining whether a company falls within sub-paragraph (1)(a) or (2)(b)(i), the purposes for which it exists shall be disregarded to the extent that they consist in the carrying on of the following activities—

(a) in the case of a single company, the holding and managing of property used by the company for one or more qualifying trades carried on by it, and

(b) in the case of a group company, any activities within sub-paragraph (5).

(5) For the purposes of determining the business of a group, activities of a group company shall be disregarded to the extent that they consist in—

(a) the holding of shares in or securities of, or the making of loans to, another group company; or

(b) the holding and managing of property used by a group company for the purposes of one or more qualifying trades carried on by a group company; or

(c) incidental activities of a company which meets the trading activities requirement for a single company.

(6) In sub-paragraph (2)(a) "non-qualifying activities" means—

(a) excluded activities other than—

(i) the letting of ships to which paragraph 21 applies (ships other than oil rigs or pleasure craft) in circumstances where the requirements of sub-paragraph (2) of that paragraph are met; or

(ii) the receiving of royalties or licence fees within paragraph 22 in circumstances where the requirements mentioned in sub-paragraph (2) of that paragraph are met; or

(b) activities carried on otherwise than in the course of a trade.

(7) In this paragraph—

(a) "incidental purposes" means purposes having no significant effect (other than in relation to incidental matters) on the extent of the company's activities; and

(b) "incidental activities" means activities carried on in pursuance of incidental purposes.

Meaning of "qualifying trade"

18.—(1) A trade is a qualifying trade if—

(a) it is carried on wholly or mainly in the United Kingdom,

(b) it is conducted on a commercial basis and with a view to the realisation of profits, and

(c) it does not consist wholly or as to a substantial part in the carrying on of excluded activities.

(2) The carrying on of activities of research and development from which it is intended that a connected qualifying trade will be derived or benefit is treated as the carrying on of a qualifying trade.

But preparing to carry on such activities does not count as preparing to carry on a qualifying trade.

(3) For the purposes of sub-paragraph (2) a "connected qualifying trade" means a qualifying trade carried on—

(a) by the company carrying on the activities of research and development, or

(b) if that company is a member of a group, by any other group company.

Excluded activities

19.—(1) The following are excluded activities—

(a) dealing in land, in commodities or futures or in shares, securities or other financial instruments;

(b) dealing in goods otherwise than in the course of an ordinary trade of wholesale or retail distribution;

(c) banking, insurance, money-lending, debt-factoring, hire-purchase financing or other financial activities;

(d) leasing (including letting ships on charter or other assets on hire) or receiving royalties or licence fees;

(e) providing legal or accountancy services;

(f) property development;

(g) farming or market gardening;

(h) holding, managing or occupying woodlands, any other forestry activities or timber production;

(i) operating or managing hotels or comparable establishments, or managing property used as a hotel or comparable establishment; and

(j) operating or managing nursing homes or residential care homes, or managing property used as a nursing home or residential care home.

(2) Sub-paragraph (1) is supplemented by the following provisions—

paragraph 20 (wholesale and retail distribution);

paragraph 21 (leasing of ships);

paragraph 22 (receipt of royalties and licence fees);

paragraph 23 (property development);

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paragraph 24 (hotels and comparable establishments);

paragraph 25 (nursing homes and residential care homes); and

paragraph 26 (provision of facilities for another business).

Excluded activities: wholesale and retail distribution

20.—(1) This paragraph supplements paragraph 19(1)(b).

(2) A trade of wholesale distribution is one in which the goods are offered for sale and sold to persons for resale by them, or for processing and resale by them, to members of the general public for their use or consumption.

(3) A trade of retail distribution is one in which the goods are offered for sale and sold to members of the general public for their use or consumption.

(4) A trade is not an ordinary trade of wholesale or retail distribution if—

(a) it consists, to a substantial extent, in dealing in goods of a kind which are collected or held as an investment, or in that activity and any other excluded activity taken together, and

(b) a substantial proportion of those goods are held by the company for a period which is significantly longer than the period for which a vendor would reasonably be expected to hold them while endeavouring to dispose of them at their market value.

(5) In determining whether a trade carried on by any person is an ordinary trade of wholesale or retail distribution, regard shall be had to the extent to which it has the following features—

(a) the goods are bought by that person in quantities larger than those in which he sells them;

(b) the goods are bought and sold by that person in different markets;

(c) that person employs staff and incurs expenses in the trade in addition to the cost of the goods and, in the case of a trade carried on by a company, to any remuneration paid to any person connected with it;

(d) there are purchases or sales from or to persons who are connected with that person;

(e) purchases are matched with forward sales or vice versa;

(f) the goods are held by that person for longer than is normal for goods of the kind in question;

(g) the trade is carried on otherwise than at a place or places commonly used for wholesale or retail trade;

(h) that person does not take physical possession of the goods;

(6) The features specified in sub-paragraph (5)(a) to (c) are indications that the trade is such an ordinary trade.

Those in sub-paragraph (5)(d) to (h) are indications of the contrary.

Excluded activities: leasing of ships

21.—(1) This paragraph supplements paragraph 19(1)(d) so far as it relates to the leasing of ships other than oil rigs or pleasure craft.

(2) A trade shall not be treated as not being a qualifying trade by reason only of its consisting in letting such ships on charter if the following requirements are met—

(a) every ship let on charter by the company carrying on the trade is beneficially owned by the company;

(b) every ship beneficially owned by the company is registered in the United Kingdom;

(c) the company is solely responsible for arranging the marketing of the services of its ships; and

(d) the conditions mentioned in sub-paragraph (3) are satisfied in relation to every letting of a ship on charter by the company.

(3) The conditions are that—

(a) the letting is for a period not exceeding 12 months and no provision is made at any time (whether in the charterparty or otherwise) for extending it beyond that period otherwise than at the option of the charterer;

(b) during the period of the letting there is no provision in force (whether by virtue of being contained in the charterparty or otherwise) for the grant of a new letting to end, otherwise than at the option of the charterer, more than 12 months after that provision is made;

(c) the letting is by way of a bargain made at arm's length between the company and a person who is not connected with it;

(d) under the terms of the charter the company is responsible as principal—

(i) for taking, throughout the period of the charter, management decisions in relation to the ship, other than those of a kind generally regarded by persons engaged in trade of the kind in question as matters of husbandry; and

(ii) for defraying all expenses in connection with the ship throughout that period, or substantially all such expenses, other than those directly incidental to a particular voyage or to the employment of the ship during that period;

and

(e) no arrangements exist by virtue of which a person other than the company may be appointed to be responsible for the matters mentioned in paragraph (d) on behalf of the company.

(4) In relation to any letting between one company and another where—

(a) one of those companies is the company carrying on the trade and the other is a qualifying subsidiary of that company, or

(b) both companies are qualifying subsidiaries of the company carrying on the trade,

sub-paragraph (3) has effect with the omission of paragraph (c).

(5) Where any of the requirements in sub-paragraph (2) are not met in relation to any lettings, the trade shall not thereby be treated as not a qualifying trade if those lettings and any other excluded activities do not, taken together, amount to a substantial part of the trade.

(6) In this paragraph—

"oil rig" means any ship which is an offshore installation for the purposes of the Mineral Workings (Offshore Installations) Act 1971; and 1971 c. 61.

"pleasure craft" means any ship of a kind primarily used for sport or recreation.

Excluded activities: receipt of royalties and licence fees

22.—(1) This paragraph supplements paragraph 19(1)(d) so far as it relates to the receipt of royalties and licence fees.

(2) A trade shall not be regarded as not being a qualifying trade by reason only that it consists to a substantial extent in the receiving of royalties or licence fees if the royalties and licence fees (or all but for a part that is not a substantial part in terms of value) are attributable to the exploitation of relevant intangible assets.

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(3) For this purpose an intangible asset is a "relevant intangible asset" if the whole or greater part (in terms of value) of it has been created—

(a) by the company carrying on the trade, or

(b) by a company which at all times during which it created the asset was—

(i) the parent company of the company carrying on the trade, or

(ii) a qualifying subsidiary of that parent company.

(4) In this paragraph "intangible asset" means any asset which falls to be treated as an intangible asset in accordance with normal accounting practice.

For this purpose "normal accounting practice" means normal accounting practice in relation to the accounts of companies incorporated in any part of the United Kingdom.

(5) In the case of a relevant asset that is intellectual property, references in this paragraph to the creation of the asset by a company are to its creation in circumstances in which the right to exploit it vests in the company (whether alone or jointly with others).

(6) In sub-paragraph (5) "intellectual property" means—

(a) any patent, trade mark, registered design, copyright, design right, performer's right or plant breeder's right; and

(b) any rights under the law of a country or territory outside the United Kingdom which correspond or are similar to those falling within paragraph (a).

Excluded activities: property development

23.—(1) This paragraph supplements paragraph 19(1)(f).

(2) "Property development" means the development of land—

(a) by a company which has, or at any time has had, an interest in the land, and

(b) with the sole or main object of realising a gain from the disposal of an interest in the land when it is developed.

(3) For this purpose "interest in land" means, subject to sub-paragraph (4)—

(a) any estate, interest or right in or over land, including any right affecting the use or disposition of land, or

(b) any right to obtain such an estate, interest or right from another which is conditional on the other's ability to grant it.

(4) References in this paragraph to an interest in land do not include—

(a) the interest of a creditor (other than a creditor in respect of a rentcharge) whose debt is secured by way of mortgage, an agreement for a mortgage or a charge of any kind over land, or

(b) in the case of land in Scotland, the interest of a creditor in a charge or security of any kind over land.

Excluded activities: hotels and comparable establishments

24.—(1) This paragraph supplements paragraph 19(1)(i).

(2) The reference to a comparable establishment is to a guest house, hostel or other establishment the main purpose of maintaining which is the provision of facilities for overnight accommodation (with or without catering services).

(3) The activities of a person shall not be taken to fall within paragraph 19(1)(i) unless that person has an estate or interest in, or is in occupation of, the hotel or comparable establishment in question.

Excluded activities: nursing homes and residential care homes

25.—(1) This paragraph supplements paragraph 19(1)(j).

(2) "Nursing home" means an establishment that exists wholly or mainly for the provision of nursing care—

(a) for persons suffering from sickness, injury or infirmity, or

(b) for women who are pregnant or have given birth to children.

(3) "Residential care home" means an establishment that exists wholly or mainly for the provision of residential accommodation, together with board and personal care, for persons in need of personal care by reason of—

(a) old age,

(b) mental or physical disability,

(c) past or present dependence on alcohol or drugs,

(d) any past illness, or

(e) past or present mental disorder.

(4) The activities of a person shall not be taken to fall within paragraph 19(1)(j) unless that person has an estate or interest in, or is in occupation of, the nursing home or residential care home in question.

Excluded activities: provision of facilities for another business

26.—(1) Providing services or facilities for a business carried on by another person is an excluded activity if—

(a) the business consists to a substantial extent in excluded activities within paragraph 19(1), and

(b) a controlling interest in the business is held by a person (other than a company of which the company providing the services or facilities is a subsidiary) who also has a controlling interest in the business carried on by the company providing the services or facilities.

(2) Sub-paragraphs (3) to (5) define what is meant by a controlling interest in a business for the purposes of sub-paragraph (1)(b).

(3) In the case of a business carried on by a company, a person has a controlling interest if—

(a) he controls the company,

(b) the company is a close company and he or an associate of his, being a director of the company, either—

(i) is the beneficial owner of more than 30% of the ordinary share capital of the company, or

(ii) is able, directly or through the medium of other companies or by any other indirect means, to control more than 30% of that share capital,

or

(c) not less than half of the business could, in accordance with section 344(2) of the Taxes Act 1988, be regarded as belonging to him for the purposes of section 343 of that Act.

(4) In any other case, a person has a controlling interest in a business if he is entitled to not less than half of the assets used for, or of the income arising from, the business.

(5) For the purposes of sub-paragraph (3)(a) the question whether a person controls a company shall be determined in accordance with section 416(2) to (6) of the Taxes Act 1988.

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(6) For the purposes of this paragraph there shall be attributed to any person any rights or powers of any other person who is an associate of his.

(7) In this paragraph—

"associate" has the meaning given in section 417(3) and (4) of the Taxes Act 1988, except that in those subsections as they apply for the purposes of this paragraph "relative" does not include a brother or sister;

"business" includes any trade, profession or vocation; and

"director" shall be construed in accordance with section 417(5) of the Taxes Act 1988.

PART IV

ELIGIBLE EMPLOYEES

Introduction

27. An individual is an eligible employee in relation to the relevant company if the requirements of this Part of this Schedule are met as to—

(a) employment (see paragraph 28),

(b) commitment of working time (see paragraph 29), and

(c) no material interest (see paragraph 30).

The employment requirement

28. An employee is an eligible employee in relation to the relevant company only if he is an employee—

(a) of that company, or

(b) if that company is a parent company, of that company or a qualifying subsidiary of that company.

The requirement as to commitment of working time

29.—(1) An employee is an eligible employee in relation to the relevant company only if his committed time amounts to—

(a) at least 25 hours a week, or

(b) if less, 75% of his working time.

(2) An employee's "committed time" means the time that he is required as an employee in relevant employment to spend—

(a) on the business of the relevant company, or

(b) if the relevant company is a parent company, on the business of the group.

(3) It includes any time which the employee would have been required to spend as mentioned in sub-paragraph (2) but for—

(a) injury, ill-health or disability,

(b) pregnancy, childbirth, maternity or paternity leave or parental leave,

(c) reasonable holiday entitlement, or

(d) not being required to work during a period of notice of termination of employment.

(4) For the purposes of this paragraph an employee is in "relevant employment" if he is employed—

(a) by the relevant company, or

(b) where the relevant company is a parent company, by any group company.

References to an employee beginning or ceasing to be in relevant employment are to his becoming or no longer being so employed.

(5) In sub-paragraph (1)(b) "working time" means—

(a) time spent on remunerative work as an employee or self-employed person, or

(b) time which would have been so spent but for any of the reasons specified in sub-paragraph (3)(a) to (d).

(6) In sub-paragraph (5)(a) "remunerative work" means—

(a) work the income from which is chargeable to tax under Case I of Schedule E, and

(b) work undertaken with a view to profit the profits (if any) from which are (or would be) chargeable to tax under Case I or II of Schedule D,

or, in either case, which would be so chargeable if the employee were resident and ordinarily resident in the United Kingdom.

The "no material interest" requirement

30.—(1) An individual is not an eligible employee in relation to the relevant company if he has a material interest in—

(a) that company, or

(b) if that company is a parent company, any group company.

(2) For the purposes of this paragraph an individual is regarded as having a material interest in a company if—

(a) the individual,

(b) the individual together with one or more associates of his, or

(c) any associate of the individual's, with or without any other such associates,

has a material interest in the company.

(3) No account shall be taken for the purposes of this paragraph of shares that an individual may acquire under a qualifying option, but once such shares have been acquired they are taken into account.

(4) This paragraph is supplemented—

(a) as regards the meaning of "material interest", by paragraphs 31 to 33; and

(b) as regards the meaning of "associate", by paragraph 34 (read with paragraphs 35 and 36).

Meaning of "material interest"

31.—(1) For the purposes of paragraph 30 a material interest in a company means—

(a) beneficial ownership of, or the ability to control, directly or through the medium of other companies or by any other indirect means, more than 30% of the ordinary share capital of the company; or

(b) where the company is a close company, possession of or entitlement to acquire such rights as would, in the event of the winding up of the company or in any other circumstances, give an entitlement to receive more than 30% of the assets that would then be available for distribution among the participators.

(2) In this paragraph—

"close company" includes a company that would be a close company but for—

(a) section 414(1)(a) of the Taxes Act 1988 (exclusion of companies not resident in the United Kingdom), or

(b) section 415 of that Act (exclusion of certain quoted companies);

"participator" has the meaning given by section 417(1) of that Act.

(3) This paragraph is supplemented by paragraph 32 (options etc.) and paragraph 33 (shares held by trustees of approved profit-sharing schemes).

Material interest: options etc.

32.—(1) For the purposes of paragraph 31 (meaning of "material interest") a right to acquire shares (however arising) is treated as a right to control them.

(2) In any case where—

(a) the shares attributed to an individual consist of or include shares which he or another person has a right to acquire, and

(b) the circumstances are such that if that right were to be exercised the shares acquired would be shares which were previously unissued and which the company is contractually bound to issue in the event of the exercise of the right,

then in determining at any time prior to the exercise of the right whether the number of shares attributed to the individual exceeds a particular percentage of the ordinary share capital of the company, that ordinary share capital shall be taken to be increased by the number of unissued shares referred to in paragraph (b).

(3) The references in sub-paragraph (2) to the shares attributed to an individual are to the shares which in accordance with paragraph 31(1)(a) fall to be brought into account in his case to determine whether their number exceeds a particular percentage of the company's ordinary share capital.

Material interest: shares held by trustees of approved profit-sharing schemes etc.

33. In applying paragraph 31 (meaning of "material interest") there shall be disregarded—

(a) the interest of the trustees of—

(i) any profit-sharing scheme approved under Schedule 9 to the Taxes Act 1988, or

(ii) any employee share ownership plan approved under Schedule 8 to this Act,

in any shares which are held by them in accordance with the scheme or plan but which have not been appropriated to, or acquired on behalf of, an individual; and

(b) any rights exercisable by those trustees by virtue of any such interest.

Meaning of "associate"

34.—(1) In paragraph 30 (the "no material interest" requirement) "associate", in relation to an individual, means—

(a) any relative or partner of that individual,

(b) the trustee or trustees of any settlement in relation to which that individual, or any relative of his (living or dead), is or was a settlor, and

(c) where that individual is interested in any shares or obligations of the company which are subject to any trust, or are part of the estate of a deceased person, the trustee or trustees of the settlement concerned or, as the case may be, the personal representatives of the deceased.

(2) In sub-paragraph (1)(a) and (b) "relative" means husband or wife, parent or remoter forebear, or child or remoter issue.

(3) In sub-paragraph (1)(b) "settlor" and "settlement" have the same meaning as in Chapter IA of Part XV of the Taxes Act 1988 (see section 660G(1) and (2)).

Meaning of "associate": trustees of employee benefit trust

35.—(1) This paragraph applies for the purposes of paragraph 34(1)(c) (meaning of "associate": trustees of settlement) where an individual is interested as a beneficiary of an employee benefit trust in shares or obligations of a company ("the company") in relation to which it falls to be determined whether that individual has an interest.

(2) The trustees of the employee benefit trust are not regarded as associates of the individual by reason only of his being so interested if neither—

(a) the individual, nor

(b) the individual together with one or more associates of his, nor

(c) any associate of the individual's, with or without any other such associates,

has at any time on or after 14th March 1989 been the beneficial owner of, or able (directly or through the medium of other companies or by any other indirect means) to control, more than 30% of the ordinary share capital of the company.

(3) In this paragraph "employee benefit trust" has the same meaning as in paragraph 7 of Schedule 8 to the Taxes Act 1988.

(4) Sub-paragraphs (9) to (12) of that paragraph apply for the purposes of this paragraph in relation to an individual as they apply for the purposes of that paragraph in relation to an employee.

(5) In sub-paragraph (2)(b) and (c) "associate" does not include the trustees of an employee benefit trust by reason only that the individual has an interest in shares or obligations of the trust.

Meaning of "associate": trustees of discretionary trust

36.—(1) This paragraph applies for the purposes of paragraph 34(1)(c) (meaning of "associate": trustees of settlement) where—

(a) an individual ("the beneficiary") is one of the objects of a discretionary trust, and

(b) the property subject to the trust has at any time consisted of or included shares or obligations of the company ("the company") in relation to which it falls to be determined whether that individual has an interest.

(2) If—

(a) the beneficiary has ceased to be eligible to benefit under the discretionary trust by reason of—

(i) an irrevocable disclaimer or release executed by him, or

(ii) the irrevocable exercise by the trustees of a power to exclude him from the objects of the trust,

(b) immediately after the beneficiary ceased to be so eligible, no associate of his was interested in the shares or obligations of the company which were subject to the trust, and

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(c) during the period of twelve months ending with the date when the beneficiary ceases to be so eligible, neither he nor any associate of his received any benefit under the trust,

the beneficiary is not regarded by reason only of the matters mentioned in sub-paragraph (1) as having been interested in the shares or obligations of the company at any time during the period of twelve months mentioned in paragraph (c) above.

(3) In sub-paragraph (2) "associate" has the meaning given by paragraph 34, but with the omission of sub-paragraph (1)(c) of that paragraph (trusts and estates).

PART V

REQUIREMENTS AS TO TERMS OF OPTION ETC.

Introduction

37. An option is not a qualifying option unless the requirements of this Part of this Schedule are met as to—

(a) the type of shares that may be acquired (see paragraph 38);

(b) when the option is capable of being exercised (see paragraph 39);

(c) the terms being agreed in writing (see paragraph 40); and

(d) the non-assignability of rights (see paragraph 41).

Type of shares that may be acquired

38.—(1) The option must confer a right to acquire shares that—

(a) form part of the ordinary share capital of the relevant company,

(b) are fully paid up, and

(c) are not redeemable.

(2) Shares are not fully paid up for the purposes of sub-paragraph (1)(b) if there is any undertaking to pay cash to the relevant company at a future date.

(3) For the purposes of sub-paragraph (1)(c) "redeemable" shares include shares that may become redeemable at a future date.

Option to be capable of exercise within 10 years

39.—(1) The option must be capable of being exercised within the period of ten years beginning with the date on which it is granted.

(2) Where the exercise of the option is dependent on the fulfilment of conditions, it is taken to be capable of being exercised within the period mentioned in sub-paragraph (1) if the conditions may be fulfilled within that period.

Terms of option to be agreed in writing

40.—(1) The option must take the form of a written agreement between the person granting the option and the employee which meets the following requirements.

(2) The agreement must state—

(a) the date on which the option is granted;

(b) that it is granted under the provisions of this Schedule;

(c) the number, or maximum number, of shares that may be acquired;

(d) the price (if any) payable by the employee to acquire them, or the method by which that price is to be determined; and

(e) when and how the option may be exercised.

(3) The agreement must set out any conditions, such as performance conditions, affecting the terms or extent of the employee's entitlement.

(4) The agreement must contain details of any restrictions attaching to the shares.

(5) Where the shares that may be acquired by the employee are subject to risk of forfeiture, the agreement must contain details of the conditions.

For this purpose shares are "subject to risk of forfeiture" if the interest that may be acquired is only conditional within the meaning of Section 140C of the Taxes Act 1988.

Non-assignability of rights

41. An option is not a qualifying option unless the terms on which it is granted—

(a) prohibit the person to whom it is granted from transferring any of his rights under it, and

(b) if they permit its exercise after that person's death, do not permit such exercise more than one year after the death.

PART VI

INCOME TAX

Introduction

42.—(1) The provisions of this Part of this Schedule give relief from income tax in respect of the grant or exercise of a qualifying option.

(2) Relief in respect of the exercise of a qualifying option applies only to exercise within the period of ten years after—

(a) the grant of the option, or

(b) if it is a replacement option, the grant of the original option.

(3) In this Part the references to the "original option", where there has been one or more replacement options, are to the option that the replacement option (or, if there has been more than one, the first of them) replaced.

Exclusion of charge on grant

43. Tax is not chargeable under any provision of the Tax Acts in respect of the grant of the option.

Exercise of option to acquire shares at market value

44.—(1) This paragraph applies if the option is to acquire shares at not less than their market value—

(a) at the time the option is granted, or

(b) if it is a replacement option, at the time the original option was granted.

(2) In that case no amount is chargeable to income tax under section 135 of the Taxes Act 1988 (taxation of share options) in respect of the exercise of the option.

(3) This paragraph has effect subject to paragraph 53 (effect of disqualifying event).

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Exercise of option to acquire shares at less than market value

45.—(1) This paragraph applies if the option is to acquire shares at less than their market value—

(a) at the time the option is granted, or

(b) if it is a replacement option, at the time the original option was granted.

(2) In that case for the purposes of section 135 of the Taxes Act 1988 (taxation of share options) the amount of the gain realised by the exercise of the option is taken to be—

(a) the amount of the discount, or

(b) if lower, the amount by which the market value of the shares at the time the option is exercised exceeds the amount for which they are acquired.

(3) The amount of the discount means the amount by which the market value of the shares—

(a) at the time the option was granted, or

(b) if it is a replacement option, at the time the original option was granted,

exceeds the amount for which they are acquired.

(4) If the market value of the shares at the time the option is exercised does not exceed the amount for which they are acquired, no amount is chargeable to income tax under section 135 of the Taxes Act 1988 (taxation of share options) in respect of the exercise of the option.

(5) This paragraph has effect subject to paragraph 53 (effect of disqualifying event).

Exercise of option to acquire shares at nil cost

46.—(1) This paragraph applies if the option is to acquire shares at a nil cost.

(2) In that case for the purposes of section 135 of the Taxes Act 1988 (taxation of share options) the amount of the gain realised by the exercise of the option is taken to be—

(a) the market value of the shares—

(i) at the time the option was granted, or

(ii) if it is a replacement option, at the time the original option was granted, or

(b) if lower, the market value of the shares at the time the option is exercised.

(3) This paragraph has effect subject to paragraph 53 (effect of disqualifying event).

Main disqualifying events

47.—(1) The following are "disqualifying events" in relation to a qualifying option—

(a) the relevant company—

(i) becoming a 51% subsidiary of another company, or

(ii) coming under the control of another company (or of another company and any other person connected with that other company), without being a 51% subsidiary of that other company;

(b) the relevant company ceasing to meet the trading activities requirement;

(c) the employee ceasing to be an eligible employee in relation to the relevant company by reason of ceasing to meet—

(i) the requirement in paragraph 28 (the employment requirement), or

(ii) the requirement in paragraph 29 (the requirement as to commitment of working time);

(d) any variation of the terms of the option the effect of which is—

(i) to increase the market value of the shares that are the subject of the option, or

(ii) that the requirements of this Schedule would no longer be met in relation to the option;

(e) any alteration to the share capital of the relevant company that is within paragraph 49 and is made without the prior approval of the Inland Revenue;

(f) a conversion of any of the shares to which the option relates into shares of a different class, except in a case within paragraph 50; and

(g) the grant to the employee of a relevant CSOP option, if immediately after it is granted the employee holds unexercised employee options in respect of shares with a total value of more than £100,000.

(2) A disqualifying event is treated as occurring in relation to a qualifying option if—

(a) the relevant company was a qualifying company at the time the option was granted by reason only of preparations to carry on a qualifying trade, and

(b) either—

(i) the preparations cease to be carried on, or

(ii) the period of two years from the grant of the original option comes to an end,

without the relevant company or, if it is the parent company of a group, any group company beginning to carry on that qualifying trade.

(3) A disqualifying event is also treated as occurring in relation to a qualifying option if in any tax year the employee's relevant working time amounts to less than 25 hours a week or, if less, 75% of his working time.

(4) This paragraph is supplemented by the following provisions—

paragraph 48 (company reorganisation);

paragraph 49 (alterations of share capital);

paragraph 50 (conversion of shares);

paragraph 51 (grant of CSOP option); and

paragraph 52 (actual relevant working time).

Disqualifying events: company reorganisation

48. Where a replacement option has been granted (see paragraph 61), if an event within paragraph 47(1)(a) (loss of independence) has occurred in relation to the old option at any time during the period—

(a) beginning at the same time as the period within which the replacement option had to be granted (see paragraph 62), and

(b) ending with the release of the rights under the old option,

that event shall not be regarded as a disqualifying event in relation to the old option.

Disqualifying events: alterations of share capital

49.—(1) An alteration of the share capital of the relevant company is within this paragraph if—

(a) it affects (or but for the occurrence of some other event would affect) the value of the shares which are the subject of the qualifying option, and

(b) it consists of or includes—

(i) the creation, variation or removal of a right relating to any shares in the relevant company,

(ii) the imposition of a restriction relating to any such shares, or

(iii) the variation or removal of a restriction to which any such shares are subject.

For this purpose references to restrictions relating to shares or to which shares are subject, or to rights relating to shares, include restrictions imposed or rights conferred by any contract or arrangement or in any other way.

(2) The Inland Revenue shall not withhold their approval under paragraph 47(1)(e) unless it appears to them that the effect of the alteration would be—

(a) to increase the market value of the shares that are the subject of the qualifying option, or

(b) that the requirements of this Schedule would no longer be met in relation to the option.

(3) Where the Inland Revenue withhold their approval the employer company may appeal against that decision.

(4) Notice of appeal must be given to the Inland Revenue within 30 days after their notice of their decision was given to the employer company.

(5) An appeal under this paragraph lies to the General Commissioners or, if the employer company so elects (in accordance with section 46(1) of the Taxes Management Act 1970), to the Special Commissioners.

1970 c. 9.

Disqualifying events: conversion of shares

50.—(1) A conversion of shares is not a disqualifying event if—

(a) the conversion is a conversion of shares of one class only ("the original class") into shares of one other class only ("the new class");

(b) all shares of the original class are converted into shares of the new class; and

(c) one of the conditions in sub-paragraph (2) is fulfilled.

(2) The conditions are—

(a) that immediately before the conversion the majority of the relevant company's shares of the original class are held otherwise than by or for the benefit of—

(i) directors or employees of the relevant company,

(ii) an associated company of the relevant company, or

(iii) directors or employees of such an associated company; and

(b) that immediately before the conversion the relevant company is employee-controlled by virtue of holdings of shares of the original class.

(3) For the purposes of this paragraph "director", "employee", "associated company" and "employee-controlled" have the same meaning as in section 140D of the Taxes Act 1988 (convertible shares).

Disqualifying events: grant of CSOP option

51.—(1) This paragraph applies where it falls to be determined whether a disqualifying event within sub-paragraph (1)(g) of paragraph 47 has occurred in relation to a qualifying option ("the qualifying option") granted to an employee.

(2) For the purposes of that sub-paragraph and this paragraph "CSOP option" has the meaning given in paragraph 10(6).

(3) A CSOP option is a "relevant" CSOP option if it is granted to the employee by reason of his employment with—

(a) the employer company, or

(b) if that company is a member of a group, any member of that group.

(4) An option is an "employee option" if it is—

(a) the qualifying option,

(b) another qualifying option granted to the employee by reason of his employment with the employer company or, if that company is a member of a group, any member of that group, or

(c) a relevant CSOP option.

(5) Paragraph 10(7) and (8) (determination of value of shares) apply for the purposes of paragraph 47(1)(g) as they apply for the purposes of paragraph 10.

Disqualifying events: actual relevant working time

52.—(1) For the purposes of paragraph 47(3) an employee's relevant working time means the time that he in fact spends as an employee in relevant employment—

(a) on the business of the relevant company, or

(b) if the relevant company is a parent company, on the business of the group.

(2) The time at which the disqualifying event is taken to have occurred is determined in accordance with the following provisions.

(3) Subject to sub-paragraphs (4) and (5), the time at which the disqualifying event occurred is determined as follows:

Method

1. For each calendar month calculate whether over the tax year to date the employee's relevant working time amounts to less than 25 hours a week or, if less, 75% of his working time.

2. If it does, the disqualifying event is taken to have occurred—

(a) at the end of the previous calendar month, or

(b) if the calendar month for which the calculation is done is April, at the end of the previous tax year.

(4) In the case of an employee who begins or ceases to be in relevant employment during the tax year, the references in sub-paragraph (3) above and paragraph 47(3) to that tax year shall be construed as references to the part of the tax year in which he is in relevant employment.

(5) If the time determined under sub-paragraph (3) or (4) falls before the grant of the option, the option is treated for the purposes of this Schedule as if it had never been a qualifying option.

(6) Expressions used in paragraph 47(3) or this paragraph that are defined for the purposes of paragraph 29 (requirement as to commitment of working time) have the same meaning as in that paragraph.

Effect of disqualifying event

53.—(1) This paragraph applies where—

(a) a disqualifying event occurs in relation to a qualifying option before the option is exercised, and

(b) the option is not exercised within 40 days of that event.

(2) For the purposes of section 135 of the Taxes Act 1988 (taxation of share options) the amount of the gain realised on the exercise of the option is taken—

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(a) where paragraph 44 applies (option to acquire shares at market value), to be, and

(b) where paragraph 45 or 46 applies (option to acquires shares at less than market value or for nil cost), to be increased by,

the amount (if any) by which the market value of the shares when the option is exercised exceeds their market value immediately before the disqualifying event.

This is subject to sub-paragraph (3).

(3) Paragraphs 44 to 46 and sub-paragraph (2) of this paragraph do not apply if the amount chargeable under section 135 of the Taxes Act 1988 on the exercise of the option would, in the absence of those provisions, be less than the amount so chargeable by virtue of those provisions.

Exclusion of charge on acquisition at under-value

54.—(1) Section 162(1) of the Taxes Act 1988 (deemed employment-related loan in case of acquisition of shares at an undervalue), as it applies in relation to an employee chargeable to tax under Case I of Schedule E, does not apply in relation to the acquisition of shares by the exercise of a qualifying option.

(2) This does not affect any charge to tax under section 162(6) of that Act (stop-loss provisions).

Saving for other income tax charges

55.—(1) Nothing in this Part of this Schedule affects—

(a) any charge to tax under section 135 of the Taxes Act 1988 (taxation of share options) in respect of the release of rights conferred by a qualifying option;

1988 c. 39.

(b) any charge to tax under section 78 or 80 of the Finance Act 1988 (charge on removal of restrictions etc. or on special benefits) in respect of shares acquired under a qualifying option; or

(c) subject to sub-paragraph (2), any charge to tax under—

(i) section 140A of the Taxes Act 1988 (charge on interest in shares ceasing to be only conditional), or

(ii) section 140D of that Act (convertible shares),

in respect of shares acquired under a qualifying option.

(2) The amount of relief under this Schedule shall be treated as a deductible amount for the purposes of any charge to tax under section 140A or 140D of the Taxes Act 1988 in respect of shares acquired under a qualifying option.

The amount of relief means the difference between the amount on which tax would have been chargeable under section 135 of that Act in respect of the exercise of the option apart from this Schedule and the amount (if any) in fact so chargeable.

PART VII

CAPITAL GAINS TAX

Qualifying shares

56.—(1) In this Part of this Schedule "qualifying shares"—

(a) means shares acquired by the exercise of a qualifying option, subject to sub-paragraphs (2) and (3), and

(b) includes shares ("replacement shares") which—

1992 c. 12.

(i) are treated under section 127 of the Taxation of Chargeable Gains Act 1992 (company reorganisations etc.) as the same asset as a holding of qualifying shares, and

(ii) meet the requirements of paragraph 38 (type of shares that may be acquired under qualifying option).

(2) If a disqualifying event occurs in relation to a qualifying option (whether the original option or a replacement option), shares acquired by the exercise of the option are qualifying shares only if the option is exercised within 40 days of that event.

(3) References in this Part to "the original option", where there has been one or more replacement options, are to the option that the replacement option (or, if there has been more than one, the first of them) replaced.

Taper relief on disposal of qualifying shares

57. For the purposes of computing taper relief on a disposal of qualifying shares, the shares are treated as if they had been acquired when the original option was granted.

Rights issues in respect of qualifying shares

58. Where—

(a) an individual holds qualifying shares, and

(b) there is, by virtue of any such allotment for payment as is mentioned in section 126(2)(a) of the Taxation of Chargeable Gains Act 1992, a reorganisation affecting that holding, 1992 c. 12.

sections 127 to 130 of that Act shall not apply in relation to that holding.

PART VIII

COMPANY REORGANISATIONS

Introduction

59.—(1) The provisions of this Part of this Schedule apply in relation to company reorganisations.

(2) For the purposes of this Part a "company reorganisation" means where a company ("the acquiring company")—

(a) obtains control of a company whose shares are subject to a qualifying option which has yet to be exercised—

(i) as a result of making a general offer to acquire the whole of the issued ordinary share capital of that company which is made on a condition such that if it is satisfied the person making the offer will have control of the company, or

(ii) as a result of making a general offer to acquire all the shares in the company which are of the same class as those to which the option relates; or

(b) obtains control of such a company in pursuance of a compromise or arrangement sanctioned by the court under section 425 of the Companies Act 1985 or Article 418 of the Companies (Northern Ireland) Order 1986; or 1985 c. 6. S.I. 1986/1032 (N.I. 6).

(c) becomes bound or entitled under sections 428 to 430 of that Act or Articles 421 to 423 of that Order to acquire shares of the same class as shares that are subject to a qualifying option that has yet to be exercised; or

(d) obtains all the shares of a company whose shares are subject to such a qualifying option as a result of a qualifying exchange of shares (see paragraph 60).

(3) In this Part of this Schedule "control" has the meaning given by section 840 of the Taxes Act 1988.

Meaning of "qualifying exchange of shares"

60.—(1) For the purposes of this Part of this Schedule there is a "qualifying exchange of shares" where arrangements are made in accordance with which a company ("the new company") acquires all the shares ("old shares") in another company ("the old company") and the following conditions are met.

(2) The conditions are—

(a) that the consideration for the old shares consists wholly of the issue of shares ("new shares") in the new company;

(b) that new shares are issued in consideration of old shares only at times when there are no issued shares in the new company other than—

(i) subscriber shares, and

(ii) new shares previously issued in consideration of old shares;

(c) that the consideration for new shares of each description consists wholly of old shares of the corresponding description;

(d) that new shares of each description are issued to the holders of old shares of the corresponding description in respect of, and in proportion to, their holdings; and

1992 c. 12.

(e) that by virtue of section 127 of the Taxation of Chargeable Gains Act 1992 as applied by section 135(3) of that Act, the exchange of shares is not treated as involving a disposal of the old shares or an acquisition of the new shares.

(3) For the purposes of this paragraph old shares and new shares are of a corresponding description if, on the assumption that they were shares in the same company, they would be of the same class and carry the same rights.

(4) In this paragraph references to "shares", except in the expression "subscriber shares", include securities.

Grant of replacement option

61.—(1) This paragraph applies where in the case of a company reorganisation—

(a) the holder of a qualifying option, by agreement with the acquiring company, releases his rights under that option ("the old option") in consideration of the grant to him of rights ("the new option") which are equivalent but relate to shares in the acquiring company, and

(b) the requirements of the following paragraphs are met—

paragraph 62 (period within which replacement option must be granted), and

paragraph 63 (qualifying requirements for replacement option).

(2) Where this paragraph applies, the new option shall be treated for the purposes of this Schedule as a "replacement option".

(3) Except as otherwise provided—

(a) references in this Schedule to a qualifying option include a replacement option, and

(b) a replacement option is treated for the purposes of this Schedule as if it had been granted on the date on which the old option was granted.

(4) In this Schedule references to "the old option" or "the new option" shall be construed in accordance with this paragraph.

Period within which replacement option must be granted

62. The new option does not qualify as a replacement option unless it is granted within—

(a) if the company reorganisation falls within paragraph 59(2)(a), the period of six months beginning with the time when the person making the offer has obtained control of the company and any condition subject to which the offer is made is satisfied;

(b) if the company reorganisation falls within paragraph 59(2)(b) or (d), the period of six months beginning with the time when the acquiring company obtains control of the company whose shares are subject to the old option;

(c) if the company reorganisation falls within paragraph 59(2)(c), the period during which the acquiring company remains bound or entitled as mentioned in that paragraph.

Qualifying requirements for replacement option

63. A new option qualifies as a replacement option only if—

(a) the option is granted to the holder of the old option by reason of his employment—

(i) with the acquiring company, or

(ii) if that company is a parent company, with that company or another group company;

(b) at the time of the release of rights under the old option, the requirements of—

(i) paragraph 9 (purpose of granting the option), and

(ii) paragraph 11 (number of employees who may hold qualifying options),

are met in relation to the new option;

(c) at that time, the independence requirement and the trading activities requirement are met in relation to the acquiring company;

(d) at that time, the individual to whom the new option is granted is an eligible employee in relation to the acquiring company;

(e) at that time, the requirements of Part V are met in relation to the new option;

(f) the total market value, immediately before the release, of the shares which were subject to the old option is equal to the total market value, immediately after the grant, of the shares in respect of which the new option is granted; and

(g) the total amount payable by the employee for the acquisition of shares in pursuance of the new option is equal to the total amount that would have been payable for the acquisition of shares in pursuance of the old option.

PART IX

SUPPLEMENTARY PROVISIONS

Power to require information

64.—(1) The Inland Revenue may by notice require any person to furnish them, within such time as the Inland Revenue may direct (not being less than three months), with such information as—

(a) the Inland Revenue think necessary for the performance of their functions under this Schedule, and

(b) the person to whom the notice is addressed has or can reasonably obtain.

(2) The power conferred by this paragraph extends, in particular, to information to enable the Inland Revenue—

(a) to decide whether an option is a qualifying option, or

(b) to determine the liability to tax, including capital gains tax, of any person who has been granted a qualifying option.

1970 c. 9.

(3) In section 98 of the Taxes Management Act 1970 (penalties in connection with returns, etc.), in the first column of the table, after the final entry insert—

"paragraph 64 of Schedule 14 to the Finance Act 2000;".

Annual returns

65.—(1) A company whose shares are the subject of a qualifying option at any time during a tax year must deliver a return to the Inland Revenue.

(2) The return must—

(a) contain such information as the Inland Revenue may require, and

(b) be made within three months after the end of the tax year to which it relates.

(3) In section 98 of the Taxes Management Act 1970 (penalties in connection with returns, etc.), in the second column of the table, after the final entry insert—

"paragraph 65 of Schedule 14 to the Finance Act 2000;".

Meaning of "market value" of shares

66.—(1) For the purposes of this Schedule the "market value" of shares has the same meaning as, for the purposes of the Taxation of Chargeable Gains Act 1992, it has by virtue of Part VIII of that Act.

1992 c. 12.

This is subject to paragraph 10(8) (determination of value of shares subject to restriction or risk of forfeiture).

(2) Where the market value of shares on any date falls to be determined for the purposes of this Schedule, the Inland Revenue and the employer company may agree that it shall be determined by reference to such date or dates, or to an average of the values on a number of dates, as may be provided in the agreement.

Determination of market value

67.—(1) The market value of shares for the purposes of this Schedule, if not agreed between the employer company and the Inland Revenue or referred to the Commissioners under sub-paragraph (4), shall be determined by the Inland Revenue.

(2) The employer company may appeal against any such determination.

(3) Notice of appeal must be given to the Inland Revenue within 30 days after their notice of their determination was given to the employer company.

(4) The employer company may, at any time before notice of determination by the Inland Revenue has been given to it, by notice given to the Inland Revenue require the question of the market value of the shares to be referred to the Commissioners.

Any such reference shall be determined by the Commissioners in the same way as an appeal.

(5) An appeal or reference under this paragraph lies to the General Commissioners or, if the employer company so elects (in accordance with section 46(1) of the Taxes Management Act 1970), to the Special Commissioners.

Exercise of functions conferred on "the Inland Revenue"

68. Functions conferred by this Schedule on "the Inland Revenue" may be exercised by any officer of the Board.

Power to amend by Treasury order

69. The Treasury may by order amend this Schedule—

(a) to make such amendments of paragraphs 17 to 26 (the trading activities requirement and related provisions) as they consider expedient;

(b) to substitute different sums of money for those for the time being specified in—

paragraph 10(1), (4) and (5) (maximum entitlement of employee), or

paragraph 16(1) and (2) (the gross assets requirement).

Compliance with time limits

70.—(1) For the purposes of this Part and Part I of this Schedule a person is not taken to have failed to do anything required to be done within a limited time if—

(a) he had a reasonable excuse for not doing it within that time, and

(b) if the excuse ceased, he did it without unreasonable delay after the excuse ceased.

(2) Where sub-paragraph (1)(b) applies any further time limit expressed by reference to the time when the thing should have been done shall have effect as if it had been expressed by reference to the time when it was done.

Minor definitions

71.—(1) In this Schedule—

"arrangements" includes any scheme, agreement or understanding, whether or not legally enforceable;

"company" means any body corporate;

"group", in relation to a parent company, means that company and its 51% subsidiaries;

"group company", in relation to a parent company, means that company or any of its 51% subsidiaries;

"parent company" means a company that has one or more 51% subsidiaries and "single company" means a company that does not;

"option" means any right to acquire shares;

"ordinary share capital" has the meaning given in section 832(1) of the Taxes Act 1988;

"research and development" has the meaning given by section 837A of the Taxes Act 1988;

"shares" includes stock; and

"tax year" means a year of assessment.

(2) Section 839 of the Taxes Act 1988 (connected persons) applies for the purposes of this Schedule.

Index of defined expressions

72. In this Schedule the following expressions are defined or otherwise explained by the provisions indicated:

arrangements	paragraph 71(1)

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closure notice (in Part I)	paragraph 5(4)
company	paragraph 71(1)
company reorganisation (in Part VIII)	paragraph 59(2)
connected person	paragraph 71(2)
disqualifying event	paragraphs 47 to 52
eligible employee	paragraph 27
employer company	paragraph 1(3)
excluded activities	paragraph 19
gross assets requirement	paragraph 16
group and group company	paragraph 71(1)
the independence requirement	paragraph 13
the Inland Revenue	paragraph 68
market value	paragraph 66 (and see paragraph 10(8))
new option	paragraph 61(4)
old option	paragraph 61(4)
option	paragraph 71(1)
ordinary share capital	paragraph 71(1)
original option (in Parts VI and VII)	paragraph 56(3)
parent company	paragraph 71(1)
qualifying company	paragraph 12
qualifying option	paragraph 1 (and see paragraph 61(3))
qualifying shares (in Part VII)	paragraph 56
qualifying subsidiary	paragraph 15
qualifying trade	paragraph 18
relevant company	paragraph 1(3)
replacement option	paragraph 61(2)
research and development	paragraph 71(1)
shares	paragraph 71(1) (and see paragraph 60(4))
single company	paragraph 71(1)
tax year	paragraph 71(1)
trading activities requirement	paragraph 17

Section 63(1).

SCHEDULE 15

THE CORPORATE VENTURING SCHEME

PART I

INVESTMENT RELIEF: INTRODUCTION

Meaning of "investment relief"

1. This Schedule makes provision for—

(a) relief against corporation tax ("investment relief") on amounts subscribed by companies for shares (see this Part and Parts II to VI of this Schedule);

(b) relief against income of companies for losses on disposals of shares to which investment relief is attributable (see Part VII of this Schedule); and

(c) the postponement of certain chargeable gains of companies where the gains are reinvested in shares to which investment relief is attributable (see Part VIII of this Schedule).

Eligibility for investment relief

2. A company ("the investing company") is eligible for investment relief in respect of an amount subscribed by it for an issue of shares in another company ("the issuing company") if—

(a) the shares ("the relevant shares") are issued to the investing company;

(b) the investing company is a qualifying investing company in relation to the relevant shares (see Part II of this Schedule);

(c) the issuing company is a qualifying issuing company in relation to the relevant shares (see Part III of this Schedule); and

(d) the general requirements of Part IV of this Schedule are met in respect of the relevant shares.

Meaning of "the qualification period"

3.—(1) In this Schedule "the qualification period", in relation to the relevant shares, means the period beginning with the issue of the shares and ending—

(a) immediately before the third anniversary of the issue date; or

(b) where the money raised by the issuance of the shares is employed wholly or mainly for the purposes of one or more qualifying trades that, on the issue date, were not being carried on—

(i) by the issuing company, or

(ii) if it is a parent company, by that company or any of its qualifying subsidiaries,

immediately before the third anniversary of the trading date.

(2) For this purpose "the trading date" means—

(a) the date on which the issuing company or one of its qualifying subsidiaries begins to carry on the qualifying trade to which sub-paragraph (1)(b) refers, or

(b) if there is more than one such trade, the latest date on which the issuing company or one of its qualifying subsidiaries begins to carry on such a trade.

PART II

THE INVESTING COMPANY

Introduction

4. The investing company is a qualifying investing company in relation to the relevant shares if the requirements of this Part are met as to—

(a) no material interest (see paragraph 5);

(b) no reciprocal arrangements (see paragraph 6);

(c) no control (see paragraph 8);

(d) non-financial activities (see paragraph 10);

(e) the shares being a chargeable asset (see paragraph 13); and

(f) no tax avoidance (see paragraph 14).

The "no material interest" requirement

5. The investing company must not, at any time during the qualification period relating to the shares, have a material interest in the issuing company.

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The "no reciprocal arrangements" requirement

6.—(1) The investing company must not subscribe for the relevant shares as part of any arrangements which provide for any other person to subscribe for shares in a related company.

(2) For this purpose—

(a) arrangements shall be disregarded to the extent that they provide for the issuing company to subscribe for shares in any of its qualifying subsidiaries, and

(b) "a related company" means a company in which the investing company, or any other person who is a party to the arrangements, has a material interest.

(3) In sub-paragraph (2)(a) the reference to qualifying subsidiaries of the issuing company is not restricted to companies that were such subsidiaries at the time the arrangements were made.

Meaning of "material interest"

7.—(1) For the purposes of paragraphs 5 and 6 a person has a material interest in a company if he (whether alone or together with any person connected with him) directly or indirectly possesses or is entitled to acquire more than 30% of—

(a) the ordinary share capital of the company or any subsidiary, or

(b) the voting power in the company or any subsidiary.

(2) For the purposes of sub-paragraph (1) "ordinary share capital", in relation to a company, means—

(a) all of the issued share capital (by whatever name called) of the company, other than capital comprising relevant preference shares, and

(b) all of the loan capital of the company that comprises debt which carries (directly or indirectly) any right to conversion into, or to the acquisition of, shares within paragraph (a) (or that would be within that paragraph if issued).

(3) For the purposes of sub-paragraph (2)(b) the loan capital of a company shall be treated as including any debt incurred by the company—

(a) for any money borrowed or capital assets acquired by the company,

(b) for any right to receive income created in favour of the company, or

(c) for consideration the value of which to the company was (at the time when the debt was incurred) substantially less than the amount of the debt (including any premium on it).

This is subject to sub-paragraph (4).

(4) For the purposes of sub-paragraph (3) a debt which—

(a) is incurred by a company or any subsidiary by overdrawing an account with a person carrying on the business of banking, and

(b) arises in the ordinary course of that business,

shall not be treated as loan capital of the company.

(5) For the purposes of sub-paragraph (1)—

(a) a person is treated as entitled to acquire anything which he is entitled to acquire at a future date or will at a future date be entitled to acquire, and

(b) there are attributed to a person any rights or powers of any other person who is an associate of his.

(6) For the purposes of this paragraph a company is a subsidiary of another company if it is a 51% subsidiary of that company.

The "no control" requirement

8.—(1) The investing company must not, at any time during the qualification period relating to those shares, control the issuing company.

(2) For this purpose the question whether the investing company controls the issuing company shall be determined in accordance with section 416(2) to (6) of the Taxes Act 1988 with the following modifications.

(3) The first modification is that, in determining whether the investing company controls the issuing company, there shall be disregarded—

(a) its or any other person's possession of, or entitlement to acquire, relevant preference shares of the issuing company; and

(b) its or any other person's possession of, or entitlement to acquire, rights as a loan creditor of the issuing company.

(4) For the purposes of sub-paragraph (3) a person is a "loan creditor" of a company if the person is a creditor in respect of the loan capital of that company (within the meaning of paragraph 7(3)).

(5) The second modification is that in determining whether the conditions of section 416(2) of that Act are satisfied there shall be attributed to the investing company (to the extent that it would not otherwise be the case) any rights or powers in the issuing company, or any of its subsidiaries, that are held by—

(a) any person connected with the investing company; or

(b) any person who is—

(i) a director of the investing company, or of any company connected with that company, or

(ii) a relative of such a director.

For this purpose "relative" means husband or wife, parent or remoter forebear or child or remoter issue.

Relevant preference shares

9.—(1) In paragraphs 7 (meaning of "material interest") and 8 (the "no control" requirement) "relevant preference shares" means shares which—

(a) do not for the time being carry voting rights;

(b) are issued wholly for new consideration;

(c) do not carry any right either to conversion into shares or securities of any other description or to the acquisition of any additional shares or securities; and

(d) do not carry any right to dividends other than dividends which—

(i) fall within sub-paragraph (2) or (3);

(ii) are not to any extent dependent on the results of the company's business or any part of it or on the value of any of the company's assets; and

(iii) together with any sum paid on a redemption, represent no more than a reasonable commercial return on the consideration for which the shares were issued.

In paragraph (b) "new consideration" has the meaning given by section 254 of the Taxes Act 1988.

(2) Dividends fall within this sub-paragraph if they are of a fixed amount or at a fixed rate per cent of the nominal value of the shares.

This includes dividends where the amount or rate may be changed to another fixed amount or fixed rate in a manner determined under the terms of issue of the shares.

(3) Dividends fall within this sub-paragraph if they are of a rate per cent of the nominal value of the shares and the rate fluctuates in accordance with—

(a) a standard published rate of interest,

(b) a rate of tax,

(c) the retail prices index, or any similar general index of prices which is published by the government, or by an agent of the government, of the country or territory in whose currency the shares are denominated, or

(d) a published index of prices of shares quoted in the official list of a recognised stock exchange.

(4) For the purposes of sub-paragraph (1)(d)(ii) dividends shall not be treated as being to any extent dependent on the results of the company's business (or any part of it) or on the value of any of the company's assets by reason only of the fact that the amount or rate of the dividends—

(a) reduces in the event of the results of the business (or part) improving or the value of any of the company's assets increasing, or

(b) increases in the event of the results of the business (or part) deteriorating or the value of any of the company's assets diminishing.

(5) Dividends are not prevented from falling within sub-paragraph (2) or (3) by the fact that the shares carry no rights at all to dividends for a period or periods determined under the terms of issue of the shares.

The non-financial activities requirement

10.—(1) Throughout the qualification period relating to the relevant shares the investing company must fall within sub-paragraph (2) or (3).

(2) The company falls within this sub-paragraph at any time when it—

(a) is a single company, and

(b) disregarding any incidental purposes, exists wholly for the purpose of carrying on one or more non-financial trades.

(3) The company falls within this sub-paragraph at any time when—

(a) it is a group company,

(b) the group is a non-financial trading group, and

(c) sub-paragraph (4) applies.

(4) This sub-paragraph applies where the company—

(a) disregarding any incidental purposes, exists wholly for the purpose of carrying on one or more—

(i) non-financial trades, or

(ii) businesses other than trades; or

(b) is the parent company of the group.

(5) For the purposes of determining whether the company falls within sub-paragraph (2)(b) or (4)(a), the purposes for which the company exists shall be disregarded to the extent that they consist in the carrying on of the following activities—

(a) in the case of a single company, the holding and managing of property used by the company for one or more non-financial trades carried on by it,

(b) in the case of a group company, any activities within paragraph 12(3)(a) or (b), and

(c) in any case, the holding of shares to which investment relief is attributable, unless the holding of such shares amounts to a substantial part of the company's business.

(6) In this paragraph "incidental purposes" means purposes having no significant effect (other than in relation to incidental matters) on the extent of the company's activities.

Meaning of "non-financial trade"

11.—(1) A trade is a "non-financial trade" if—

(a) it is conducted on a commercial basis and with a view to the realisation of profits, and

(b) it does not consist wholly or as to a substantial part in the carrying on of financial activities.

(2) For this purpose "financial activities" includes—

(a) banking, or money-lending, carried on by a bank, building society or other person;

(b) debt-factoring, finance-leasing or hire-purchase financing;

(c) insurance;

(d) dealing in shares, securities, currency, debts or other assets of a financial nature; and

(e) dealing in commodity or financial futures or options.

Meaning of "non-financial trading group"

12.—(1) A group is a "non-financial trading group" unless the business of the group consists wholly or as to a substantial part in the carrying on of one or more of the following—

(a) trades other than non-financial trades;

(b) businesses which are not trades.

(2) The business of the group means what would be the business of the group if the activities of the group companies taken together were regarded as one business.

(3) For this purpose activities of a group company shall be disregarded to the extent that they consist in—

(a) the holding of shares in or securities of, or the making of loans to, another group company;

(b) the holding and managing of property used by a group company for the purposes of one or more non-financial trades carried on by a group company; or

(c) the holding of shares to which investment relief is attributable, unless the holding of such shares amounts to a substantial part of the company's business.

Requirement as to shares being a chargeable asset

13.—(1) The investing company is not a qualifying investing company in relation to the relevant shares unless the shares are a chargeable asset of the company immediately after they are issued to it.

(2) For this purpose an asset is a chargeable asset of that company at any time if, on a disposal at that time, a gain accruing to the company would be a chargeable gain.

(3) In this paragraph "asset" has the same meaning as in the 1992 Act.

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Requirement as to no tax avoidance

14. The relevant shares must be subscribed for by the investing company for commercial reasons, and not as part of a scheme or arrangement the main purpose or one of the main purposes of which is the avoidance of tax.

PART III

THE ISSUING COMPANY

Introduction

15. The issuing company is a qualifying issuing company in relation to the relevant shares if the requirements of this Part are met as to—

(a) unquoted status (see paragraph 16);

(b) independence (see paragraph 17);

(c) individual-owners (see paragraph 18);

(d) partnerships and joint ventures (see paragraph 19);

(e) qualifying subsidiaries (see paragraph 20);

(f) gross assets (see paragraph 22); and

(g) trading activities (see paragraph 23).

The "unquoted status" requirement

16.—(1) The unquoted status requirement is that, at the time the relevant shares are issued, none of the issuing company's shares, debentures or other securities is (and there are no arrangements in existence for any of them to be)—

(a) listed on a recognised stock exchange,

(b) listed on a designated exchange in a country outside the United Kingdom, or

(c) dealt in outside the United Kingdom by such means as may be designated.

This is subject to sub-paragraph (3).

(2) The unquoted status requirement applies whether or not the company is resident in the United Kingdom.

(3) The unquoted status requirement is treated as not met if at the time the relevant shares are issued—

(a) arrangements are in existence for the issuing company to become a subsidiary of another company ("the new company") by virtue of an exchange of shares, or shares and securities, in relation to which paragraph 83 (certain exchanges resulting in acquisition of share capital by new company) applies, and

(b) arrangements have been made with a view to any of the new company's shares, debentures or other securities being listed or dealt in as mentioned in paragraph (a), (b) or (c) of sub-paragraph (1).

(4) For the purposes of sub-paragraph (1) "designated" means designated by an order ("a designation order") made for the purposes of subsection (1B) of section 312 of the Taxes Act 1988 (definition of "unquoted company" for the purposes of EIS).

(5) Where the issuing company meets the unquoted status requirement when the relevant shares are issued, it shall not cease to meet it by virtue of—

(a) any designation order, or

(b) any order under section 841 of the Taxes Act 1988 (designation of exchange as "recognised stock exchange"),

made after that time.

The independence requirement

17.—(1) The independence requirement is that—

(a) the issuing company is not, at any time during the qualification period relating to the relevant shares—

(i) a 51% subsidiary of another company, or

(ii) under the control of another company (or of another company and any other person connected with that other company), without being a 51% subsidiary of that other company, and

(b) no arrangements are in existence at any time during that period by virtue of which the company could become such a subsidiary or fall under such control (whether during that period or otherwise).

(2) For the purposes of sub-paragraph (1)(b) arrangements with a view to such an exchange of shares, or shares and securities, as is mentioned in paragraph 83(1) (certain exchanges resulting in acquisition of share capital by new company) shall be disregarded.

(3) In this paragraph "control" has the meaning given by section 840 of the Taxes Act 1988.

The "individual-owners" requirement

18.—(1) The "individual-owners" requirement is that, throughout the qualification period relating to the relevant shares, at least 20% of the ordinary share capital of the issuing company is beneficially owned by one or more independent individuals.

(2) For the purposes of sub-paragraph (1) "independent individual" means an individual who is not, at any time during that period when he holds ordinary shares in the issuing company—

(a) a director or employee of—

(i) the investing company, or

(ii) any company connected with that company, or

(b) a relative of such a director or employee.

For this purpose "relative" means husband or wife, parent or remoter forebear or child or remoter issue.

(3) Where part of the ordinary share capital of the issuing company forms part of the estate of a deceased person who immediately before his death—

(a) was the beneficial owner of the shares in question, and

(b) was an independent individual for the purposes of sub-paragraph (1),

the shares in question shall, by virtue of this sub-paragraph, continue to be treated as beneficially owned by an independent individual for the purposes of sub-paragraph (1) until such time as they cease to form part of the deceased's estate.

The partnerships and joint ventures requirement

19.—(1) The requirement as to partnerships and joint ventures is that neither the issuing company nor any of its qualifying subsidiaries is at any time during the qualification period relating to the relevant shares—

(a) a member of a partnership falling within sub-paragraph (2), or

(b) a party to a joint venture falling within sub-paragraph (3).

(2) A partnership of which the issuing company, or any of its qualifying subsidiaries, is a member falls within this paragraph at any time when—

(a) the relevant trade is being carried on, or to be carried on, by the partners in partnership,

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(b) the other partners include at least one other company, and

(c) the same person (or persons) are the beneficial owner (or owners) of more than 75% of the issued share capital or the ordinary share capital of both—

(i) the issuing company, and

(ii) at least one of the other partners.

(3) A joint venture to which the issuing company, or any of its qualifying subsidiaries, is a party falls within this paragraph at any time when—

(a) the relevant trade is being carried on, or to be carried on, by that party in its capacity as a party to the joint venture,

(b) the other parties include at least one other company, and

(c) the same person (or persons) are the beneficial owner (or owners) of more than 75% of the issued share capital or the ordinary share capital of both—

(i) the issuing company, and

(ii) at least one of the other parties.

(4) For the purposes of sub-paragraphs (2) and (3)—

(a) "the relevant trade" means any trade by reference to which the trading activities requirement is met in respect of the issuing company in relation to the relevant shares; and

(b) there shall be attributed to any person any issued share capital or ordinary share capital held by any other person who is an associate of his.

The qualifying subsidiaries requirement

20.—(1) The issuing company is not a qualifying issuing company in relation to the relevant shares if, at any time during the qualification period relating to those shares, it has a subsidiary which is not a qualifying subsidiary.

(2) For this purpose—

(a) "subsidiary" means any company which the company controls, either on its own or together with any person connected with it; and

(b) the question whether a person controls a company shall be determined in accordance with section 416(2) to (6) of the Taxes Act 1988.

Meaning of "qualifying subsidiary"

21.—(1) A company ("the subsidiary") is a qualifying subsidiary of another company ("the relevant company") if the following conditions are met.

(2) The conditions are that—

(a) the relevant company or another of its subsidiaries possesses not less than 75% of the issued share capital of, and not less than 75% of the voting power in, the subsidiary;

(b) the relevant company or another of its subsidiaries would—

(i) in the event of a winding up of the subsidiary, or

(ii) in any other circumstances,

be beneficially entitled to receive not less than 75% of the assets of the subsidiary which would then be available for distribution to the shareholders of the subsidiary;

(c) the relevant company or another of its subsidiaries is beneficially entitled to not less than 75% of any profits of the subsidiary which are available for distribution to the shareholders of the subsidiary;

(d) no person other than the relevant company or another of its subsidiaries has control of the subsidiary within the meaning of section 840 of the Taxes Act 1988; and

(e) no arrangements are in existence by virtue of which the conditions in paragraphs (a) to (d) would cease to be met.

(3) The subsidiary shall not be regarded as ceasing to be a company in relation to which the conditions in sub-paragraph (2) are met by reason only of—

(a) anything done as a consequence of the subsidiary, or any other company, being in administration or receivership, or

(b) the subsidiary, or any other company, being wound up or dissolved without winding up,

if sub-paragraph (4) applies.

(4) This paragraph applies where—

(a) in a case within sub-paragraph (3)(a)—

(i) the making of the order within paragraph (a) or, as the case may be, (b) of paragraph 102(4) (administration orders and orders for appointment of receiver etc.), and

(ii) everything done as a consequence of the company being in administration or receivership, or

(b) in a case within sub-paragraph (3)(b), the winding up or dissolution,

is for commercial reasons and is not part of a scheme or arrangement the main purpose or one of the main purposes of which is the avoidance of tax.

(5) The subsidiary shall not be regarded, at any time when arrangements are in existence for the disposal by the relevant company or (as the case may be) by another subsidiary of that company of all its interest in the subsidiary in question, as having ceased on that account to be a qualifying subsidiary if the disposal is to be for commercial reasons and not part of a scheme or arrangement the main purpose of which, or one of the main purposes of which, is the avoidance of tax.

The gross assets requirement

22.—(1) The gross assets requirement in the case of a single company is that the value of the company's gross assets—

(a) does not exceed £15 million immediately before the issue of the relevant shares, and

(b) does not exceed £16 million immediately afterwards.

(2) The gross assets requirement in the case of a parent company is that the consolidated value of the group assets—

(a) does not exceed £15 million immediately before the issue of the relevant shares, and

(b) does not exceed £16 million immediately afterwards.

(3) The consolidated value of the group assets means the aggregate value of the gross assets of the group, disregarding any that consist in rights against, or shares in or securities of, another group company.

The trading activities requirement

23.—(1) The issuing company is not a qualifying issuing company in relation to the relevant shares unless it meets the trading activities requirement throughout the qualification period relating to those shares.

(2) The trading activities requirement in the case of a single company is that the company—

(a) disregarding any incidental purposes, exists wholly for the purpose of carrying on one or more qualifying trades, and

(b) is carrying on a qualifying trade or preparing to do so.

(3) The trading activities requirement in the case of a parent company is that—

(a) the business of the group does not consist wholly or as to a substantial part in the carrying on of non-qualifying activities, and

(b) at least one group company—

(i) disregarding any incidental purposes, exists wholly for the purpose of carrying on one or more qualifying trades, and

(ii) is carrying on a qualifying trade or preparing to do so.

(4) For this purpose the business of the group means what would be the business of the group if the activities of the group companies taken together were regarded as one business.

(5) The requirement of sub-paragraph (2) or (3) is not met at any time by reason of the issuing company or a subsidiary preparing to carry on a qualifying trade if the company or subsidiary does not begin to carry on the trade within two years after the issue of the relevant shares.

(6) For the purposes of determining whether the company falls within sub-paragraph (2)(a) or (3)(b)(i), the purposes for which it exists shall be disregarded to the extent that they consist in the carrying on of the following activities—

(a) in the case of a single company, the holding and managing of property used by the company for one or more qualifying trades carried on by it,

(b) in the case of a group company, any activities within sub-paragraph (7)(a), (b) or (d), and

(c) in any case, the holding of shares to which investment relief is attributable, unless the holding of such shares amounts to a substantial part of the company's business.

(7) For the purposes of determining the business of a group, activities of a group company shall be disregarded to the extent that they consist in—

(a) the holding of shares in or securities of, or the making of loans to, another group company;

(b) the holding and managing of property used by a group company for the purposes of one or more qualifying trades carried on by a group company;

(c) the holding of shares to which investment relief is attributable, unless the holding of such shares amounts to a substantial part of the company's business, or

(d) incidental activities of a company which meets the trading activities requirement for a single company.

(8) In sub-paragraph (3)(a) "non-qualifying activities" means—

(a) excluded activities other than—

(i) the letting of ships to which paragraph 28 applies (ships other than oil rigs or pleasure craft) in circumstances where the requirement of sub-paragraph (2) of that paragraph is met; or

(ii) the receiving of royalties or licence fees within paragraph 29 in circumstances where the requirements mentioned in sub-paragraph (2) of that paragraph are met; and

(b) activities carried on otherwise than in the course of a trade.

(9) In this paragraph—

(a) "incidental purposes" means purposes having no significant effect (other than in relation to incidental matters) on the extent of the activities of the company in question;

(b) "incidental activities" means activities carried on in pursuance of incidental purposes.

Ceasing to meet trading activities requirement by reason of administration, receivership, etc.

24.—(1) A company which is in administration or receivership shall not be regarded as ceasing to meet the trading activities requirement by reason of anything done as a consequence of the company, or any of its qualifying subsidiaries, being in administration or receivership.

This sub-paragraph has effect subject to sub-paragraphs (2) and (3).

(2) Sub-paragraph (1) applies only if—

(a) the making of the order within paragraph (a) or, as the case may be, (b) of paragraph 102(4) (administration orders and orders for appointment of receiver etc.), and

(b) everything done as a consequence of the company being in administration or receivership,

is for commercial reasons and is not part of a scheme or arrangement the main purpose or one of the main purposes of which is the avoidance of tax.

(3) A company ceases to meet the trading activities requirement if—

(a) a resolution is passed, or an order is made, for the winding up of the company or any of its qualifying subsidiaries (or, in the case of a winding up otherwise than under the Insolvency Act 1986 or the Insolvency (Northern Ireland) Order 1989, any other act is done for the like purpose), or

1986 c. 45.
S.I.1989/2405 (N.I.19).

(b) the company, or any of its qualifying subsidiaries, is dissolved without winding up.

This is subject to sub-paragraph (4).

(4) A company shall not be regarded as ceasing to meet the trading activities requirement if—

(a) it does so by reason of the company or any of its subsidiaries being wound up or dissolved without winding up, and

(b) the winding up or dissolution is for commercial reasons and not part of a scheme or arrangement the main purpose or one of the main purposes of which is the avoidance of tax.

Meaning of "qualifying trade"

25.—(1) A trade is a qualifying trade if—

(a) it is carried on wholly or mainly in the United Kingdom,

(b) it is conducted on a commercial basis and with a view to the realisation of profits, and

(c) it does not consist wholly or as to a substantial part in the carrying on of excluded activities.

(2) The carrying on of activities of research and development from which it is intended that a connected qualifying trade will be derived or benefit is treated as the carrying on of a qualifying trade.

But preparing to carry on such activities does not count as preparing to carry on a qualifying trade.

(3) For the purposes of sub-paragraph (2) a "connected qualifying trade" means a qualifying trade carried on—

(a) by the company carrying on the activities of research and development, or

(b) if that company is a member of a group, by any other group company.

Excluded activities

26.—(1) The following are excluded activities—

(a) dealing in land, in commodities or futures or in shares, securities or other financial instruments;

(b) dealing in goods otherwise than in the course of an ordinary trade of wholesale or retail distribution;

(c) banking, insurance, money-lending, debt-factoring, hire-purchase financing or other financial activities;

(d) leasing (including letting ships on charter or other assets on hire) or receiving royalties or other licence fees;

(e) providing legal or accountancy services;

(f) property development;

(g) farming or market gardening;

(h) holding, managing or occupying woodlands, any other forestry activities or timber production;

(i) operating or managing hotels or comparable establishments or managing property used as a hotel or comparable establishment; and

(j) operating or managing nursing homes or residential care homes, or managing property used as a nursing home or residential care home.

(2) Sub-paragraph (1) is supplemented by the following provisions—

paragraph 27 (wholesale and retail distribution);

paragraph 28 (leasing of ships);

paragraph 29 (receipt of royalties and licence fees);

paragraph 30 (property development);

paragraph 31 (hotels and comparable establishments);

paragraph 32 (nursing homes and residential care homes); and

paragraph 33 (provision of facilities for another business).

Excluded activities: wholesale and retail distribution

27.—(1) This paragraph supplements paragraph 26(1)(b).

(2) A trade of wholesale distribution is one in which the goods are offered for sale and sold to persons for resale by them, or for processing and resale by them, to members of the general public for their use or consumption.

(3) A trade of retail distribution is one in which the goods are offered for sale and sold to members of the general public for their use or consumption.

(4) A trade is not an ordinary trade of wholesale or retail distribution if—

(a) it consists, to a substantial extent, in dealing in goods of a kind which are collected or held as an investment, or in that activity and any other excluded activity taken together, and

(b) a substantial proportion of those goods are held by the company for a period which is significantly longer than the period for which a vendor would reasonably be expected to hold them while endeavouring to dispose of them at their market value.

(5) In determining whether a trade carried on by any person is an ordinary trade of wholesale or retail distribution, regard shall be had to the extent to which it has the following features—

(a) the goods are bought by that person in quantities larger than those in which he sells them;

(b) the goods are bought and sold by that person in different markets;

(c) that person employs staff and incurs expenses in the trade in addition to the cost of the goods and, in the case of a trade carried on by a company, to any remuneration paid to any person connected with it;

(d) there are purchases or sales from or to persons who are connected with that person;

(e) purchases are matched with forward sales or vice versa;

(f) the goods are held by that person for longer than is normal for goods of the kind in question;

(g) the trade is carried on otherwise than at a place or places commonly used for wholesale or retail trade;

(h) that person does not take physical possession of the goods.

(6) The features specified in sub-paragraph (5)(a) to (c) are indications that the trade is such an ordinary trade.

Those in sub-paragraph (5)(d) to (h) are indications of the contrary.

Excluded activities: leasing of ships

28.—(1) This paragraph supplements paragraph 26(1)(d) so far as it relates to the leasing of ships other than oil rigs or pleasure craft.

(2) A trade shall not be treated as not being a qualifying trade by reason only of its consisting in letting such ships on charter if the following requirements are met—

(a) every ship let on charter by the company carrying on the trade is beneficially owned by the company;

(b) every ship beneficially owned by the company is registered in the United Kingdom;

(c) the company is solely responsible for arranging the marketing of the services of its ships; and

(d) the conditions mentioned in sub-paragraph (3) are satisfied in relation to every letting of a ship on charter by the company.

(3) The conditions are that—

(a) the letting is for a period not exceeding 12 months and no provision is made at any time (whether in the charterparty or otherwise) for extending it beyond that period otherwise than at the option of the charterer;

(b) during the period of the letting there is no provision in force (whether by virtue of being contained in the charterparty or otherwise) for the grant of a new letting to end, otherwise than at the option of the charterer, more than 12 months after that provision is made;

(c) the letting is by way of a bargain made at arm's length between the company and a person who is not connected with it;

(d) under the terms of the charter the company is responsible as principal—

(i) for taking, throughout the period of the charter, management decisions in relation to the ship, other than those of a kind generally regarded by persons engaged in trade of the kind in question as matters of husbandry; and

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(ii) for defraying all expenses in connection with the ship throughout that period, or substantially all such expenses, other than those directly incidental to a particular voyage or to the employment of the ship during that period;

and

(e) no arrangements exist by virtue of which a person other than the company may be appointed to be responsible for the matters mentioned in paragraph (d) on behalf of the company.

(4) In relation to any letting between one company and another where—

(a) one of those companies is the company carrying on the trade and the other is a qualifying subsidiary of that company, or

(b) both companies are qualifying subsidiaries of the company carrying on the trade,

sub-paragraph (3) has effect with the omission of paragraph (c).

(5) Where any of the requirements in sub-paragraph (2) are not met in relation to any lettings, the trade shall not thereby be treated as not a qualifying trade if those lettings and any other excluded activities do not, taken together, amount to a substantial part of the trade.

(6) In this paragraph—

"oil rig" means any ship which is an offshore installation for the purposes of the Mineral Workings (Offshore Installations) Act 1971; and

1971 c. 61.

"pleasure craft" means any ship of a kind primarily used for sport or recreation.

Excluded activities: receipt of royalties and licence fees

29.—(1) This paragraph supplements paragraph 26(1)(d) so far as it relates to the receipt of royalties and licence fees.

(2) A trade shall not be regarded as not being a qualifying trade by reason only that at some time in the qualification period relating to the relevant shares it consists to a substantial extent in the receiving of royalties or licence fees if the royalties and licence fees (or all but for a part that is not a substantial part in terms of value) are attributable to the exploitation of relevant intangible assets.

(3) For this purpose an intangible asset is a "relevant intangible asset" if the whole or greater part (in terms of value) of it has been created—

(a) by the company carrying on the trade, or

(b) by a company which at all times during which it created the asset was—

(i) the parent company of the company carrying on the trade, or

(ii) a qualifying subsidiary of that parent company.

(4) In this paragraph "intangible asset" means any asset which falls to be treated as an intangible asset in accordance with normal accounting practice.

For this purpose "normal accounting practice" means normal accounting practice in relation to the accounts of companies incorporated in any part of the United Kingdom.

(5) In the case of a relevant asset that is intellectual property, references in this paragraph to the creation of the asset by a company are to its creation in circumstances in which the right to exploit it vests in the company (whether alone or jointly with others).

(6) In sub-paragraph (5) "intellectual property" means—

(a) any patent, trade mark, registered design, copyright, design right, performer's right or plant breeder's right; and

(b) any rights under the law of a country or territory outside the United Kingdom which correspond or are similar to those falling within paragraph (a).

Excluded activities: property development

30.—(1) This paragraph supplements paragraph 26(1)(f).

(2) "Property development" means the development of land—

(a) by a company which has, or at any time has had, an interest in the land, and

(b) with the sole or main object of realising a gain from the disposal of an interest in the land when it is developed.

(3) For this purpose "interest in land" means, subject to sub-paragraph (4)—

(a) any estate, interest or right in or over land, including any right affecting the use or disposition of land, or

(b) any right to obtain such an estate, interest or right from another which is conditional on the other's ability to grant it.

(4) References in this paragraph to an interest in land do not include—

(a) the interest of a creditor (other than a creditor in respect of a rentcharge) whose debt is secured by way of mortgage, an agreement for a mortgage or a charge of any kind over land, or

(b) in the case of land in Scotland, the interest of a creditor in a charge or security of any kind over land.

Excluded activities: hotels and comparable establishments

31.—(1) This paragraph supplements paragraph 26(1)(i).

(2) The reference to a comparable establishment is to a guest house, hostel or other establishment the main purpose of maintaining which is the provision of facilities for overnight accommodation (with or without catering services).

(3) The activities of a person shall not be taken to fall within paragraph 26(1)(i) unless that person has an estate or interest in, or is in occupation of, the hotel or comparable establishment in question.

Excluded activities: nursing homes and residential care homes

32.—(1) This paragraph supplements paragraph 26(1)(j).

(2) "Nursing home" means an establishment that exists wholly or mainly for the provision of nursing care—

(a) for persons suffering from sickness, injury or infirmity, or

(b) for women who are pregnant or have given birth to children.

(3) "Residential care home" means an establishment that exists wholly or mainly for the provision of residential accommodation, together with board and personal care, for persons in need of personal care by reason of—

(a) old age,

(b) mental or physical disability,

(c) past or present dependence on alcohol or drugs,

(d) any past illness, or

(e) past or present mental disorder.

(4) The activities of a person shall not be taken to fall within paragraph 26(1)(j) unless that person has an estate or interest in, or is in occupation of, the nursing home or residential care home in question.

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Excluded activities: provision of facilities for another business

33.—(1) Providing services or facilities for a business carried on by another person is an excluded activity if—

(a) the business consists to a substantial extent of excluded activities within sub-paragraph 26(1), and

(b) a controlling interest in the business is held by a person who also has a controlling interest in the business carried on by the company providing the services or facilities.

(2) Sub-paragraphs (3) to (5) define what is meant by a controlling interest in a business for the purposes of sub-paragraph (1)(b).

(3) In the case of a business carried on by a company, a person has a controlling interest if—

(a) he controls the company,

(b) the company is a close company and he or an associate of his, being a director of the company, either—

(i) is the beneficial owner of more than 30% of the ordinary share capital of the company, or

(ii) is able, directly or through the medium of other companies or by any other indirect means, to control more than 30% of that share capital,

or

(c) not less than half of the business could, in accordance with section 344(2) of the Taxes Act 1988, be regarded as belonging to him for the purposes of section 343 of that Act.

(4) In any other case, a person has a controlling interest in a business if he is entitled to not less than half of the assets used for, or of the income arising from, the business.

(5) For the purposes of sub-paragraph (3)(a) the question whether a person controls a company shall be determined in accordance with section 416(2) to (6) of the Taxes Act 1988.

(6) For the purposes of this paragraph—

(a) there shall be attributed to any person any rights or powers of any other person who is an associate of his, and

(b) "business" includes any trade, profession or vocation.

PART IV

GENERAL REQUIREMENTS

Introduction

34. The investing company is not eligible for investment relief in respect of the amount subscribed by it for the relevant shares unless the requirements of this Part are met as to—

(a) the shares (see paragraph 35);

(b) the money raised (see paragraph 36);

(c) no pre-arranged exits (see paragraph 37); and

(d) no tax avoidance (see paragraph 38).

Requirement as to the shares

35.—(1) The relevant shares must satisfy sub-paragraphs (2) and (3).

(2) Shares satisfy this sub-paragraph if they are—

(a) ordinary shares,

(b) subscribed for wholly in cash, and

(c) fully paid up at the time they are issued.

Shares are not fully paid up for the purposes of paragraph (c) if there is any undertaking to pay cash to the issuing company at a future date.

(3) Shares satisfy this sub-paragraph if they do not, at any time during the qualification period relating to the relevant shares, carry—

(a) any present or future preferential right to dividends or to a company's assets on its winding up, or

(b) any present or future right to be redeemed.

Requirement as to the money raised

36.—(1) The money raised by the issuance of the relevant issue of shares must have been employed wholly for the purposes of a relevant trade not later than—

(a) the end of the period of 12 months beginning with the issue of the shares, or

(b) where the relevant trade was not being carried on at the time the shares were issued the end of the period of 12 months beginning when the issuing company or a subsidiary begins to carry on the relevant trade.

This is subject to sub-paragraph (5).

(2) For the purposes of this paragraph—

"the relevant issue of shares" means the issue of shares in the issuing company which includes the relevant shares;

"relevant trade" means a trade by reference to which the issuing company meets the trading activities requirement.

(3) In this paragraph references to employing money for the purposes of a trade (except where the carrying on of the trade is within paragraph 25(2)) include references to employing it for the purpose of preparing to carry on the trade.

(4) In sub-paragraph (2) the reference to a trade by reference to which the trading activities requirement is met includes, where the carrying on of that trade is within paragraph 25(2), a reference to any qualifying trade—

(a) which is derived or benefits from that trade, and

(b) which is carried on—

(i) by the issuing company, or

(ii) if that company is a parent company, by that company or a qualifying subsidiary of that company.

(5) Where—

(a) any of the money mentioned in sub-paragraph (1) is employed for the purposes of a trade that is a relevant trade by virtue of sub-paragraph (4), and

(b) that trade was not being carried on by the issuing company, or a qualifying subsidiary of that company, at the time the shares were issued,

the requirement of sub-paragraph (1) is not met unless that money is so employed before the third anniversary of the issue date.

(6) For the purposes of this paragraph money is not treated as employed otherwise than wholly for the purposes of a trade if the only amount employed for other purposes is an amount which is not a significant amount.

Requirement as to no pre-arranged exits

37.—(1) The issuing arrangements for the relevant shares must not include—

(a) arrangements with a view to the subsequent repurchase, exchange or other disposal of those shares or of other shares in or securities of the issuing company;

(b) arrangements for or with a view to the cessation of any trade which is being or is to be or may be carried on by the issuing company or a person connected with that company;

(c) arrangements for the disposal of, or of a substantial amount (in terms of value) of, the assets of the issuing company or of a person connected with that company; or

(d) arrangements the main purpose of which, or one of the main purposes of which, is (by means of any insurance, indemnity or guarantee or otherwise) to provide partial or complete protection for persons investing in shares in the issuing company against what would otherwise be the risks attached to making the investment.

(2) For the purposes of this paragraph "the issuing arrangements" means—

(a) the arrangements under which the relevant shares are issued to the investing company,

(b) any arrangements made, before the issue of the relevant shares to that company, in relation to or in connection with that issue, and

(c) if before the relevant shares were issued information on pre-arranged exits was made available to any prospective subscribers for shares in the relevant issue, any arrangements made—

(i) on or after the issue of the shares, but

(ii) before the end of the qualification period relating to them.

(3) For the purposes of sub-paragraph (2)—

(a) "information on pre-arranged exits" means any information indicating the possibility of making, on or after the issue of the relevant shares but before the end of the qualification period relating to them, arrangements of the kind described in paragraph (a), (b), (c) or (d) of sub-paragraph (1), and

(b) "the relevant issue" means the issue of shares in the issuing company which includes the relevant shares.

(4) The arrangements referred to in sub-paragraph (1)(a) do not include any arrangements with a view to such an exchange of shares, or shares and securities, as is mentioned in paragraph 83(1) (certain exchanges resulting in acquisition of share capital by new company).

(5) The arrangements referred to in sub-paragraph (1)(b) and (c) do not include any arrangements applicable only on the winding up of the issuing company except in a case where—

(a) the issuing arrangements include arrangements for the issuing company to be wound up, or

(b) the issuing company is wound up otherwise than for commercial reasons.

(6) The arrangements referred to in sub-paragraph (1)(d) do not include any arrangements which are confined to the provision—

(a) for the issuing company itself, or

(b) where the issuing company is the parent company of a group, for any group company,

of any such protection against the risks arising in the course of carrying on its business as might reasonably be expected to be provided for normal commercial reasons.

Requirement as to no tax avoidance

38. The relevant shares must be issued for commercial reasons, and not as part of a scheme or arrangement the main purpose or one of the main purposes of which is the avoidance of tax.

PART V

INVESTMENT RELIEF

Form of investment relief

39.—(1) Where—

(a) the investing company is eligible for investment relief in respect of an amount subscribed by it for an issue of shares, and

(b) it makes a claim under this Part,

the company's liability for corporation tax for the accounting period in which the shares were issued shall be reduced by the appropriate amount.

(2) In sub-paragraph (1) "the appropriate amount" means whichever is the smaller of—

(a) 20% of the amount or aggregate amount—

(i) which was subscribed by the company for shares issued in that period, and

(ii) in respect of which the company is eligible for and claims investment relief, and

(b) the amount which reduces the liability to nil.

Entitlement to claim

40.—(1) The investing company is entitled to make a claim to investment relief in respect of the amount subscribed by it for the relevant shares if it appears to it that the requirements for the relief are for the time being met.

This is subject to sub-paragraph (2).

(2) The investing company is not entitled to make a claim to investment relief in relation to the amount subscribed by it for the relevant shares unless—

(a) the funded trade has been carried on by the issuing company or a subsidiary of the company for four months (disregarding any time spent preparing to carry on that trade), and

(b) the investing company has received from the issuing company a compliance certificate in respect of those shares.

(3) For the purposes of this paragraph, "the funded trade" means the trade or trades by reference to which the requirement of paragraph 36 (use of money raised) is met in respect of the relevant issue of shares (as defined by sub-paragraph (2) of that paragraph).

This is subject to sub-paragraph (4).

(4) To the extent that the funded trade would, by virtue of sub-paragraph (3), be a trade derived or benefiting from a trade within paragraph 25(2), the funded trade shall be deemed, for the purposes of this paragraph, to be the trade within that paragraph.

(5) Where—

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(a) the company or subsidiary concerned, by reason of its being wound up, or dissolved without winding up, carries on the funded trade for a period shorter than four months, and

(b) the winding up or dissolution was for commercial reasons and was not part of a scheme or arrangement the main purpose or one of the main purposes of which was the avoidance of tax,

sub-paragraph (2)(a) shall have effect as if it referred to that shorter period.

(6) Where—

(a) the company or subsidiary concerned, by reason of anything done as a consequence of its being in administration or receivership, carries on the funded trade for a period shorter than four months, and

(b) the making of the order within paragraph (a) or, as the case may be, (b) of paragraph 102(4) (administration orders and orders for appointment of receiver etc.), and everything done as a consequence of the company being in administration or receivership, is for commercial reasons and is not part of a scheme or arrangement the main purpose or one of the main purposes of which is the avoidance of tax,

sub-paragraph (2)(a) shall have effect as if it referred to that shorter period.

1970 c. 9.

(7) No application shall be made under section 55(3) or (4) of the Taxes Management Act 1970 (application for postponement of payment of tax pending appeal) on the ground that the investing company is eligible for investment relief unless a claim for the relief has been duly made by that company.

Compliance certificates

41.—(1) A "compliance certificate" is a certificate which—

(a) is issued by the issuing company in respect of the relevant shares,

(b) states that, except so far as they fall to be met by or in relation to the investing company, the requirements for investment relief are for the time being met in relation to those shares, and

(c) is in such form as the Inland Revenue may direct.

(2) Before issuing a compliance certificate in respect of the relevant shares, the issuing company must provide the Inland Revenue with a compliance statement in respect of the issue of shares which includes the relevant shares.

(3) The issuing company must not issue a compliance certificate without the authority of the Inland Revenue.

(4) Where the company or a person connected with the company has given notice to the Inland Revenue under paragraph 65 (information to be provided by issuing company etc.) the authority of the Inland Revenue must be given or renewed after the receipt of the notice.

Compliance statements

42.—(1) A "compliance statement" is a statement, in respect of an issue of shares, to the effect that, except so far as they fall to be satisfied by or in relation to companies to which the shares included in that issue have been issued, the requirements for investment relief—

(a) are for the time being met in relation to the shares to which the statement relates, and

(b) have been so met at all times since the shares were issued.

In determining for the purposes of this sub-paragraph whether those requirements are met at any time in relation to the issue of shares, references in this Schedule to "the relevant shares" shall be read as references to the shares included in the issue.

(2) A compliance statement must be in such form as the Inland Revenue direct and must contain—

(a) such additional information as the Inland Revenue reasonably require,

(b) a declaration that the statement is correct to the best of the issuing company's knowledge and belief, and

(c) such other declarations as the Inland Revenue reasonably require.

(3) Without prejudice to the generality of sub-paragraph (2)(a) the information required by the Inland Revenue may include—

(a) information relating to the companies to which compliance certificates may be issued under paragraph 41 in respect of any shares included in the issue of shares to which the statement relates, and

(b) information to enable the Inland Revenue to determine whether the requirements of paragraph 35(2)(b) and (c) (shares to be subscribed for wholly in cash and fully paid up) are met in relation to shares included in that issue subscribed for by such companies.

(4) The issuing company may not provide the Inland Revenue with a compliance statement in respect of any shares issued by it in any accounting period—

(a) before the condition in paragraph 40(2)(a) (no claim until trade carried on for four months) is satisfied; or

(b) later than two years after the end of that accounting period or, if that condition is first satisfied after the end of that accounting period, later than two years after the condition is first satisfied.

Appeal against refusal to authorise compliance certificate

43. For the purposes of the provisions of the Taxes Management Act 1970 relating to appeals, the refusal of the Inland Revenue to authorise the issue of a compliance certificate shall be taken to be a decision disallowing a claim by the issuing company which is not a claim for discharge or repayment of tax. 1970 c. 9.

Penalties for fraudulent certificate or statement etc.

44. The issuing company is liable to a penalty not exceeding £3,000 if—

(a) it issues a compliance certificate, or provides a compliance statement, which is made fraudulently or negligently, or

(b) it issues a compliance certificate in contravention of paragraph 41(3) or (4) (no certificate to be issued without Inland Revenue approval).

Attribution of relief to shares

45.—(1) References in this Schedule, in relation to a company, to the investment relief attributable to any shares or issue of shares shall be read as references to any reduction made in the company's liability to corporation tax that is attributed to those shares or that issue in accordance with this paragraph.

This is subject to the provisions of Part VI of this Schedule providing for the reduction or withdrawal of investment relief.

(2) Where a company's liability to corporation tax is reduced for an accounting period under paragraph 39 (form of investment relief), then—

(a) where the reduction is obtained by reason of one issue of shares, the amount of the reduction shall be attributed to that issue, and

(b) where the reduction is obtained by reason of two or more issues of shares, the reduction—

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(i) shall be apportioned between those issues in the same proportions as the amounts subscribed by the company for each issue, and

(ii) shall be attributed to those issues accordingly.

(3) Where under this paragraph an amount of any reduction of corporation tax is attributed to an issue of shares ("the original issue") to a company a proportionate part of that amount shall be attributed to each share comprised in the original issue.

(4) If corresponding bonus shares are issued to the company in respect of any shares ("the original shares") comprised in the original issue that have been continuously held by the company from the time they were issued until the issue of the bonus shares—

(a) a proportionate part of the total amount attributed to the original shares immediately before the bonus shares are issued shall be attributed to each of the shares in the holding comprising the original shares and the bonus shares, and

(b) after the issue of the bonus shares, this Schedule shall apply as if—

(i) the original issue had included the bonus shares, and

(ii) the bonus shares had been held by the company continuously from the time the original shares were issued until the bonus shares were issued.

(5) In sub-paragraph (4) "corresponding bonus shares" means bonus shares which are in the same company, of the same class, and carry the same rights as the original shares.

(6) If investment relief attributable to any shares falls to be withdrawn under Part VI of this Schedule the relief attributable to each of the shares shall be reduced to nil.

(7) If investment relief attributable to any shares falls to be reduced under Part VI of this Schedule by any amount the relief attributable to each of the shares shall be reduced by a proportionate part of that amount.

PART VI

WITHDRAWAL OF INVESTMENT RELIEF

Disposal of shares

46.—(1) This paragraph applies where—

(a) the investing company disposes of any of the relevant shares which have been held by it continuously from the time they were issued until the disposal,

(b) the disposal takes place during the qualification period relating to the relevant shares, and

(c) investment relief is attributable to the shares.

(2) If the disposal is not—

(a) by way of a bargain made at arm's length for full consideration,

(b) by way of a distribution in the course of dissolving or winding up the issuing company,

(c) a disposal within section 24(1) of the 1992 Act (entire loss, destruction, dissipation or extinction of asset), or

(d) a deemed disposal under section 24(2) of that Act (claim that value of asset has become negligible),

the investment relief attributable to those shares must be withdrawn.

(3) If the disposal is within paragraph (a), (b), (c) or (d) of sub-paragraph (2) the investment relief attributable to those shares must—

(a) if it is greater than an amount equal to 20% of the amount or value of the consideration (if any) which the company receives for the shares, be reduced by that amount, and

(b) in any other case, be withdrawn.

(4) Where—

(a) the amount of the reduction ("A") in the investing company's liability to corporation tax obtained under paragraph 39 (form of investment relief) in respect of the relevant shares, is less than

(b) the amount ("B") which is equal to 20% of the amount subscribed by the investing company for those shares,

sub-paragraph (3)(a) shall have effect in relation to a disposal of any of those shares as if the amount or value referred to in that sub-paragraph were reduced by multiplying it by the fraction—

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

(5) Where the amount of investment relief attributable to any of the relevant shares has been reduced before the investment relief was obtained, the amount of the corporation tax reduction obtained in respect of those shares shall be deemed for the purposes of sub-paragraph (4) to be the amount of the corporation tax reduction that would have been obtained had no such reduction of relief been made before the relief was obtained.

(6) Sub-paragraph (5) does not apply to a reduction by virtue of paragraph 45(4) (attribution of investment relief where there is a corresponding issue of bonus shares).

Value received by investing company

47.—(1) Sub-paragraph (2) applies where the investing company receives any value (other than insignificant value) from the issuing company during the period of restriction relating to the relevant shares.

(2) Any investment relief attributable to the shares shall—

(a) if it exceeds the amount mentioned in sub-paragraph (3), be reduced by that amount, and

(b) in any other case, be withdrawn.

(3) The amount referred to in sub-paragraph (2)(a) is an amount equal to 20% of the amount of the value received.

(4) This paragraph is subject to the following paragraphs—

paragraph 51 (value received where there is more than one issue of shares);

paragraph 52 (cases where maximum investment relief not obtained); and

paragraph 54 (receipt of replacement value).

(5) Where—

(a) value is received ("the relevant receipt") by the investing company from the issuing company at any time during the period of restriction relating to the relevant shares,

(b) the investing company has received from the issuing company one or more receipts of insignificant value at a time or times—

(i) during that period, but

(ii) not later than the time of the relevant receipt, and

(c) the aggregate amount of the value of the receipts within paragraph (a) and (b) is not an amount of insignificant value,

the investing company shall be treated for the purposes of this Part as if the relevant receipt had been a receipt of an amount of value equal to that aggregate amount.

For this purpose a receipt does not fall within paragraph (b) if it has been previously aggregated under this sub-paragraph.

(6) If, at any time in the period—

(a) beginning one year before the relevant shares are issued, and

(b) expiring at the end of the issue date,

arrangements are in existence which provide for the investing company to receive, or to be entitled to receive, any value from the issuing company at any time in the period of restriction relating to those shares, no amount of value received by the investing company shall be treated as a receipt of insignificant value for the purposes of this paragraph.

(7) For the purposes of this paragraph—

(a) references to a receipt of insignificant value (however expressed) are references to a receipt of an amount of insignificant value;

(b) "an amount of insignificant value" means an amount of value which—

(i) does not exceed £1,000, or

(ii) if it exceeds that amount, is insignificant in relation to the amount subscribed by the investing company for the shares.

This is subject to sub-paragraph (6).

(8) Where by reason of the investing company's disposal of any shares any investment relief attributable to those shares is withdrawn or reduced, the investing company shall not be treated for the purposes of this paragraph as receiving value from the issuing company in respect of the disposal.

(9) Value received shall be disregarded, for the purposes of this paragraph, to the extent to which investment relief attributable to any shares has already been reduced or withdrawn on its account.

Meaning of "the period of restriction"

48. For the purposes of this Schedule "the period of restriction" relating to the relevant shares means the period—

(a) beginning one year before the shares are issued, and

(b) ending at the end of the qualification period relating to the shares.

When value is received

49.—(1) For the purposes of paragraphs 47 (value received by investing company) and 51 (value received where there is more than one issue of shares) the investing company receives value from the issuing company at any time when the issuing company—

(a) repays, redeems or repurchases any of its share capital or securities which belong to the investing company or makes any payment to that company for giving up its right to any of the issuing company's share capital or any security on its cancellation or extinguishment;

(b) repays, in pursuance of any arrangements for or in connection with the acquisition of the relevant shares, any debt owed to the investing company other than a debt which was incurred by the issuing company—

(i) on or after the date of issue of those shares; and

(ii) otherwise than in consideration of the extinguishment of a debt incurred before that date;

(c) makes to the investing company any payment for giving up the company's right to any debt on its extinguishment;

(d) releases or waives any liability of the investing company to the issuing company or discharges, or undertakes to discharge, any liability of the investing company to a third person;

(e) makes a loan or advance to the investing company which has not been repaid in full before the issue of the relevant shares;

(f) provides a benefit or facility for the directors or employees of the investing company or any of their associates;

(g) disposes of an asset to the investing company for no consideration or for a consideration which is or the value of which is less than the market value of the asset;

(h) acquires an asset from the investing company for a consideration which is or the value of which is more than the market value of the asset; or

(i) makes a payment to the investing company other than a qualifying payment.

(2) For the purposes of sub-paragraph (1)(e) there shall be treated as if it were a loan made by the issuing company to the investing company—

(a) the amount of any debt (other than an ordinary trade debt) incurred by the investing company to the issuing company, and

(b) the amount of any debt due from the investing company to a third person which has been assigned to the issuing company.

(3) For the purposes of sub-paragraph (1)(d) the issuing company shall be treated as having released or waived a liability if the liability is not discharged within 12 months of the time when it ought to have been discharged.

(4) For the purposes of this paragraph—

(a) references to a debt or liability do not, in relation to a person, include references to any debt or liability which would be discharged by the making by that person of a qualifying payment;

(b) references to a benefit or facility do not include references to any benefit or facility provided in circumstances such that, if a payment had been made of an amount equal to its value, that payment would be a qualifying payment; and

(c) any reference to a payment or disposal to a person includes a reference to a payment or disposal made to that person indirectly or to his order or for his benefit.

In paragraphs (a) to (c) references to "a person" include references to any person who, at any time in the period of restriction in question, is connected with that person, whether or not he is so connected at the material time.

(5) In this paragraph—

"ordinary trade debt" means any debt for goods or services supplied in the ordinary course of a trade or business where any credit given—

(a) does not exceed six months, and

(b) is not longer than that normally given to customers of the person carrying on the trade or business; and

"qualifying payment" means—

(a) any payment by any person for any goods, services or facilities provided by the investing company (in the course of its trade or otherwise) which is reasonable in relation to the market value of those goods, services or facilities;

(b) the payment by any person of any interest which represents no more than a reasonable commercial return on money lent to that person;

(c) the payment by any company of any dividend or other distribution which does not exceed a normal return on any investment in shares in or other securities of that company;

(d) any payment for the acquisition of an asset which does not exceed its market value;

(e) the payment by any person, as rent for any property occupied by the person, of an amount not exceeding a reasonable and commercial rent for the property; and

(f) a payment in discharge of an ordinary trade debt.

The amount of value received

50. For the purposes of paragraph 47 the amount of the value received is—

(a) in a case within paragraph 49(1)(a), (b) or (c)—

(i) the amount received by the investing company, or

(ii) the market value of the shares, securities or debt in question,

whichever is greater;

(b) in a case within paragraph 49(1)(d), the amount of the liability;

(c) in a case within paragraph 49(1)(e)—

(i) the amount of the loan or advance, less

(ii) the amount of any repayment made before the issue of the relevant shares;

(d) in a case within paragraph 49(1)(f)—

(i) the cost to the issuing company of providing the benefit or facility, less

(ii) any consideration given for it by the recipient or any associate of his;

(e) in a case within paragraph 49(1)(g) or (h), the difference between the market value of the asset and the consideration (if any) received for it; and

(f) in a case within paragraph 49(1)(i), the amount of the payment.

Value received where there is more than one issue of shares

51.—(1) This paragraph applies where—

(a) two or more issues of shares in the issuing company have been made to the investing company (being issues in relation to which the investing company is eligible for and claims investment relief), and

(b) the value received falls within the periods of restriction relating to two or more of those issues.

(2) Where this paragraph applies paragraph 47 has effect in relation to the shares comprised in each of the issues referred to in sub-paragraph (1)(b) as if the amount of the value received were reduced by multiplying it by the fraction—

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

Where—

A is the amount subscribed by the investing company for the shares comprised in the issue in question to which investment relief is (or, but for paragraph 47 would be) attributable; and

B is the aggregate of that amount and the corresponding amount or amounts for the other issue or issues.

Cases where maximum investment relief not obtained

52.—(1) Where—

(a) the amount of the reduction ("C") in the investing company's liability to corporation tax obtained in respect of the relevant shares, is less than

(b) the amount ("D") which is equal to 20% of the amount subscribed by the investing company for those shares,

paragraph 47 has effect as if the amount of the value received were reduced by multiplying it by the fraction—

$$\frac{C}{D}$$

(2) Where the amount of investment relief attributable to any of the relevant shares has been reduced before the investment relief was obtained, the amount of the corporation tax reduction obtained in respect of those shares shall be deemed for the purposes of sub-paragraph (1) to be the amount of the corporation tax reduction that would have been obtained had no such reduction of relief been made before the relief was obtained.

(3) Sub-paragraph (2) does not apply to a reduction of investment relief by virtue of paragraph 45(4) (attribution of investment relief where there is a corresponding issue of bonus shares).

Receipts of value by and from connected persons

53. In paragraphs 47, 49 and 50 references to the investing company or the issuing company include references to any person who at any time in the period of restriction relating to the relevant shares is connected with the company concerned, whether or not he is connected at the material time.

Receipt of replacement value

54.—(1) Where—

(a) any investment relief attributable to the relevant shares would, in the absence of this paragraph, be reduced or withdrawn under paragraph 47 by reason of a receipt of value within paragraph 49(1) ("the original value"),

(b) the original supplier receives value ("the replacement value") from the original recipient by reason of a qualifying receipt, and

(c) the replacement value is not less than the amount of the original value,

paragraph 47 shall not, by reason of the receipt of the original value, have effect to reduce or withdraw the investment relief.

(2) For the purposes of this paragraph and paragraph 55—

"the original recipient" means the person who receives the original value; and

"the original supplier" means the person from whom that value was received.

(3) A receipt of the replacement value is a qualifying receipt for the purposes of sub-paragraph (1) if it arises—

(a) by reason of the original recipient making a payment to the original supplier other than—

(i) a qualifying payment (within the meaning of paragraph 49(5)), or

(ii) a payment for shares in or securities of any company in circumstances that do not fall within paragraph (c) below;

(b) where the receipt of the original value was within paragraph 49(1)(d), by reason of an event the effect of which is to reverse the event which constituted the receipt of the original value; or

(c) where the receipt of the original value was within paragraph 49(1)(g) or (h), by reason of—

(i) the original recipient acquiring any asset from the original supplier for a consideration which is or the value of which is more than the market value of the asset, or

(ii) the original recipient disposing of any asset to the original supplier for no consideration or for a consideration which is, or the value of which is, less than the market value of the asset.

(4) For the purposes of this paragraph—

(a) paragraph 50 shall apply for the purposes of determining the amount of the original value; and

(b) the amount of the replacement value is—

(i) in a case within sub-paragraph (3)(a), the amount of the payment,

(ii) in a case within sub-paragraph (3)(b), the same as the amount of the original value, and

(iii) in a case within sub-paragraph (3)(c), the difference between the market value of the asset and the consideration (if any) received for it.

Provision supplementary to paragraph 54

55.—(1) The receipt of the replacement value shall be disregarded for the purposes of sub-paragraph (1) of paragraph 54 to the extent to which it has previously been set (under that paragraph) against a receipt of value to prevent any reduction or withdrawal of investment relief under paragraph 47.

(2) The receipt of the replacement value by the original supplier ("the event") shall be disregarded for the purposes of paragraph 54(1) if—

(a) the event occurs before the start of the period of restriction relating to the relevant shares,

(b) there was an unreasonable delay in the event occurring, or

(c) where an appeal has been brought by the investing company against an assessment to withdraw or reduce any investment relief attributable to the relevant shares by reason of the receipt of the original value, the event occurs more than 60 days after the amount of relief which falls to be withdrawn has been finally determined.

But nothing in paragraph 54 or this paragraph requires the replacement value to be received after the original value.

(3) Sub-paragraph (4) applies where—

(a) the receipt of the replacement value is a qualifying receipt for the purposes of paragraph 54(1) (receipt of replacement value which prevents loss of investment relief), and

(b) the event which gives rise to the receipt is (or includes) a subscription for shares by—

(i) the investing company, or

(ii) any person who at any time in the period of restriction relating to the relevant shares is connected with the investing company, whether or not he is connected at the material time.

(4) Where this sub-paragraph applies the person who subscribes for the shares shall not—

(a) be eligible for—

(i) any investment relief, or

(ii) any relief under Chapter III of Part VII of the Taxes Act 1988 (EIS income tax relief),

in relation to those shares or any other shares in the same issue; or

(b) by virtue of his subscription for those shares or any other shares in the same issue, be treated as making a qualifying investment for the purposes of Schedule 5B to the 1992 Act (EIS: deferral relief).

Value received by other persons

56.—(1) Where any investment relief is attributable to such of the relevant shares as are held by the investing company, sub-paragraph (2) shall apply if at any time in the period of restriction relating to the relevant shares the issuing company or any subsidiary—

(a) repays, redeems or repurchases any of its share capital which belongs to any member other than—

(i) the investing company, or

(ii) a person who falls within sub-paragraph (3), or

(b) makes any payment to any such member for giving up his right to any of the share capital of the company or subsidiary on its cancellation or extinguishment.

(2) The investment relief—

(a) if it is greater than the amount mentioned in sub-paragraph (4), shall be reduced by that amount, and

(b) in any other case, must be withdrawn.

(3) A person falls within this sub-paragraph if the repayment, redemption, repurchase or payment in question—

(a) causes any investment relief attributable to that person's shares in the issuing company to be withdrawn or reduced by virtue of—

(i) paragraph 46 (disposal of shares), or

(ii) paragraph 49(1)(a) (receipt of value by virtue of repayment of share capital etc.);

(b) causes any relief under Chapter III of Part VII of the Taxes Act 1988 (EIS income tax relief) attributable to that person's shares in the issuing company to be withdrawn or reduced by virtue of—

(i) section 299 of that Act (disposal of shares), or

(ii) section 300(2)(a) of that Act (receipt of value by virtue of repayment of share capital etc.);

or

(c) gives rise to a qualifying chargeable event (within the meaning of paragraph 14(4) of Schedule 5B to the 1992 Act (EIS: deferral relief)) in respect of that person.

(4) The amount referred to in sub-paragraph (2) is an amount equal to 20%—

(a) where sub-paragraph (1) does not apply in the case of any other company holding shares in the issuing company, of the amount received by the member, and

(b) where sub-paragraph (1) also applies in the case of one or more such other companies, of the appropriate fraction of that amount.

(5) For the purposes of sub-paragraph (4) "the appropriate fraction" is—

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

Where—

A is the amount subscribed by the investing company for such of the relevant shares as are shares to which investment relief is or, but for sub-paragraph (2)(b), would be attributable, and

B is the aggregate of that amount and the amount or amounts subscribed by the other company or companies for such shares which are comprised in the same issue of shares.

(6) Where—

(a) the amount of the reduction ("C") in the investing company's liability to corporation tax obtained under paragraph 39 (form of investment relief) in respect of the relevant shares, is less than

(b) the amount ("D") which is equal to 20% of the amount subscribed by the investing company for those shares,

sub-paragraph (4) has effect as if the amount received by the member, or (as the case may be) the appropriate fraction of that amount, were reduced by multiplying it by the fraction—

$$\frac{C}{D}$$

(7) Where the amount of investment relief attributable to the relevant shares has been reduced before the relief was obtained, the amount of the corporation tax reduction obtained in respect of those shares shall be deemed for the purposes of sub-paragraph (6) to be the amount of the corporation tax reduction that would have been obtained had no such reduction of investment relief been made before the relief was obtained.

(8) Sub-paragraph (7) does not apply to a reduction by virtue of paragraph 45(4) (attribution of investment relief where there is a corresponding issue of bonus shares).

Insignificant repayments disregarded

57.—(1) Any repayment shall be disregarded for the purposes of paragraph 56(1) (repayments etc. which cause withdrawal of investment relief) if whichever is the greater of—

(a) the market value of the shares to which it relates ("the target shares") immediately before the event occurs, and

(b) the amount received by the member in question,

is insignificant in relation to the market value of the remaining share capital of the issuing company (or, as the case may be, subsidiary) immediately after the event occurs.

This is subject to sub-paragraph (4).

(2) For the purposes of this paragraph "repayment" means a repayment, redemption, repurchase or payment mentioned in paragraph 56(1) (repayments etc. which cause withdrawal of investment relief).

(3) For the purposes of sub-paragraph (1) it shall be assumed that the target shares are cancelled at the time the payment is made.

(4) Sub-paragraph (1) does not apply if, at a relevant time, arrangements are in existence that provide—

(a) for a repayment by the issuing company or any subsidiary of that company (whether or not it is such a subsidiary at the time the arrangements are made), or

(b) for anyone to be entitled to such a repayment,

at any time in the period of restriction relating to the shares.

(5) For the purposes of sub-paragraph (4) "a relevant time" means any time in the period—

(a) beginning one year before the relevant shares are issued, and

(b) expiring at the end of the issue date.

Provision supplementary to paragraph 56 and 57

58.—(1) Any repayment shall be disregarded for the purposes of paragraph 56(1) (repayments etc. which cause withdrawal of investment relief) to the extent to which investment relief attributable to any shares has already been reduced or withdrawn on its account.

(2) In any case where—

(a) investment relief is attributable to such of the relevant shares as are held by the investing company;

(b) the issuing company has made one or more other issues of shares each of which includes shares ("designated shares") to which investment relief is attributable, and

(c) the repayment falls—

(i) within the period of restriction relating to the relevant shares, and

(ii) within one or more of the equivalent periods relating to any of the designated shares,

paragraph 56(4) shall have effect in relation to each of the issues of shares as if the amount received by the member, or (as the case may be) the appropriate fraction of that amount, were reduced by multiplying it by the relevant fraction.

(3) For the purposes of sub-paragraph (2) "the equivalent period", in relation to any designated shares, means the period—

(a) beginning one year before the shares are issued, and

(b) ending at the end of the qualification period relating to the shares.

For the purposes of determining the qualification period relating to any designated shares, the references in paragraph 3 to the relevant shares shall be read as references to those designated shares.

(4) In sub-paragraph (2)—

(a) "the appropriate fraction" has the meaning given by paragraph 56(5), and

(b) "the relevant fraction" means—

$$\frac{E}{F}$$

Where—

E is the amount subscribed by companies for shares which are included in the issue in question and to which investment relief is or, but for paragraph 56(2)(b), would be attributable; and

F is the aggregate of that amount and the corresponding amount or amounts for the other issue or issues.

(5) Where—

(a) a company issues share capital of nominal value equal to the authorised minimum (within the meaning of the Companies Act 1985) for the purposes of complying with the requirements of section 117 of that Act (public company not to do business unless requirements as to share capital complied with), and

1985 c. 6.

(b) the registrar of companies issues the company with a certificate under section 117,

paragraph 56(1) shall not apply in relation to any redemption of those shares within 12 months of the date on which they were issued.

(6) In relation to companies incorporated under the law of Northern Ireland references in sub-paragraph (5) to the Companies Act 1985 and to section 117 of that Act shall have effect as references to the Companies (Northern Ireland) Order 1986 and to Article 127 of that Order.

S.I. 1986/1032 (N.I.6).

(7) References in paragraphs 56 and 57 and this paragraph to a subsidiary of the issuing company are references to any company which at any time in the period of restriction relating to the relevant shares is a 51% subsidiary of the issuing company whether or not it is such a subsidiary at the time of the repayment in question.

(8) For the purposes of this paragraph "repayment" has the meaning given in paragraph 57(2).

Put options and call options

59.—(1) Sub-paragraph (2) applies where—

(a) an option, the exercise of which would bind the grantor to purchase any of the relevant shares, is granted to the investing company during the qualification period relating to those shares; or

(b) an option, the exercise of which would bind the investing company to sell such shares, is granted by the investing company during that period.

(2) Any investment relief attributable to the shares to which the option relates must be withdrawn.

(3) The shares to which the option relates are those which, if—

(a) the option were exercised immediately after the grant, and

(b) any shares in the issuing company acquired by the investing company after the grant were disposed of immediately after being acquired,

would be treated for the purposes of this Schedule as disposed of in pursuance of the option.

(4) Nothing in this paragraph prejudices the operation of paragraph 37 (pre-arranged exits).

Withdrawal of relief

60.—(1) Where any investment relief has been obtained which—

(a) is subsequently found not to have been due, or

(b) falls to be withdrawn under this Part,

it shall be withdrawn by making an assessment to corporation tax under Case VI of Schedule D for the accounting period for which the relief was obtained.

(2) Investment relief obtained by the investing company in respect of the relevant shares may not be withdrawn on the ground—

(a) that the issuing company is not a qualifying issuing company in relation to those shares,

(b) that the requirements of Part IV of this Schedule are not met in respect of the shares,

(c) by virtue of paragraph 47 (value received by investing company), or

(d) by virtue of paragraph 56 (value received by other persons),

unless sub-paragraph (3) is satisfied.

(3) This sub-paragraph is satisfied if—

(a) either—

(i) the issuing company has given notice under paragraph 65 (information to be provided by issuing company etc.) in relation to those shares, or

(ii) the Inland Revenue have given notice to that company stating that, by reason of the ground in question, the whole or any part of the investment relief obtained by any company or companies in respect of shares included in the relevant issue of shares was not in their opinion due,

and

(b) in the case of a withdrawal within sub-paragraph (2)(c) or (d), the Inland Revenue have given notice to the investing company stating the matters mentioned in paragraph (a)(ii) above.

(4) In this paragraph—

(a) references to the withdrawal of investment relief include its reduction; and

(b) "the relevant issue of shares" means the issue of shares in the issuing company which includes the relevant shares.

Appeals against withdrawal of relief

61. For the purposes of the provisions of the Taxes Management Act 1970 relating to appeals, the giving of notice by the Inland Revenue under paragraph 60(3)(a)(ii) shall be taken to be a decision disallowing a claim by the issuing company which is not a claim for discharge or repayment of tax. 1970 c. 9.

Time limits

62.—(1) The Inland Revenue may not—

(a) make an assessment for withdrawing or reducing the investment relief attributable to any of the relevant shares, or

(b) give a notice under paragraph 60(3)(a)(ii) or (b),

more than six years after the end of the relevant accounting period.

(2) In sub-paragraph (1) "the relevant accounting period" means—

(a) the accounting period in which the time mentioned in paragraph 36(1) (time limit for employing money raised) falls, or

(b) the accounting period in which the event which causes the investment relief to be withdrawn or reduced occurs,

whichever is later.

(3) This paragraph is subject to sub-paragraphs (2) and (3) of paragraph 46 of Schedule 18 to the Finance Act 1998 (fraud or negligence). 1998 c. 36.

Those sub-paragraphs shall apply in relation to any notice under paragraph 60(3)(a)(ii) or (b) as if it were an assessment relating to the accounting period to which any assessment made by virtue of the notice would relate.

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Interest

63.—(1) This paragraph applies where—

(a) investment relief is withdrawn or reduced by virtue of—

(i) a failure to meet any of the requirements of paragraphs 5 to 10 or of Part III of this Schedule (requirements to be met in relation to investing company or issuing company);

(ii) paragraph 46 (disposal of shares);

(iii) paragraph 47 (value received by investing company);

(iv) paragraph 56 (value received by other persons); or

(v) paragraph 59 (put options and call options);

(b) as a result, an assessment to corporation tax is made by virtue of paragraph 60; and

(c) the relevant event occurs after the date when the tax assessed became due and payable or, if there is more than one such date, the latest of them.

1970 c. 9.

(2) Section 87A of the Taxes Management Act 1970 (interest on overdue corporation tax etc.) has effect in relation to the tax assessed as if it became due and payable on the date the relevant event occurred.

(3) In this paragraph references to "the relevant event" are to the event by virtue of which the relief is withdrawn or reduced as mentioned in sub-paragraph (1)(a).

Information to be provided by the investing company

64.—(1) This paragraph applies where—

(a) the investing company has obtained investment relief in respect of the relevant shares, and

(b) an event occurs by reason of which—

(i) the company is not a qualifying investing company in relation to those shares,

(ii) the investment relief falls to be withdrawn or reduced by virtue of paragraph 47 (receipt of value by investing company), or

(iii) the investment relief falls to be withdrawn or reduced by virtue of paragraph 59 (put options and call options).

(2) Where this paragraph applies the investing company must give the Inland Revenue a notice containing particulars of the event.

(3) Where the investing company—

(a) is required under this paragraph to give notice of a receipt of value (within paragraph 49(1)), and

(b) has knowledge of any replacement value received (or expected to be received) from the original recipient by the original supplier by reason of a qualifying receipt,

the notice shall include particulars of that receipt of replacement value (or expected receipt).

In this paragraph "replacement value", "original recipient", "original supplier" and "qualifying receipt" shall be construed in accordance with paragraph 54.

(4) Subject to sub-paragraph (5), any notice required to be given by the company under sub-paragraph (2) must be given—

(a) within 60 days after the event, or

(b) where the event is the receipt of value by a person connected with the company (see paragraph 53), within 60 days after the company's coming to know of the event.

(5) In a case within sub-paragraph (1)(b)(ii), where the event occurred before the issue of the relevant shares, any notice required to be given by the investing company under sub-paragraph (2) must be given—

(a) within 60 days after the issue of the shares, or

(b) where—

(i) the event is the receipt of value by a person connected with the company (see paragraph 53), and

(ii) the company comes to know of the event on or after the issue of the shares,

within 60 days after the company's coming to know of the event.

Information to be provided by the issuing company etc.

65.—(1) This paragraph applies where—

(a) the issuing company has provided the Inland Revenue with a compliance statement in respect of an issue of shares, and

(b) an event occurs by reason of which—

(i) the issuing company is not a qualifying issuing company in relation to any of the shares included in that issue, or would not be such a company if investment relief had been obtained in respect of the shares in question,

(ii) the requirements of Part IV of this Schedule are not met in respect of any of the shares included in that issue, or would not be met if investment relief had been obtained in respect of the shares in question, or

(iii) paragraph 47 (value received by investing company) or 56 (value received by other persons) has effect to cause any investment relief attributable to any of the shares included in that issue to be withdrawn or reduced, or would have such an effect if investment relief had been obtained in respect of the shares in question.

(2) Where this paragraph applies—

(a) the company, and

(b) any person connected with the company who has knowledge of the matters mentioned in sub-paragraph (1),

must give the Inland Revenue a notice containing particulars of the event.

(3) Sub-paragraph (3) of paragraph 64 shall apply in relation to a person required to give notice under this paragraph of a receipt of value within paragraph 49(1) as it applies to a company required to give such a notice under paragraph 64.

(4) Subject to sub-paragraph (6) any notice required to be given by a company under sub-paragraph (2)(a) must be given—

(a) within 60 days after the event, or

(b) where the event is—

(i) a failure by the company to meet the requirement of paragraph 18 (the "individual-owners requirement") in respect of any of those shares; or

(ii) a receipt of value within paragraph 49(1) from a person connected with the company (see paragraph 53),

within 60 days after the company's coming to know of the event.

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(5) Subject to sub-paragraph (6) any notice required to be given by a person within sub-paragraph (2)(b) must be given within 60 days after the person's coming to know of the event.

(6) In a case within sub-paragraph (1)(b)(iii), any notice required to be given by a person under sub-paragraph (2) must be given within 60 days after the issue of the shares if—

(a) the event occurred, and

(b) the person came to know of it,

before those shares were issued.

Power of Inland Revenue to obtain information

66.—(1) This paragraph applies where the Inland Revenue have reason to believe that a company or other person—

(a) has not given a notice which it is required to give under paragraph 64 or 65 in respect of any event, or

(b) has given or received value (within the meaning of paragraph 49(1)) which, but for the fact that the amount given or received was an amount of insignificant value, would have triggered a requirement to give such a notice.

(2) The Inland Revenue may by notice require the person concerned to furnish them, within such time as the Inland Revenue may direct (not being less than 60 days), with such information relating to the event as the Inland Revenue may reasonably require for the purposes of this Schedule.

(3) In sub-paragraph (1)(b) the reference to an amount of insignificant value shall be construed in accordance with paragraph 47(7)(b).

PART VII

RELIEF FOR LOSSES ON DISPOSALS OF SHARES

Eligibility for relief against income

67.—(1) The investing company is eligible for relief under this Part ("loss relief") if—

(a) it incurs an allowable loss on the disposal of shares to which investment relief is attributable (and not withdrawn in full as a result of the disposal), and

(b) the requirements of sub-paragraphs (2) and (3) are met.

(2) The first requirement is that the shares must have been held continuously by the investing company from the time they were issued until the disposal.

(3) The second requirement is that the disposal on which the loss is incurred must be a disposal of the kind described in paragraph (a), (b), (c) or (d) of paragraph 46(2).

Entitlement to claim

68.—(1) Where the investing company is eligible for loss relief it may make a claim requiring that the loss be set off for the purposes of corporation tax against income—

(a) of the accounting period in which the loss is incurred, and

(b) if the claim so requires, of accounting periods ending within the preceding 12 month period.

(2) A claim under sub-paragraph (1) must be made within two years after the end of the accounting period in which the loss is incurred.

(3) In this paragraph "the preceding 12 month period" means the 12 months ending immediately before the accounting period in which the loss is incurred.

Form of loss relief

69.—(1) Where a claim is made under sub-paragraph (1) of paragraph 68, the income of any of the accounting periods mentioned in that sub-paragraph shall then be treated as reduced by the amount of the loss or by so much of it as cannot be relieved under this sub-paragraph against income of a later accounting period.

This is subject to loss relief first being obtained for any earlier loss.

(2) The amount of the reduction which may be made under this paragraph in the income of an accounting period beginning before the preceding 12 month period (within the meaning of paragraph 68(3)) shall not exceed a part of that income proportionate to the part of the accounting period falling within that period.

Priority of loss relief

70.—(1) Where loss relief is claimed by the investing company it must be claimed—

(a) in priority to any relief claimed by that company under section 573 of the Taxes Act 1988 (relief for loss on disposal of shares in certain trading companies by investment companies), and

(b) before any deduction is made for charges on income or other amounts which can be deducted from or set against or treated as reducing profits of any description.

(2) Where loss relief is obtained for an amount of a loss no deduction shall be made in respect of that amount—

(a) by virtue of section 573(2) of the Taxes Act 1988 (relief for loss on disposal of shares in certain trading companies by investment companies), or

(b) for the purposes of corporation tax on chargeable gains.

Tax avoidance

71.—(1) Sub-paragraph (2) applies where shares would, in the absence of paragraph 82 (which disapplies sections 135 and 136 of the 1992 Act in respect of shares to which investment relief is attributable), be the subject of an exchange or arrangement which—

(a) is of the kind mentioned in section 135 or 136 of the 1992 Act (company reconstructions etc.), and

(b) would involve a disposal of shares, by reason of—

(i) section 137(1) of that Act (schemes with tax avoidance purpose), or

(ii) paragraph 96(2)(b) (company treated as disposing of shares in the case of certain reconstructions and amalgamations involving tax avoidance).

(2) Where this sub-paragraph applies no loss relief may be obtained in respect of any allowable loss incurred on the disposal.

(3) Where a claim is made under this Part in respect of a loss accruing on the disposal of shares, section 30 of the 1992 Act (value-shifting) shall have effect in relation to the disposal as if for the references in subsections (1)(b) and (5) of that section to a tax-free benefit there were substituted references to any benefit whether tax-free or not.

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Adjustment of corporation tax

72. The Inland Revenue shall make any adjustment of corporation tax required as a result of—

(a) loss relief being obtained in respect of an allowable loss, or

(b) loss relief not being obtained for the whole or part of a loss in respect of which a claim is made under this Part,

whether by way of assessment, discharge or repayment of tax.

PART VIII

DEFERRAL RELIEF

Introduction

73.—(1) This Part applies where—

(a) a chargeable gain ("the original gain") accrues to the investing company at any time ("the accrual time"),

(b) the gain is one accruing either—

(i) on a disposal of shares to which investment relief was attributable immediately before the disposal, or

(ii) by virtue of paragraph 79 on the occurrence of a chargeable event in relation to shares to which deferral relief is attributable immediately before the event,

and

(c) the investing company makes a qualifying investment.

(2) In determining for the purposes of sub-paragraph (1)(a) whether or not a chargeable gain accrues at any time paragraph 76 (postponement of original gain) shall be disregarded.

(3) Sub-paragraph (1)(b)(i) does not apply to a disposal of shares unless the shares were held by the investing company continuously from the time they were issued until the disposal.

Meaning of "qualifying investment"

74.—(1) For the purposes of this Part the investing company makes a qualifying investment if—

(a) it subscribes for any shares to which investment relief is attributable,

(b) the shares are not issued by a prohibited company,

(c) the shares are issued to the investing company at a qualifying time, and

(d) where the shares were issued before the accrual time—

(i) they have been held continuously by the investment company from the time they were issued until that time, and

(ii) investment relief is attributable to the shares at that time.

(2) For the purposes of sub-paragraph (1)—

"a prohibited company" means—

(a) the company whose shares comprised the original holding, or

(b) a company that was, at the accrual time or the time of the issue of the qualifying shares (or both), a member of the same group as that company; and

"a qualifying time" means any time in the period of four years beginning one year before the accrual time.

(3) For the purposes of the definition of "a prohibited company" in sub-paragraph (2), "the original holding" means—

(a) where the original gain accrued as mentioned in sub-paragraph (i) of paragraph 73(1)(b), the shares disposed of, and

(b) where the original gain accrued as mentioned in sub-paragraph (ii) of paragraph 73(1)(b), the shares in relation to which the chargeable event occurred.

Meaning of "the qualifying shares"

75.—(1) For the purposes of this Part "the qualifying shares", in relation to a case where this Part applies, means the shares which are acquired by the investing company in making the qualifying investment.

This is subject to sub-paragraphs (2) and (4).

(2) If any corresponding bonus shares are issued to the investing company, this Part shall apply as if references to the qualifying shares were to all the shares comprising the qualifying shares and the bonus shares so issued.

(3) In sub-paragraph (2) "corresponding bonus shares" means bonus shares which—

(a) are issued in respect of the qualifying shares, and

(b) are in the same company, of the same class and carry the same rights as those shares.

(4) If in circumstances where paragraph 83 (certain exchanges resulting in acquisition of share capital by new company) applies new shares are issued in exchange for old shares, references in this Part to the qualifying shares, so far as they relate to the old shares, shall be construed as references to the new shares.

For this purpose "old shares" and "new shares" have the same meaning as in that paragraph.

Postponement of original gain

76.—(1) On the making of a claim by the investing company for the purposes of this Part, so much of the investing company's unused qualifying expenditure on the qualifying shares as—

(a) is specified in the claim, and

(b) does not exceed so much of the original gain as is unmatched,

shall be set against a corresponding amount of the original gain.

(2) Where an amount of qualifying expenditure on the qualifying shares is set under this paragraph against the whole or part of the original gain, then for the purposes of corporation tax on chargeable gains—

(a) so much of that gain as is equal to that amount shall be treated as not having accrued at the accrual time, but

(b) paragraph 79 applies for determining the gain that is to be treated as accruing on the occurrence of any chargeable event in relation to any of the qualifying shares.

(3) For the purposes of this Part—

(a) the investing company's qualifying expenditure on the qualifying shares is the amount subscribed by it for the shares, and

(b) that expenditure is unused to the extent that it has not already been set under this paragraph against the whole or any part of a chargeable gain.

(4) For the purposes of this paragraph the original gain is unmatched in relation to any qualifying expenditure on the qualifying shares to the extent that it has not had any other expenditure set against it under this paragraph.

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Meaning of "deferral relief"

77. For the purposes of this Schedule "deferral relief" is attributable to any shares if—

(a) expenditure on the shares has been set under paragraph 76 against the whole or part of any gain, and

(b) there has been no chargeable event for the purposes of this Part in relation to the shares.

Chargeable events

78.—(1) There is, for the purposes of this Part, a chargeable event in relation to any of the qualifying shares if—

(a) the investing company disposes of those shares, or

(b) any other event occurs by reason of which the investment relief attributable to those shares is reduced or withdrawn otherwise than by virtue of paragraph 46(2) or (3) (withdrawal of investment relief on disposal of shares).

(2) For the purposes of sub-paragraph (1)(b), where the qualifying investment is made before the time at which the original gain accrues, any reduction of the investment relief attributable to the qualifying shares that is made by reason of an event that occurs before the accrual time shall be disregarded.

Gain accruing on chargeable event

79.—(1) This paragraph applies where a chargeable event occurs in relation to any of the qualifying shares in relation to which there has not been a previous chargeable event.

(2) Where this paragraph applies, then for the purposes of corporation tax on chargeable gains—

(a) a chargeable gain shall be treated as accruing to the investing company at the time of the event, and

(b) the amount of the gain shall be equal to so much of the deferred gain as is attributable to the shares in relation to which the chargeable event occurs.

(3) In order to determine, for this purpose, the amount of the deferred gain attributable to any shares, a proportionate part of the amount of the gain shall be attributed to each of the qualifying shares held immediately before the occurrence of the chargeable event in question by the investing company.

(4) In this paragraph "the deferred gain" means—

(a) the amount of the original gain against which expenditure has been set under paragraph 76, less

(b) the amount of any gain treated as accruing under this paragraph previously in consequence of a chargeable event in relation to any of the qualifying shares.

(5) For the purposes of section 10 of the 1992 Act (taxation of chargeable gains accruing to non-resident with UK branch or agency) a chargeable gain treated as accruing by virtue of this paragraph shall be treated as a chargeable gain accruing on the disposal of an asset to which subsection (3) of that section applies.

PART IX

COMPANY RESTRUCTURING

Share reorganisations

80.—(1) Where a company ("the company") holds shares which—

(a) form part of the ordinary share capital of another company,

(b) are of the same class and held in the same capacity, and

(c) include shares falling within two or more of the categories in sub-paragraph (2),

then, where there is a reorganisation affecting those shares to which section 116 or section 127 of the 1992 Act applies, section 116 or (as the case may be) section 127 shall apply separately to shares falling within each of those categories.

(2) The categories referred to in sub-paragraph (1)(c) are—

(a) shares to which deferral relief is attributable;

(b) shares—

(i) to which investment relief but not deferral relief is attributable, and

(ii) which have been held continuously by the company since the time they were issued until the reorganisation; and

(c) shares not within paragraph (a) or (b) above.

(3) In this paragraph "reorganisation" has the meaning given in section 126 of the 1992 Act.

Rights issues etc.

81.—(1) Where—

(a) a company ("the company") holds shares ("the existing holding") which—

(i) form part of the ordinary share capital of another company, and

(ii) are of the same class and held in the same capacity,

(b) there is by virtue of such an allotment as is mentioned in section 126(2)(a) of the 1992 Act (an allotment of shares or debentures in respect of and in proportion to an original holding), other than an allotment of corresponding bonus shares, a reorganisation affecting the existing holding,

(c) immediately following the reorganisation, investment relief is attributable to the shares comprised in the existing holding or the shares allotted in respect of those shares, and

(d) if investment relief is attributable to the shares comprised in the existing holding at that time, those shares have been held by the company continuously from the time they were issued until the reorganisation,

sections 127 to 130 of that Act (treatment of share capital following a reorganisation) shall not apply in relation to the existing holding.

(2) Subsection (10) of section 116 of that Act (reorganisations, conversions and reconstructions) shall not apply in any case where the old asset consists of shares held (in the same capacity) by a company—

(a) that have been held by it continuously from the time they were issued until the relevant transaction, and

(b) to which investment relief is attributable immediately before that transaction.

In this sub-paragraph "old asset" and "the relevant transaction" have the meanings given in section 116 of that Act.

(3) For the purposes of sub-paragraph (1)—

"corresponding bonus shares" means bonus shares that—

(a) are issued in respect of shares comprised in the existing holding, and

(b) are of the same class, and carry the same rights, as those shares;

"reorganisation" has the meaning given in section 126 of that Act.

Company reconstructions and amalgamations

82.—(1) Where—

(a) a company ("the company") holds shares ("the existing holding") in a company ("company A"),

(b) there is a reconstruction or amalgamation affecting the existing holding,

(c) immediately before the reconstruction or amalgamation, investment relief is attributable to the shares comprised in the existing holding, and

(d) the shares comprised in the existing holding have been held by the company continuously from the time they were issued until the reconstruction or amalgamation,

sections 135 and 136 of the 1992 Act (company reconstructions and amalgamations) shall not apply in respect of the existing holding.

This is subject to paragraph 84 (no disposal on certain exchanges of shares).

(2) Sub-paragraph (1)(a) applies only where the shares are held by the company in the same capacity.

(3) For the purposes of sub-paragraph (1) a "reconstruction or amalgamation" means an issue by a company ("company B") of shares in or debentures of that company in exchange for or in respect of shares in or debentures of company A.

Certain exchanges resulting in acquisition of share capital by new company

83.—(1) Paragraphs 84 and 85 apply where—

(a) arrangements are made in accordance with which a company ("the new company") acquires all the shares ("old shares") in another company ("the old company");

(b) the acquisition provided for by the arrangements falls within sub-paragraph (2); and

(c) the Inland Revenue have, before any exchange of shares takes place under the arrangements, given an approval notification.

(2) An acquisition of shares falls within this sub-paragraph if—

(a) the consideration for the old shares consists wholly of the issue of shares ("new shares") in the new company;

(b) new shares are issued in consideration of old shares only at times when there are no issued shares in the new company other than—

(i) subscriber shares, and

(ii) new shares previously issued in consideration of old shares;

(c) the consideration for new shares of each description consists wholly of old shares of the corresponding description; and

(d) new shares of each description are issued to the holders of old shares of the corresponding description in respect of, and in proportion to, their holdings.

(3) For the purposes of sub-paragraph (1)(c) an approval notification is one which, on an application by either the old company or the new company, is given to the applicant company and states that the Inland Revenue are satisfied that the exchange of shares under the arrangements—

(a) will be effected for commercial reasons, and

(b) will not form part of any such scheme or arrangements as are mentioned in section 137(1) of the 1992 Act (schemes with tax avoidance purpose).

(4) For the purposes of this paragraph old shares and new shares are of a corresponding description if, on the assumption that they were shares in the same company, they would be of the same class and carry the same rights.

(5) In this paragraph references to "shares", except in the expression "subscriber shares", include securities.

(6) References in paragraphs 84 to 87 to "shares", "old shares", "new shares", "the old company" and "the new company" shall be construed in accordance with this paragraph.

No disposal on certain exchanges of shares

84.—(1) Where this paragraph applies (see paragraph 83), nothing in paragraph 82 has effect to disapply section 135 of the 1992 Act (exchange of shares etc. for those in another company).

Accordingly, by virtue of section 127 of that Act (as applied by section 135(3)), the exchange of shares is not treated as involving a disposal of the old shares or an acquisition of the new shares.

(2) In its application by virtue of sub-paragraph (1), section 127 of the 1992 Act shall have effect subject to paragraph 80 (shares to which investment relief or investment and deferral relief is attributable treated as separate holdings).

Attribution of relief to new shares

85.—(1) Where this paragraph applies (see paragraph 83), any investment relief or deferral relief which is attributable to any old shares shall be attributable instead to the new shares for which they are exchanged.

(2) Where investment relief becomes so attributable to any new shares—

(a) this Schedule shall have effect as if anything which under paragraph 41, 42, 60 or 65 has been done, or is required to be done, by or in relation to the old company had been done, or were required to be done, by or in relation to the new company; and

(b) any appeal brought by the old company against—

(i) the refusal of the Inland Revenue to authorise the issue of a compliance certificate, or

(ii) a notice under paragraph 60(3)(b),

may be prosecuted by the new company as if it had been brought by that company.

Substitution of new shares for old shares

86.—(1) This paragraph applies where—

(a) relief becomes attributable, by virtue of paragraph 85, to any new shares held by a company ("the company"), and

(b) the old shares for which those shares were exchanged ("the relevant old shares") were—

(i) subscribed for by and issued to the company, and

(ii) held by it continuously from the time they were issued until the exchange.

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(2) Where this paragraph applies this Schedule shall have effect as if—

(a) the matching new shares had been subscribed for by the company at the time when, and for the amount for which, the relevant old shares were subscribed for,

(b) the matching new shares had—

(i) been issued at the time when the relevant old shares were issued, and

(ii) been held continuously by the company from that time until the exchange,

(c) any claim for relief under Part V (investment relief), or Part VIII (deferral relief), of this Schedule made in respect of the relevant old shares had been made in respect of the matching new shares, and

(d) the company's liability to corporation tax had been reduced under Part V of this Schedule in respect of the matching new shares for the same accounting period as that for which its liability was so reduced in respect of the relevant old shares.

(3) For the purposes of this paragraph old shares and new shares are matching shares in relation to each other if the old shares are the shares for which those new shares are exchanged under the arrangements.

Operation of requirements of Parts II and III in relation to new shares

87.—(1) This paragraph applies where paragraph 86 (substitution of new shares for old shares) applies in relation to any new shares held by a company.

(2) If, immediately before the exchange, any of the requirements of paragraphs 5, 8 and 13 (requirements to be met by a qualifying investing company in relation to the relevant shares) was (or was deemed to be) met to any extent by the company in relation to the matching old shares, the requirement shall be deemed to be met by the company to the same extent in relation to the new shares.

(3) If, immediately before the exchange, any of the requirements of paragraphs 16 to 22 (requirements to be met by a qualifying issuing company) was (or was deemed to be) met to any extent by the old company in relation to the matching old shares, it shall be deemed to be met to the same extent by the new company in relation to the new shares.

(4) In determining whether the requirements of paragraphs 17 (the independence requirement) and 20 (the qualifying subsidiaries requirement) are met in relation to the old company or the new company at a time in the period for giving effect to the arrangements, both—

(a) the arrangements themselves, and

(b) any exchange of new shares for old shares that has already taken place under the arrangements,

shall be disregarded.

(5) If, immediately before the period for giving effect to the arrangements, the requirement of paragraph 23(1) (the trading activities requirement) was (or was deemed to be) met to any extent by the old company in relation to the matching old shares—

(a) it shall be deemed to be met to the same extent by the new company in relation to the new shares, and

(b) to the extent that it would not otherwise be the case, it shall also be deemed to be met by that company in relation to those shares at all times which—

(i) fall in the period for giving effect to the arrangements, and

(ii) do not fall after a time when (apart from the arrangements) the requirement would have ceased to have been met by the old company in relation to the matching old shares.

(6) For the purposes of this paragraph—

(a) "the period for giving effect to the arrangements" means the period which—

(i) begins when those arrangements first come into existence; and

(ii) ends when the new company completes its acquisition under the arrangements of all the old shares;

and

(b) references to matching shares shall be construed in accordance with paragraph 86(3).

Relationship between this Part and the 1992 Act

88. The following provisions of the 1992 Act have effect subject to paragraphs 80, 81, 82 and 84 (which make special provision in respect of company reorganisations etc. involving shares to which investment relief is attributable)—

section 116 (reorganisations, conversions and reconstructions); and

Chapter II of Part IV (reorganisation of share capital, conversion of securities etc.).

PART X

ADVANCE CLEARANCE

Application for advance clearance notice

89.—(1) A company ("the applicant") may, before issuing any shares, make an application to the Board for an advance clearance notice in respect of that issue.

(2) An advance clearance notice is a notice issued by the Board in respect of an issue of shares which states that, on the basis of the particulars, declarations and undertakings provided by the applicant, the Board are satisfied that, at the time the shares are issued, the requirements of Parts III and IV of this Schedule will be met (or, in the case of any requirement that cannot be met until a future date, will be met for the time being) in relation to the shares.

(3) For the purposes of determining whether they are satisfied as mentioned in sub-paragraph (2) the Inland Revenue shall assume that the shares included in the issue of shares are "the relevant shares".

(4) An application under this paragraph must—

(a) contain the particulars, declarations and undertakings required by the Board, and

(b) disclose all facts and circumstances material for the decision of the Board.

(5) In this Part references to an "application" are to an application under this paragraph.

Provision of further information

90.—(1) On receiving an application for an advance clearance notice, the Board may by notice ("an information notice") require the applicant to provide them, within such time as the Board may direct (not being less than 30 days), with such further particulars as the Board deem necessary to enable them to decide whether or not to issue an advance clearance notice.

(2) An information notice must be given—

(a) within 30 days after the receipt of the application, or

(b) if further particulars have already been provided in response to an earlier information notice, within 30 days after the receipt of those particulars.

(3) If the applicant does not comply with an information notice within the period specified in the notice, the Board need not proceed further on the application.

Decision on application and review procedure

91.—(1) The Board must within 30 days after receiving an application or, where an information notice is given in relation to the application, within 30 days after that notice being complied with—

(a) issue an advance clearance notice in respect of the shares to which the application relates, or

(b) notify the applicant that the Board are not satisfied as mentioned in paragraph 89(2) in respect of those shares.

This is subject to sub-paragraph (3) and to paragraph 90(3) (circumstances in which Board need not proceed on application).

(2) In a case where two or more information notices are given in relation to the application, the time limit in sub-paragraph (1) is calculated by reference to the time when the later (or last) of the notices is complied with.

(3) If before the Board issue an advance clearance notice in respect of the issue of shares to which the application relates, or notify the applicant under sub-paragraph (1), the applicant issues the shares in question, the Board need not proceed further on the application.

(4) If the Board—

(a) notify the applicant that they are not satisfied as mentioned in paragraph 89(2), or

(b) in a case to which sub-paragraph (3) does not apply, fail to notify their decision to the applicant in accordance with sub-paragraph (1),

the applicant may, within 30 days after the notification or failure, require the Board to transmit the application, together with any information notices given and further particulars provided under paragraph 90, to the Special Commissioners.

(5) Where sub-paragraph (4) applies any notification by the Special Commissioners that they are satisfied as mentioned in paragraph 89(2) shall have effect as if it were an advance clearance notice issued by the Board in respect of the issue of shares in question.

Effect of advance clearance notice

92.—(1) For the purposes of this Schedule, where an advance clearance notice is issued in respect of an issue of shares before the shares are issued, the requirements of Parts III and IV of this Schedule shall be treated as met (or, in the case of any requirement that cannot be met until a future date, as met for the time being) in relation to those shares at the time they are issued.

(2) If—

(a) any particulars provided in the application for the notice, or in response to any information notice relating to the application, do not fully and accurately disclose all facts and circumstances material for the decision of the Board or the Special Commissioners, or

(b) the applicant or any of its subsidiaries fails to act in accordance with any declaration or undertaking which was given in, or in connection with, the application,

any resulting advance clearance notice shall be void.

(3) Sub-paragraph (2)(b) applies in relation to a subsidiary of the applicant whether or not it was such a subsidiary at the time the declaration or undertaking in question was given.

PART XI

SUPPLEMENTARY AND GENERAL

Identification of shares on a disposal

93.—(1) In any case where—

(a) a company ("the company") disposes of part of a holding of shares ("the holding"), and

(b) the holding includes shares to which investment relief is attributable that have been held continuously by the company from the time they were issued until the disposal,

this paragraph applies for the purpose of identifying the shares disposed of.

(2) For the purposes of this paragraph "holding" means any number of shares of the same class in another company held by the company in the same capacity, growing or diminishing as shares of that class are acquired or disposed of.

(3) Where shares included in the holding have been acquired by the company on different days, then, for the purposes of corporation tax on chargeable gains and of this Schedule, any disposal by the company of any of those shares shall be treated as relating to those acquired on an earlier day rather than to those acquired on a later day.

(4) Where shares included in the holding have been acquired by the company on the same day, then, for the purposes of corporation tax on chargeable gains and of this Schedule, if there is a disposal by the company of any of those shares, any shares—

(a) to which investment relief is attributable, and

(b) which have been held by the company continuously from the time they were issued until the time of disposal,

shall be treated as disposed of after any other shares included in the holding which were acquired by the company on that day.

(5) Chapter I of Part IV of the 1992 Act (share pooling, etc.) shall have effect subject to this paragraph.

(6) Sections 104 to 106 and 107 of that Act (which make provision for the purposes of corporation tax on chargeable gains for the identification of shares on a disposal) shall not apply to shares to which investment relief is attributable.

(7) In a case to which section 127 of that Act (equation of original shares and new holding) applies (whether or not by virtue of section 135(3) of that Act), shares comprised in the new holding shall be treated for the purposes of sub-paragraphs (3) and (4) as acquired when the original shares were acquired.

In this sub-paragraph "new holding" and "original shares" shall be construed in accordance with sections 126, 127, 135 and 136 of that Act.

Determination of loss where investment relief is attributable to shares

94.—(1) This paragraph applies for the purposes of corporation tax on chargeable gains where—

(a) a company disposes of shares which were held by it continuously from the time they were issued until the disposal,

(b) investment relief is attributable to the shares (and not withdrawn in full as a result of the disposal), and

(c) apart from sub-paragraph (2), there would be a loss on the disposal.

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(2) For the purpose of determining the gain or loss on the disposal the consideration given by the company for the shares is treated as reduced by the amount of the investment relief attributable to the shares immediately after the disposal.

(3) Any gain which accrues by virtue of sub-paragraph (2) is not a chargeable gain.

(4) Notwithstanding the definition of "allowable loss" in section 834(1) of the Taxes Act 1988 (interpretation of the Corporation Tax Acts), nothing in sub-paragraph (3) has effect in relation to any loss determined in accordance with sub-paragraph (2) to prevent it being an allowable loss.

Nominees

95. Shares subscribed for by, issued to, acquired or held by or disposed of by a nominee for any person shall be treated for the purposes of this Schedule as subscribed for by, issued to, acquired or held by or disposed of by that person.

Meaning of "disposal"

96.—(1) Subject to sub-paragraph (2), in this Schedule "disposal" shall be construed in accordance with the 1992 Act, and cognate expressions shall be construed accordingly.

(2) A company shall be treated for the purposes of this Schedule, and for the purposes of corporation tax on chargeable gains, as disposing of any shares which but for paragraph 82 (company reconstructions and amalgamations) it—

(a) would be treated as exchanging for other shares by virtue of section 136(1) of the 1992 Act, or

(b) would be so treated but for section 137(1) of the 1992 Act (which restricts sections 135 and 136 of that Act to bona fide reconstructions and amalgamations).

Construction of references to shares being "held continuously"

97.—(1) This paragraph applies where for the purposes of this Schedule it falls to be determined whether a company has held shares continuously throughout any period.

(2) The company shall not be treated as having held shares continuously throughout a period if—

(a) it is deemed, under any provision of the 1992 Act, to have disposed of and immediately reacquired the shares at any time during the period, or

(b) it is treated as having disposed of the shares at any such time, by virtue of paragraph 96(2) (on reconstruction or amalgamation company treated as disposing of shares continuously held by it to which investment relief is attributable).

Meaning of "issue of shares"

98. In this Schedule—

(a) references (however expressed) to an issue of shares in any company are to such of the shares in the company as are of the same class and issued on the same day; and

(b) references (however expressed) to an issue of shares in a company to a person are references to such of the shares in an issue of shares in that company as are issued to that person in one capacity.

Meaning of "associate"

99.—(1) In this Schedule "associate", in relation to a person, means—

(a) any relative or partner of that person,

(b) the trustee or trustees of any settlement in relation to which that person, or any relative of his (living or dead), is or was a settlor, and

(c) where that person is interested in any shares or obligations of a company which are subject to any trust, or are part of the estate of a deceased person—

(i) the trustee or trustees of the settlement concerned or, as the case may be, the personal representatives of the deceased, and

(ii) if that person is a company, any other company interested in those shares or obligations.

(2) In sub-paragraph (1)(a) and (b) "relative" means husband or wife, parent or remoter forebear or child or remoter issue.

(3) In sub-paragraph (1)(b) "settlor" and "settlement" have the same meaning as in Chapter IA of Part XV of the Taxes Act 1988 (see section 660G(1) and (2)).

"The Board" and "the Inland Revenue"

100. In this Schedule—

(a) "the Board" means the Commissioners of Inland Revenue; and

(b) references to "the Inland Revenue" are to any officer of the Board.

Power to amend by Treasury order

101. The Treasury may by order amend this Schedule—

(a) to make such amendments of—

(i) paragraphs 10 to 12 (the non-financial activities requirement), or

(ii) paragraphs 23 to 33 (the trading activities requirement),

as they consider expedient;

(b) to substitute different sums of money for those for the time being specified in paragraph 22 (gross assets requirement).

Minor definitions etc.

102.—(1) In this Schedule—

"allowable loss" means an allowable loss for the purposes of corporation tax on chargeable gains;

"arrangements" includes any scheme, agreement or understanding, whether or not legally enforceable;

"chargeable gain" means a chargeable gain for the purposes of corporation tax on chargeable gains;

"class", in relation to shares or securities, means a class of shares in or securities of any one company (see sub-paragraph (2));

"director" shall be construed in accordance with section 417(5) of the Taxes Act 1988;

"group" means a parent company and its 51% subsidiaries;

"group company", in relation to a group, means the parent company and any of its 51% subsidiaries;

"ordinary share capital", except in paragraph 7 (meaning of "material interest"), has the meaning given in section 832(1) of the Taxes Act 1988;

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"ordinary shares" means shares forming part of a company's ordinary share capital;

"parent company" means a company that—

(a) has one or more 51% subsidiaries, but

(b) is not itself a 51% subsidiary of another company;

"research and development" has the meaning given by section 837A of the Taxes Act 1988;

"single company" means a company that is not a parent company or a 51% subsidiary of a parent company;

1992 c. 12. "the 1992 Act" means the Taxation of Chargeable Gains Act 1992.

(2) For the purposes of this Schedule shares in or securities of a company shall not be treated as being of the same class unless they would be so treated if dealt with on the Stock Exchange.

(3) Section 839 of the Taxes Act 1988 (connected persons) applies for the purposes of this Schedule.

(4) References in this Schedule to a company being in administration or receivership shall be construed as follows—

(a) references to a company being "in administration" are to there being in force in relation to it—

1986 c. 45.
S.I. 1989/2405 (N.I.19).

(i) an administration order under Part II of the Insolvency Act 1986 or Part III of the Insolvency (Northern Ireland) Order 1989, or

(ii) any corresponding order under the law of a country or territory outside the United Kingdom;

(b) references to a company being "in receivership" are to there being in force in relation to it—

(i) an order for the appointment of an administrative receiver, a receiver and manager or a receiver under Chapter I or II of Part III of the Insolvency Act 1986 or Part IV of the Insolvency (Northern Ireland) Order 1989, or

(ii) any corresponding order under the law of a country or territory outside the United Kingdom.

(5) For the purposes of this Schedule the market value at any time of any asset is the price which it might reasonably be expected to fetch on a sale at that time in the open market free from any interest or right which exists by way of security in or over it.

(6) In this Schedule—

(a) references to investment relief obtained by a company in respect of any shares include references to investment relief obtained by it in respect of those shares at any time after it has disposed of them, and

(b) references to the withdrawal or reduction of investment relief obtained by a company in respect of any shares include references to the withdrawal or reduction of investment relief obtained in respect of those shares at any such time.

(7) In the case of a requirement that cannot be met until a future date—

(a) references in this Schedule to a requirement being met for the time being are to nothing having occurred to prevent its being met, and

(b) references to its continuing to be met are to nothing occurring to prevent its being met.

Index of defined expressions

103. In this Schedule the following expressions are defined or otherwise explained by the provisions indicated:

in administration	paragraph 102(4)(a)
allowable loss	paragraph 102(1)
application (in Part X)	paragraph 89(5)
arrangements	paragraph 102(1)
associate	paragraph 99
the Board	paragraph 100
chargeable gain	paragraph 102(1)
class (of shares)	paragraph 102(1) and (2)
compliance certificate	paragraph 41
compliance statement	paragraph 42
connected person	paragraph 102(3)
deferral relief	paragraph 77
director	paragraph 102(1)
disposal	paragraph 96
excluded activities	paragraph 26
group	paragraph 102(1)
group company	paragraph 102(1)
held continuously (in relation to shares)	paragraph 97
the Inland Revenue	paragraph 100
the investing company	paragraph 2
investment relief	paragraph 1
issue of shares	paragraph 98
the issuing company	paragraph 2
loss relief	paragraph 67(1)
market value	paragraph 102(5)
material interest	paragraph 7
new company (in paragraphs 83 to 87)	paragraph 83
new shares (in paragraphs 83 to 87)	paragraph 83
non-financial trade	paragraph 11
non-financial trading group	paragraph 12
old company (in paragraphs 83 to 87)	paragraph 83
old shares (in paragraphs 83 to 87)	paragraph 83
ordinary share capital	paragraphs 7 and 102(1)
ordinary shares	paragraph 102(1)
parent company	paragraph 102(1)
the period of restriction	paragraph 48
the qualification period	paragraph 3
the qualifying shares (in Part VIII)	paragraph 75
qualifying subsidiary	paragraph 21
qualifying trade	paragraph 25
in receivership	paragraph 102(4)(b)
relevant preference shares	paragraph 9

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the relevant shares	paragraph 2
relief attributable to shares	
investment relief	paragraph 45
deferral relief	paragraph 77
research and development	paragraph 102(1)
single company	paragraph 102(1)
the 1992 Act	paragraph 102(1)
trading activities requirement	paragraph 23(2) and (3)

Section 63(2).

SCHEDULE 16

CORPORATE VENTURING SCHEME: CONSEQUENTIAL AMENDMENTS

Penalties in connection with returns etc.

1970 c. 9.

1.—(1) In section 98 of the Taxes Management Act 1970, the Table is amended as follows.

(2) In the second column after the final entry insert—

"paragraph 64 or 65 of Schedule 15 to the Finance Act 2000".

(3) In the first column after the final entry insert—

"paragraph 66 of Schedule 15 to the Finance Act 2000".

Enterprise investment scheme

2.—(1) Chapter III of Part VII of the Taxes Act 1988 is amended as follows.

(2) In section 303 of the Taxes Act 1988 (value received by persons other than claimants)—

(a) after subsection (1A) insert—

"(1AA) This section is subject to section 303A."; and

(b) in subsection (1B) (receipts which result in withdrawal of person's EIS relief or EIS deferral relief not relevant), after paragraph (b) insert ", or

(c) causes any investment relief (within the meaning of Schedule 15 to the Finance Act 2000) to be withdrawn or reduced by virtue of paragraph 46 (disposal of shares) or 49(1)(a) (repayment etc. of share capital or securities) of that Schedule."

(3) After that section insert—

"Restriction on withdrawal of relief under section 303.

303A.—(1) Subsections (4) and (7) below apply where, by reason of a repayment, any investment relief which is attributable under Schedule 15 to the Finance Act 2000 to any shares is withdrawn under paragraph 56(2) of that Schedule.

(2) For the purposes of this section 'repayment' means a repayment, redemption, repurchase or payment mentioned in paragraph 56(1) of that Schedule (repayments etc. which cause withdrawal of investment relief).

(3) For the purposes of this section 'the relevant amount' is the amount determined by the formula—

$$X - 5Y$$

Where—

X is the amount of the repayment, and

Y is the aggregate amount of investment relief withdrawn by reason of the repayment.

(4) Where the relevant amount does not exceed £1,000 the repayment shall be disregarded for the purposes of section 303(1), unless repayment arrangements are in existence at any time in the period—

(a) beginning one year before the shares mentioned in subsection (1) above are issued, and

(b) expiring at the end of the issue date of those shares.

(5) For this purpose 'repayment arrangements' means arrangements which provide—

(a) for a repayment by the company that issued the shares ('the issuing company') or any subsidiary of that company, or

(b) for anyone to be entitled to such a repayment,

at any time.

(6) Subsection (5)(a) above applies in relation to a subsidiary of the issuing company whether or not it is such a subsidiary—

(a) at the time of the repayment mentioned in subsection (1) above, or

(b) when the arrangements were made.

(7) Where the repayment is not disregarded by virtue of subsection (4) above, the amount receivable by reason of the repayment shall be treated for the purposes of section 303(1C)(a) as an amount equal to the relevant amount.

(8) Where, but for the existence of paragraph 57(1) of Schedule 15 to the Finance Act 2000 (repayments causing insignificant changes to share capital to be disregarded), any investment relief would be withdrawn by reason of a repayment, the repayment shall be disregarded for the purposes of section 303(1).

(9) In this section—

(a) 'investment relief' has the same meaning as in that Schedule; and

(b) references to the withdrawal of investment relief include its reduction."

Loss relief

3.—(1) Chapter VI of Part XIII of the Taxes Act 1988 (relief on losses on shares in trading companies etc.) is amended as follows.

(2) In section 573 (relief for losses incurred by investment companies on disposals of shares in qualifying trading companies)—

(a) in subsection (4)—

(i) for "Relief under subsection (2) above shall be given before any deduction for" substitute "Where relief is claimed under subsection (2) above, it must be claimed before any deduction is made for";

(ii) for "is given" substitute "is obtained";

(iii) for "in respect of the amount" substitute "for an amount"; and

(iv) at the end insert—

"This subsection is subject to subsection (4A) below.";

and

(b) after that subsection insert—

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"(4A) Paragraph 70 of Schedule 15 to the Finance Act 2000 (priority of loss relief) provides that where relief under Part VII of that Schedule (relief for losses on disposals of shares to which investment relief is attributable) is claimed it must be claimed in priority to relief under subsection (2) above."

(3) In section 575(1) (which restricts the disposals in respect of which relief for losses can be obtained), after paragraph (b) insert—

"(ba) a disposal within section 24(1) of the 1992 Act (entire loss, destruction, dissipation or extinction of asset); or".

(4) In section 576—

(a) in subsection (1) for "and (1B)" substitute "to (1C)"; and

(b) after subsection (1B) insert—

"(1C) Where the holding mentioned in subsection (1) above comprises any shares—

(a) to which investment relief is attributable under Schedule 15 to the Finance Act 2000 (corporate venturing scheme), and

(b) which have been held continuously (within the meaning of paragraph 97 of that Schedule) from the time they were issued until the disposal,

any such question as is mentioned in that subsection shall not be determined as provided by that subsection, but shall be determined instead as provided by paragraph 93 of that Schedule (identification of shares on a disposal of part of a holding where investment relief is attributable to any shares in the holding held continuously by the disposing company).

For this purpose paragraph 93 of that Schedule shall have effect as if the references in it to a disposal had the same meaning as in subsection (1) above."

EIS: deferral relief

1992 c. 12.

4.—(1) The Taxation of Chargeable Gains Act 1992 is amended as follows.

(2) In paragraph 14 of Schedule 5B (value received by persons other than claimants)—

(a) in sub-paragraph (1) (repayments etc. which cause revival of a deferred gain under EIS), in paragraph (a) for "an individual" substitute "a person";

(b) at the end of that sub-paragraph insert—

"This is subject to paragraph 14A below.";

(c) in sub-paragraph (3) (exception where repayment etc. causes withdrawal of income tax relief or revival of a deferred gain under the EIS), for "An individual" substitute "A person"; and

(d) in that sub-paragraph, after paragraph (b) insert ", or

(c) causes any investment relief (within the meaning of Schedule 15 to the Finance Act 2000) to be withdrawn or reduced by virtue of paragraph 46 (disposal of shares) or 49(1)(a) (repayment etc. of share capital or securities) of that Schedule."

(3) After that paragraph insert—

"Certain receipts to be disregarded for purposes of paragraph 14

14A.—(1) Sub-paragraph (4) below applies where, by reason of a repayment, any investment relief which is attributable under Schedule 15 to the Finance Act 2000 to any shares is withdrawn under paragraph 56(2) of that Schedule.

(2) For the purposes of this paragraph 'repayment' means a repayment, redemption, repurchase or payment mentioned in paragraph 56(1) of that Schedule (repayments etc. which cause withdrawal of investment relief).

(3) For the purposes of sub-paragraph (4) below 'the relevant amount' is the amount determined by the formula—

$$X - 5Y$$

Where—

X is the amount of the repayment, and

Y is the aggregate amount of the investment relief withdrawn by reason of the repayment.

(4) Where the relevant amount does not exceed £1,000, the repayment shall be disregarded for the purposes of paragraph 14 above, unless repayment arrangements are in existence at any time in the period—

(a) beginning one year before the shares mentioned in sub-paragraph (1) above are issued, and

(b) expiring at the end of the issue date of those shares.

(5) For this purpose 'repayment arrangements' means arrangements which provide—

(a) for a repayment by the company that issued the shares ('the issuing company') or any subsidiary of that company, or

(b) for anyone to be entitled to such a repayment,

at any time.

(6) Sub-paragraph (5)(a) above applies in relation to a subsidiary of the issuing company whether or not it was such a subsidiary—

(a) at the time of the repayment mentioned in sub-paragraph (1) above, or

(b) when the arrangements were made.

(7) Where, but for the existence of paragraph 57(1) of Schedule 15 to the Finance Act 2000 (receipts causing insignificant changes to share capital to be disregarded), any investment relief would be withdrawn by reason of a repayment, the repayment shall be disregarded for the purposes of paragraph 14 above.

(8) In this paragraph—

(a) 'investment relief' has the same meaning as in that Schedule; and

(b) references to the withdrawal of investment relief include its reduction."

Company tax returns, assessments etc.

5.—(1) Schedule 18 to the Finance Act 1998 is amended as follows. 1998 c. 36.

(2) In paragraph 8 (calculation of tax payable), in sub-paragraph (1) after paragraph number 1 of the second step insert—

"1A. Any relief under Part V of Schedule 15 to the Finance Act 2000 (corporate venturing scheme: investment relief)."

(3) In paragraph 9 (claims that cannot be made without a return), after sub-paragraph (3) insert—

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"(4) This paragraph applies to a claim by a company for relief under Part V of Schedule 15 to the Finance Act 2000 (corporate venturing scheme: investment relief)."

Section 64.

SCHEDULE 17

ENTERPRISE INVESTMENT SCHEME: AMENDMENTS

PART I

REDUCTION OF APPLICABLE PERIODS

Meaning of "eligible shares"

1. In section 289 of the Taxes Act 1988 (eligibility for relief), in subsection (7) (definition of "eligible shares") for the words "the period of five years beginning with the date on which they are issued," substitute "the period—

(a) beginning with the issue of the shares, and

(b) ending immediately before the termination date relating to those shares,".

Conditions relating to individuals

2. In section 291 of the Taxes Act 1988 (individuals qualifying for relief)—

(a) in subsection (1)(b) for "seven year" substitute "designated", and

(b) for subsection (6) (definition of "the seven year period") substitute—

"(6) In this Chapter 'the designated period', in relation to any eligible shares issued by a company, means the period—

(a) beginning two years before the issue of the shares, and

(b) ending immediately before the termination date relating to those shares.".

Conditions relating to further investment by connected person

3.—(1) Section 291A of the Taxes Act 1988 (connected persons: directors) is amended as follows.

(2) In subsection (1)(a) for "seven year" substitute "designated".

(3) In subsection (5)(c) (period during which connected person can make a further investment attracting relief)—

(a) for "of five years" substitute "(i)", and

(b) after "paragraph," insert "and

(ii) ending immediately before the termination date relating to those eligible shares,".

Value received from company

4. In section 300(1) of the Taxes Act 1988 (period during which receipt of value by investor may trigger charge) for "seven year" substitute "designated".

Value received by persons other than claimants

5.—(1) Section 303 of the Taxes Act 1988 (value received by persons other than claimants) is amended as follows.

(2) In subsection (1) for "seven year" substitute "designated".

(3) In subsection (2) for "the seven year periods" substitute "the applicable periods".

(4) After that subsection insert—

"(2A) For the purposes of subsection (2) above 'the applicable period' for an issue of eligible shares is—

(a) if the shares were issued before 6th April 2000, the period beginning two years before the issue of the shares and ending immediately before the fifth anniversary of the issue date,

(b) in any other case, the designated period for the issue.".

(5) In subsection (3) for "seven year" substitute "designated".

Meaning of "termination date" and "relevant period"

6.—(1) Section 312 of the Taxes Act 1988 (interpretation of Chapter III) is amended as follows.

(2) In subsection (1) after the definition of "debenture" insert—

"'the designated period' has the meaning given by section 291(6);".

(3) In that subsection, for "and" at the end of the definition of "51 per cent subsidiary" substitute—

"'termination date' in relation to any eligible shares issued by a company, means the third anniversary of the issue date or if—

(a) the shares were issued wholly or mainly in order to raise money for the purpose of a qualifying business activity falling within section 289(2)(a) (company meeting trading activities requirement by reason of the company or a subsidiary carrying on or preparing to carry on a qualifying trade), and

(b) the company or subsidiary concerned had not begun to carry on the trade in question on the issue date,

the third anniversary of the date on which it begins to carry on that trade; and".

(4) For subsection (1A) (definition of "relevant period") substitute—

"(1A) In any provision of this Chapter 'relevant period', in relation to any eligible shares issued by a company, means whichever of the following periods is applied for the purposes of that provision—

(a) the period beginning either—

(i) with the incorporation of the company, or

(ii) if the company was incorporated more than two years before the date on which the shares were issued, two years before that date,

and ending immediately before the termination date relating to the shares, and

(b) the period beginning with the issue of the shares and ending immediately before the termination date relating to them.".

Postponement of chargeable gains on reinvestment

7.—(1) Schedule 5B to the Taxation of Chargeable Gains Act 1992 (enterprise investment scheme: reinvestment) is amended as follows. 1992 c. 12.

(2) In paragraph 19(1), after the definition of "associate" insert—

"'the designated period', in the case of any shares, means the period found by applying section 291(6) of that Act by reference to the company that issued the shares and by reference to the shares;".

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(3) In the following provisions for "five year" substitute "designated"—

paragraph 3(1)(c) and (d) (chargeable events);

paragraph 16(1)(a) (information).

(4) In the following provisions for "seven year" substitute "designated"—

paragraph 13(1) (period during which receipt of value by investor may trigger charge);

paragraph 14(1) (period during which value received by other persons may trigger charge).

Commencement

8. The amendments in this Part of this Schedule have effect in relation to shares issued on or after 6th April 2000.

PART II

QUALIFYING COMPANIES

Company in administration or receivership

9.—(1) In section 293 of the Taxes Act 1988 (qualifying companies), before subsection (5) insert—

"(4A) A company which is in administration or receivership shall not be regarded as ceasing to comply with subsection (2) above by reason of anything done as a consequence of its being in administration or receivership.

This subsection has effect subject to subsection (4B) and subsection (5) below.

(4B) Subsection (4A) applies only if—

(a) the making of the order in question, and

(b) everything done as a consequence of the company being in administration or receivership,

is for bona fide commercial reasons and is not part of a scheme or arrangement the main purpose or one of the main purposes of which is the avoidance of tax.".

(2) In section 289(1D) of the Taxes Act 1988 for "Subsection (6)" substitute "Subsections (4A) and (6)" and for "it applies" substitute "they apply".

(3) In section 289A of the Taxes Act 1988, after subsection (8) insert—

"(8A) Where the company or subsidiary concerned, by reason of anything done as a consequence of its being in administration or receivership, carries on a trade for a period shorter than four months, subsection (7)(a) above shall have effect as if it referred to that shorter period.

This applies only if—

(a) the making of the order in question, and

(b) everything done as a consequence of the company being in administration or receivership,

is for bona fide commercial reasons and is not part of a scheme or arrangement the main purpose or one of the main purposes of which is the avoidance of tax.".

(4) In section 312 of the Taxes Act 1988 (interpretation), after subsection (2) insert—

"(2A) References in this Chapter to a company being in administration or receivership shall be construed as follows—

(a) references to a company being 'in administration' are to there being in force in relation to it—

(i) an administration order under Part II of the Insolvency Act 1986 or Part III of the Insolvency (Northern Ireland) Order 1989, or

1986 c. 45.
S.I. 1989/2405 (N.I. 19).

(ii) any corresponding order under the law of a country or territory outside the United Kingdom;

(b) references to a company being 'in receivership' are to there being in force in relation to it—

(i) an order for the appointment of an administrative receiver, a receiver and manager or a receiver under Chapter I or II of Part III of the Insolvency Act 1986 or Part IV of the Insolvency (Northern Ireland) Order 1989, or

(ii) any corresponding order under the law of a country or territory outside the United Kingdom.".

Company in liquidation

10. In section 293(6) of the Taxes Act 1988 (circumstances in which liquidation does not affect company's qualifying status), paragraph (b) (requirement as to period within which company's net assets are distributed) shall cease to have effect.

Independence of qualifying company

11. In section 293 of the Taxes Act 1988 (qualifying companies), for subsection (8) substitute—

"(8) Subject to section 304A, the company must not at any time in the relevant period—

(a) control (whether on its own or together with any person connected with it) any company which is not a qualifying subsidiary, or

(b) be—

(i) a 51% subsidiary of another company, or

(ii) under the control of another company (or of another company and any other person connected with that other company), without being a 51% subsidiary of that other company,

and no arrangements must be in existence at any time in that period by virtue of which the company could fall within paragraph (a) or (b) above (whether during that period or otherwise).

(8AA) In subsection (8)(b) above 'control' has the meaning given by section 840.".

Commencement

12.—(1) The amendments in this Part of this Schedule have effect—

(a) in relation to shares issued on or after 21st March 2000, and

(b) in respect of the application of section 293 of the Taxes Act 1988 on or after that date in relation to shares—

(i) that were issued after 31st December 1993 but before 21st March 2000, and

(ii) to which income tax relief or deferral relief was attributable immediately before 21st March 2000.

(2) In sub-paragraph (1)—

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"income tax relief" means relief under Chapter III of Part VII of the Taxes Act 1988 (enterprise investment scheme); and

1992 c. 12.

"deferral relief" has the same meaning as in Schedule 5B to the Taxation of Chargeable Gains Act 1992.

PART III

OTHER AMENDMENTS

Qualifying trades

13.—(1) In section 297 of the Taxes Act 1988 for subsections (4) and (5) (trades consisting of receiving royalties and licence fees) substitute—

"(4) A trade shall not be treated as failing to comply with this section by reason only that at some time in the relevant period it consists to a substantial extent in the receiving of royalties or licence fees if the royalties and licence fees (or all but for a part that is not a substantial part in terms of value) are attributable to the exploitation of relevant intangible assets.

(5) For this purpose an intangible asset is a 'relevant intangible asset' if the whole or greater part (in terms of value) of it has been created—

(a) by the company carrying on the trade, or

(b) by a company which at all times during which it created the intangible asset was—

(i) the parent company of the company carrying on the trade, or

(ii) a qualifying subsidiary of that parent company.

(5A) For the purposes of subsection (5) above—

(a) in the case of an intangible asset that is intellectual property, references to the creation of the asset by a company are to its creation in circumstances in which the right to exploit it vests in the company (whether alone or jointly with others);

(b) 'parent company' means a company that—

(i) has one or more 51% subsidiaries, but

(ii) is not itself a 51% subsidiary of another company; and

(c) a subsidiary of the parent company referred to in subsection (5)(b) above is a 'qualifying subsidiary' of that company if it is a subsidiary of a kind which the parent company may hold by virtue of section 308.

For the purposes of paragraph (c) above, section 308 shall have effect as if the references in that section to the qualifying company were to that parent company.

(5B) For the purposes of subsections (4) to (5A) above 'intangible asset' means any asset which falls to be treated as an intangible asset in accordance with normal accounting practice.

For this purpose 'normal accounting practice' means normal accounting practice in relation to the accounts of companies incorporated in any part of the United Kingdom.

(5C) In subsection (5A)(a) above 'intellectual property' means—

(a) any patent, trade mark, registered design, copyright, design right, performer's right or plant breeder's right; and

(b) any rights under the law of a country or territory outside the United Kingdom which correspond or are similar to those falling within paragraph (a) above.".

(2) This paragraph has effect in relation to shares issued on or after 6th April 2000.

Meaning of "arrangements"

14.—(1) In section 312 of the Taxes Act 1988 (interpretation), in subsection (1)—

(a) after "In this Chapter—" insert—

"'arrangements' includes any scheme, agreement or understanding, whether or not legally enforceable;"; and

(b) in the definition of "control", after "291B(4)" insert ", 293(8)(b)".

(2) This paragraph has effect—

(a) in relation to shares issued on or after 21st March 2000, and

(b) in respect of the application of section 312 of the Taxes Act 1988 on or after that date in relation to shares—

(i) that were issued after 31st December 1993 but before 21st March 2000, and

(ii) to which income tax relief or deferral relief was attributable immediately before 21st March 2000.

(3) In sub-paragraph (2)—

"income tax relief" means relief under Chapter III of Part VII of the Taxes Act 1988 (enterprise investment scheme); and

"deferral relief" has the same meaning as in Schedule 5B to the Taxation of Chargeable Gains Act 1992. 1992 c. 12.

Meaning of "research and development"

15.—(1) In section 312 of the Taxes Act 1988 (interpretation), in subsection (1), for the definition of "research and development" substitute—

"'research and development' has the meaning given by section 837A;".

(2) This paragraph has effect in relation to shares issued on or after 6th April 2000.

(3) Nothing in this paragraph affects the operation of any of the following provisions in relation to shares issued before 6th April 2000—

(a) Chapter III of Part VII of the Taxes Act 1988 (enterprise investment scheme);

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(b) sections 573 and 574 of that Act (relief for losses on shares in trading companies);

1992 c. 12.

(c) Schedule 5B to the Taxation of Chargeable Gains Act 1992.

Section 65.

SCHEDULE 18

VENTURE CAPITAL TRUSTS: AMENDMENTS

PART I

REDUCTION OF APPLICABLE PERIODS

Relief from income tax

1.—(1) Schedule 15B to the Taxes Act 1988 (venture capital trusts: relief from income tax) is amended as follows.

(2) In paragraph 2(3) (loan-linked investments), in the definition of "the relevant period" for "ending five years after the issue of the shares" substitute "ending immediately before the third anniversary of the date on which the shares were issued".

(3) In paragraph 3(1)(b) (loss of investment relief on disposal within five years), for "five years beginning with the issue of those shares to that individual" substitute "three years beginning with the date on which those shares were issued to that individual".

(4) In paragraph 6(1) (definition of "eligible shares") for "five" substitute "three".

Deferred CGT charge on reinvestment

2. In Schedule 5C to the Taxation of Chargeable Gains Act 1992 (venture capital trusts: deferred charge on re-investment), in paragraph 3(2), in the definition of "the relevant period" for "five" substitute "three".

Commencement

3. The amendments made by this Part of this Schedule have effect in relation to shares issued on or after 6th April 2000.

PART II

QUALIFYING HOLDINGS

Introductory

4. Schedule 28B to the Taxes Act 1988 (venture capital trusts: qualifying holdings) is amended as follows.

Qualifying trade: receipt of royalties or licence fees

5.—(1) In paragraph 4 (meaning of "qualifying trade") for sub-paragraphs (5) and (6) (trades consisting of receiving royalties and licence fees) substitute—

"(5) A trade shall not be treated as failing to comply with this paragraph by reason only that it consists to a substantial extent in the receiving of royalties or licence fees if the royalties and licence fees (or all but for a part that is not a substantial part in terms of value) are attributable to the exploitation of relevant intangible assets.

(6) For this purpose an intangible asset is a 'relevant intangible asset' if the whole or greater part (in terms of value) of it has been created—

(a) by the company carrying on the trade, or

(b) by a company which at all times during which it created the intangible asset was—

(i) the parent company of the company carrying on the trade, or

(ii) a qualifying subsidiary of that parent company.

(6A) In the case of a relevant asset that is intellectual property, references in sub-paragraph (6) above to the creation of the asset by a company are to its creation in circumstances in which the right to exploit it vests in the company (whether alone or jointly with others).

(6B) For the purposes of sub-paragraphs (5) to (6A) above 'intangible asset' means any asset which falls to be treated as an intangible asset in accordance with normal accounting practice.

For this purpose 'normal accounting practice' means normal accounting practice in relation to the accounts of companies incorporated in any part of the United Kingdom.

(6C) For the purposes of sub-paragraph (6) above

(a) "parent company" means a company that—

(i) has one or more 51% subsidiaries, but

(ii) is not itself a 51% subsidiary of another company; and

(b) paragraph 10 below (meaning of 'qualifying subsidiary') shall apply as if the references in that paragraph to the relevant company were references to the parent company referred to in sub-paragraph (6)(b) above.

(6D) For the purposes of sub-paragraph (6A) above "intellectual property" means—

(a) any patent, trade mark, registered design, copyright, design right, performer's right or plant breeder's right; and

(b) any rights under the law of a country or territory outside the United Kingdom which correspond or are similar to those falling within paragraph (a) above.".

(2) This paragraph has effect for the purpose of determining whether shares or securities issued on or after 6th April 2000 are, for the purposes of section 842AA of the Taxes Act 1988, to be regarded as comprised in a company's qualifying holdings.

Meaning of "research and development"

6.—(1) In paragraph 5 (provisions supplemental to paragraph 4), in sub-paragraph (1) for the definition of "research and development" substitute—

"'research and development' has the meaning given by section 837A;".

(2) This paragraph has effect for the purpose of determining whether shares or securities issued on or after 6th April 2000 are, for the purposes of section 842AA of the Taxes Act 1988, to be regarded as comprised in a company's qualifying holdings.

(3) Nothing in this paragraph affects the operation of Schedule 28B to the Taxes Act 1988 as it has effect for the purpose of determining whether shares or securities issued before that date are, for the purposes of section 842AA of that Act, to be regarded as comprised in a company's qualifying holdings.

SCH. 18

Company in administration or receivership

7.—(1) After paragraph 11 insert—

"Company in administration or receivership

11A.—(1) A company which is in administration or receivership shall not be regarded as ceasing to comply with paragraph 3(2) or (3) by reason of anything done as a consequence of its being in administration or receivership.

(2) For this purpose—

(a) a company is "in administration" if there is in force in relation to it—

(i) an administration order under Part II of the Insolvency Act 1986 or Part III of the Insolvency (Northern Ireland) Order 1989, or

(ii) any corresponding order under the law of a country or territory outside the United Kingdom; and

(b) a company is "in receivership" if there is in force in relation to it—

(i) an order for the appointment of an administrative receiver, a receiver and manager or a receiver under Chapter I or II of Part III of the Insolvency Act 1986 or Part IV of the Insolvency (Northern Ireland) Order 1989, or

(ii) any corresponding order under the law of a country or territory outside the United Kingdom.

(3) This paragraph applies only if—

(a) the making of the order in question, and

(b) everything done as a consequence of the company being in administration or receivership,

is for bona fide commercial reasons and is not part of a scheme or arrangement the main purpose or one of the main purposes of which is the avoidance of tax.".

(2) This paragraph has effect for the purposes of determining whether shares or securities are, as at any time on or after 21st March 2000, to be regarded as comprised in a company's qualifying holdings.

Company reorganisations etc. involving exchange of shares

8.—(1) After paragraph 11A (inserted by paragraph 7 above), insert—

"Company reorganisations etc. involving exchange of shares

11B.—(1) The Treasury may by regulations make provision for cases where—

(a) a holding of shares or securities that meets the requirements of this Schedule is exchanged for other shares or securities,

(b) the exchange is made for bona fide commercial reasons and does not form part of a scheme or arrangements of which the main purpose, or one of the main purposes, is the avoidance of tax, and

(c) the new shares or securities do not meet some or all of the requirements of this Schedule,

providing that the new shares or securities shall be treated as meeting those requirements.

(2) The references in sub-paragraph (1) to an exchange of shares or securities include any form of company reorganisation or other arrangement which involves a holder of shares or securities in a company receiving other shares or securities—

(a) whether the original shares or securities are transferred, cancelled or retained, and

(b) whether the new shares or securities are in the same or another company.

(3) The regulations shall specify—

(a) the cases in which, and conditions subject to which, they apply,

(b) which requirements of this Schedule are to be treated as met, and

(c) the period for which those requirements are to be treated as met.

(4) The regulations may contain such administrative provisions (including provision for advance clearances) as appear to the Treasury to be necessary or expedient.

(5) The regulations may authorise the Board to give notice to any person requiring him to provide such information, specified in the notice, as they may reasonably require in order to determine whether any conditions imposed by the regulations are met.

(6) Regulations under this paragraph—

(a) may make different provision for different cases,

(b) may include such supplementary, incidental and transitional provisions as appear to the Treasury to be appropriate, and

(c) may include provision having retrospective effect.".

(2) In section 842AA of the Taxes Act 1988 (venture capital trusts: requirements for approval), after subsection (5AC) insert—

"(5AD) Regulations under paragraph 11B of Schedule 28B may make provision for the purposes of subsection (2)(b) to (d) above for securing that where—

(a) there is an exchange of shares to which regulations under that paragraph apply, and

(b) the new shares are treated by virtue of the regulations as meeting the requirements of that Schedule,

the value of the holding of new shares, and of any original shares that are retained under the exchange, shall be taken to be an amount such that the requirements of subsection (2)(b) to (d) above do not cease to be met by reason of the exchange.

(5AE) In subsection (5AD) above—

(a) 'shares' includes securities; and

(b) 'exchange of shares', 'new shares' and 'original shares' have the same meaning as in paragraph 11B of Schedule 28B.".

(3) In the first column of the table in section 98 of the Taxes Management Act 1970 (penalty for failure to comply with notice requiring information etc.), after the entry relating to paragraph 4 of Schedule 22 to the Taxes Act 1988 insert "regulations under paragraph 11B(5) of Schedule 28B". 1970 c. 9.

SCH. 18

(4) This paragraph applies to exchanges of shares or securities (within the meaning of paragraph 11B(1) of Schedule 28B to the Taxes Act 1988) taking effect on or after 21st March 2000.

Section 68.

SCHEDULE 19

MEANING OF "RESEARCH AND DEVELOPMENT"

PART I

THE NEW DEFINITION

Research and development

1. In Part XIX of the Taxes Act 1988 (general supplementary provisions), after section 837 insert—

"Meaning of 'research and development'.

837A.—(1) The following provisions have effect for the purposes of, and subject to, the provisions of the Tax Acts which apply this section.

(2) 'Research and development' means activities that fall to be treated as research and development in accordance with normal accounting practice.

This is subject to regulations under subsection (3) below.

(3) The Treasury may by regulations provide—

(a) that such activities as may be prescribed are not 'research and development' for the purposes of this section, and

(b) that such other activities as may be prescribed are 'research and development' for those purposes.

(4) Regulations under subsection (3) above may—

(a) make provision by reference to guidelines issued (whether before or after the coming into force of this section) by the Secretary of State, and

(b) make such supplementary, incidental, consequential or transitional provision as appears to the Treasury to be necessary or expedient.

(5) In subsection (2) above 'normal accounting practice' means normal accounting practice in relation to the accounts of companies incorporated in a part of the United Kingdom.

(6) Unless otherwise expressly provided, 'research and development' does not include oil and gas exploration and appraisal.".

Oil and gas exploration and appraisal

2. In Part XIX of the Taxes Act 1988 (general supplementary provisions), after the section inserted by paragraph 1 above insert—

"Meaning of 'oil and gas exploration and appraisal'.

837B.—(1) References in the Tax Acts to 'oil and gas exploration and appraisal' are to activities carried out for the purpose of—

(a) searching for petroleum anywhere in an area, or

(b) ascertaining—

(i) the extent or characteristics of any petroleum-bearing area, or

(ii) what the reserves of petroleum of any such area are,

so that it may be determined whether the petroleum is suitable for commercial exploitation.

(2) For this purpose 'petroleum' has the meaning given in section 1 of the Petroleum Act 1998.". 1998 c. 17.

PART II

CONSEQUENTIAL AMENDMENTS

Income and Corporation Taxes Act 1988 (c.1)

3. The Income and Corporation Taxes Act 1988 is amended as follows.

4. In section 495 (regional development grants), in subsection (1)(b) for "scientific research" substitute "research and development".

5.—(1) In Part IV (provisions relating to the Schedule D charge), after section 82 insert—

"Expenditure on research and development.

82A.—(1) Notwithstanding anything in section 74, where a person carrying on a trade incurs expenditure not of a capital nature on research and development—

(a) related to that trade, and

(b) directly undertaken by him or on his behalf,

the expenditure incurred may be deducted as an expense in computing the profits of the trade for the purposes of tax.

(2) For this purpose expenditure on research and development does not include expenditure incurred in the acquisition of rights in, or arising out of, research and development.

Subject to that, it includes all expenditure incurred in carrying out, or providing facilities for carrying out, research and development.

(3) The reference in subsection (1) above to research and development related to a trade includes—

(a) research and development which may lead to or facilitate an extension of that trade;

(b) research and development of a medical nature which has a special relation to the welfare of workers employed in that trade.

(4) The same expenditure may not be taken into account under this section in relation to more than one trade.

(5) In this section 'research and development' has the meaning given by section 837A and includes oil and gas exploration and appraisal.

Payments to research associations, universities etc.

82B.—(1) Notwithstanding anything in section 74, where a person carrying on a trade—

(a) pays any sum to a scientific research association that—

(i) has as its object the undertaking of scientific research related to the class of trade to which the trade he is carrying on belongs, and

(ii) is for the time being approved for the purposes of this section by the Secretary of State, or

(b) pays any sum to be used for such scientific research as is mentioned in paragraph (a) above to any such university, college research institute or other similar institution as is for the time being approved for the purposes of this section by the Secretary of State,

the sum paid may be deducted as an expense in computing the profits of the trade for the purposes of tax.

(2) In this section 'scientific research' means any activities in the fields of natural or applied science for the extension of knowledge.

(3) The reference in this section to scientific research related to a class of trade includes—

(a) scientific research which may lead to or facilitate an extension of trades of that class;

(b) scientific research of a medical nature which has a special relation to the welfare of workers employed in trades of that class.

(4) If a question arises under this section whether, or to what extent, any activities constitute or constituted scientific research, the Board shall refer the question for decision to the Secretary of State.

The decision of the Secretary of State is final.

(5) The same expenditure may not be taken into account under this section in relation to more than one trade.".

(2) Any approval given by the Secretary of State for the purposes of section 136(b) or (c) of the Capital Allowances Act 1990 and in force immediately before the commencement of this paragraph has effect as if given under section 82B(1)(a) or (b) of the Taxes Act 1988 as inserted by sub-paragraph (1) above.

1990 c. 1.

(3) So far as is necessary for continuing its effect, any decision made by the Secretary of State under section 139(3) of the Capital Allowances Act 1990 before the commencement of this paragraph has effect as if given under section 82B(4) of the Taxes Act 1988 as inserted by sub-paragraph (1) above.

6. In Schedule 18 (group relief: equity holders and profits or assets available for distribution), in paragraph 1(6)(b)(iii) for "scientific research" substitute "research and development (within the meaning of Part VII of that Act)".

Capital Allowances Act 1990 (c.1)

7. The Capital Allowances Act 1990 is amended as follows.

8. For "scientific research", wherever occurring, substitute "research and development".

The provisions affected by this amendment are: section 4(5), (9) (twice) and (10), section 8(5), section 56D(1)(a), section 118(2), section 137(1) (twice), (1A) (twice), (3) (three times), section 138(1), (3A)(a) and (5)(b), section 138A(3), section 139(1)(b) (twice), (1)(c) (three times), (1)(d) (three times), section 158(2)(d) and section 161(2).

9. In section 137(1)(b) after "that research" insert "and development".

10. In section 139 (supplementary provisions), in subsection (1) for paragraph (a) substitute—

"(a) 'research and development' has the meaning given by section 837A of the principal Act and includes oil and gas exploration and appraisal;".

11. In section 161 after "other than an allowance under section 136" insert "(as that section had effect before it was repealed by the Finance Act 2000)".

Taxation of Chargeable Gains Act 1992 (c.12)

12.—(1) Section 195 of the Taxation of Chargeable Gains Act 1992 (allowance of certain drilling expenditure) is amended as follows.

(2) In subsections (2) and (3) for "scientific research" in each place substitute "research and development".

(3) In subsection (3) after "that research" insert "and development".

(4) After subsection (7) insert—

"(8) In this section 'research and development' has the same meaning as in Part VII of the Capital Allowances Act 1990 (allowances for research and development expenditure)."

SCHEDULE 20

Section 69(1).

TAX RELIEF FOR EXPENDITURE ON RESEARCH AND DEVELOPMENT

PART I

ENTITLEMENT TO RELIEF

Entitlement to R&D tax relief

1.—(1) A company is entitled to R&D tax relief for an accounting period if—

(a) the company qualifies as a small or medium-sized enterprise in the period (see paragraph 2), and

(b) the company's qualifying R&D expenditure (see paragraph 3) deductible in that period is not less than—

(i) £25,000, if the accounting period is a period of 12 months, or

(ii) such amount as bears to £25,000 the same proportion as the accounting period bears to 12 months.

(2) For the purposes of sub-paragraph (1) a company's qualifying R&D expenditure is deductible in an accounting period if—

(a) it is allowable as a deduction in computing for tax purposes the profits for that period of a trade carried on by the company, or

(b) it would have been allowable as such a deduction had the company, at the time the expenditure was incurred, been carrying on a trade consisting of the activities in respect of which it was incurred.

(3) For the purposes of sub-paragraph (2)(a) no account shall be taken of section 401 of the Taxes Act 1988 (pre-trading expenditure treated as incurred when trading begins).

(4) In relation to an accounting period beginning before and ending on or after 1st April 2000, the references in sub-paragraph (1)(b)(i) and (ii) to the accounting period shall be read as references to so much of it as falls on or after that date.

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Meaning of "small or medium-sized enterprise"

2.—(1) For the purposes of this Schedule a "small or medium-sized enterprise" means a small or medium-sized enterprise as defined in Commission Recommendation 96/280/EC of 3rd April 1996.

(2) The Treasury may by order amend sub-paragraph (1) so as to substitute another definition of "small or medium-sized enterprise" for the definition that is for the time being effective for the purposes of this Schedule.

Qualifying R&D expenditure

3.—(1) For the purposes of this Schedule "qualifying R&D expenditure" of a company means expenditure that meets the following conditions.

(2) The first condition is that the expenditure is not of a capital nature.

(3) The second condition is that the expenditure is attributable to relevant research and development (see paragraph 4) directly undertaken by the company or on its behalf.

(4) The third condition is that the expenditure is incurred—

(a) on staffing costs (see paragraph 5), or

(b) on consumable stores (see paragraph 6),

or is qualifying expenditure on sub-contracted research and development (see paragraphs 9 to 12).

(5) The fourth condition is that any intellectual property (see paragraph 7) created as a result of the research and development to which the expenditure is attributable is, or will be, vested in the company (whether alone or with other persons).

(6) The fifth condition is that the expenditure is not incurred by the company in carrying on activities the carrying on of which is contracted out to the company by any person.

(7) The sixth condition is that the expenditure is not subsidised (see paragraph 8).

Relevant research and development

4.—(1) For the purposes of this Schedule "relevant research and development", in relation to a company, means research and development—

(a) related to a trade carried on by the company, or

(b) from which it is intended that a trade to be carried on by the company will be derived.

(2) For the purposes of this Schedule research and development related to a trade carried on by the company includes—

(a) research and development which may lead to or facilitate an extension of that trade, and

(b) research and development of a medical nature which has a special relation to the welfare of workers employed in that trade.

Staffing costs

5.—(1) For the purposes of this Schedule the staffing costs of a company are—

(a) the emoluments paid by the company to directors or employees of the company, including all salaries, wages, perquisites and profits whatsoever other than benefits in kind;

(b) the secondary Class 1 national insurance contributions paid by the company; and

(c) the contributions paid by the company to any pension fund (within the meaning of section 231A(4) of the Taxes Act 1988) operated for the benefit of directors or employees of the company.

(2) The staffing costs of a company attributable to relevant research and development are those paid to, or in respect of, directors or employees directly and actively engaged in such research and development.

(3) In the case of a director or employee partly engaged directly and actively in relevant research and development the following rules apply—

(a) if the time he spends so engaged is less than 20% of his total working time, none of the staffing costs relating to him are treated as attributable to relevant research and development;

(b) if the time he spends so engaged is more than 80% of his total working time, the whole of the staffing costs relating to him are treated as attributable to relevant research and development;

(c) in any other case, an appropriate proportion of the staffing costs relating to him are treated as attributable to relevant research and development.

(4) For the purpose of sub-paragraphs (2) and (3) persons who provide services, such as secretarial or administrative services, in support of activities carried on by others, are not, by virtue of providing those services, to be treated as themselves directly and actively engaged in those activities.

Expenditure on consumable stores

6.—(1) For the purposes of this Schedule expenditure on consumable stores means expenditure that would be treated as expenditure on consumable stores in accordance with normal accounting practice.

(2) Expenditure on consumable stores is attributable to relevant research and development if the stores are employed directly in such research and development.

Meaning of "intellectual property"

7. In this Schedule "intellectual property" means—

(a) any industrial information or techniques likely to assist in—

(i) the manufacture or processing of goods or materials, or

(ii) the working of a mine, oil well or other source of mineral deposits or the winning of access thereto, or

(iii) the carrying out of any agricultural, forestry or fishing operations;

(b) any patent, trade mark, registered design, copyright, design right or plant breeder's right; and

(c) any rights under the law of a country outside the United Kingdom which correspond or are similar to those falling within paragraph (b).

Subsidised expenditure

8.—(1) For the purposes of this Schedule a company's expenditure is treated as subsidised—

(a) if a notified State aid is, or has been, obtained in respect of—

(i) the whole or part of the expenditure, or

(ii) any other expenditure (whenever incurred) attributable to the same research and development project;

(b) to the extent that a grant or subsidy (other than a notified State aid) is obtained in respect of the expenditure;

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(c) to the extent that it is otherwise met directly or indirectly by any person other than the company.

(2) For the purposes of sub-paragraph (1) "notified State aid" means a State aid notified to and approved by the European Commission.

R&D tax relief and R&D tax credits are not State aids for this purpose.

(3) For the purposes of this Schedule a notified State aid, grant, subsidy or payment that is not allocated to particular expenditure shall be allocated to expenditure of the recipient in such manner as is just and reasonable.

Qualifying expenditure on sub-contracted research and development

9.—(1) The provisions of paragraphs 10 to 12 have effect for determining the amount of the qualifying expenditure of a company ("the company") on sub-contracted research and development.

(2) For the purposes of this Schedule the company incurs expenditure on sub-contracted research and development if it makes a payment (a "sub-contractor payment") to another person ("the sub-contractor") in respect of relevant research and development contracted out by the company to that person.

Treatment of expenditure where company and sub-contractor are connected persons

10.—(1) Where—

(a) the company and the sub-contractor are connected persons, and

(b) in accordance with normal accounting practice—

(i) the whole of the sub-contractor payment has been brought into account in determining the sub-contractor's profit or loss for a relevant period, and

(ii) all of the sub-contractor's relevant expenditure has been so brought into account,

the whole of the payment (up to the amount of the sub-contractor's relevant expenditure) is qualifying expenditure on sub-contracted research and development.

(2) In sub-paragraph (1)—

(a) references to the "relevant expenditure" of the sub-contractor are to expenditure that—

(i) is incurred by the sub-contractor in carrying on, on behalf of the company, the activities to which the sub-contractor payment relates,

(ii) is not of a capital nature,

(iii) is incurred on staffing costs or on consumable stores, and

(iv) is not subsidised;

(b) a "relevant period" means a period

(i) for which accounts are drawn up for the sub-contractor, and

(ii) that ends not more than twelve months after the end of the company's period of account in which the sub-contactor payment is, in accordance with normal accounting practice, brought into account in determining the company's profit or loss.

(3) Paragraph 5 (staffing costs) and paragraph 8 (subsidised expenditure) apply for the purposes of determining whether the sub-contractor's expenditure meets the requirements of sub-paragraph (2)(a)(iii) and (iv).

For this purpose the references in those paragraphs to a company shall be read as references to the sub-contractor.

(4) Any apportionment of expenditure of the company or the sub-contractor necessary for the purposes of this paragraph shall be made on a just and reasonable basis.

Election for connected persons treatment

11.—(1) The company and the sub-contractor may in any case jointly elect that paragraph 10 shall apply to sub-contractor payments made by the company to the sub-contractor.

(2) Any such election must be made in relation to all sub-contractor payments paid under the same contract or other arrangement.

(3) The election must be made by notice in writing given to the Inland Revenue.

(4) The notice must be given before the end of the period of two years beginning with the end of the company's accounting period in which the contract or other arrangement is entered into.

(5) An election under this paragraph, once made, is irrevocable.

Treatment of sub-contractor payment in other cases

12. Where—

(a) the company makes a sub-contractor payment, and

(b) paragraph 10 (treatment of expenditure where company and sub-contractor are connected) does not apply,

65% of the amount of the sub-contractor payment is treated as qualifying expenditure on sub-contracted research and development.

PART II

MANNER OF GIVING EFFECT TO RELIEF

Deduction in computing profits of trade

13. Where—

(a) a company is entitled to R&D tax relief for an accounting period,

(b) it is carrying on a trade in that period, and

(c) it has qualifying R&D expenditure that is allowable as a deduction in computing for tax purposes the profits of the trade for that period,

it may (on making a claim) treat that qualifying R&D expenditure as if it were an amount equal to 150% of the actual amount.

Alternative treatment of pre-trading expenditure

14.—(1) This paragraph applies where a company—

(a) is entitled to R&D tax relief for an accounting period, and

(b) has incurred qualifying R&D expenditure in that accounting period which—

(i) is not allowable as a deduction in computing, for tax purposes, the profits of a trade that was carried on by it at the time the expenditure was incurred, but

(ii) would have been so allowable had the company, at that time, been carrying on a trade consisting of the activities in respect of which the expenditure was incurred.

(2) The company may elect to be treated as if it had incurred a trading loss in the accounting period equal to 150% of the amount of that qualifying R&D expenditure.

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(3) Where an election is made under this paragraph in respect of the accounting period, section 401 of the Taxes Act 1988 (relief for pre-trading expenditure) does not apply to that qualifying R&D expenditure.

(4) An election under this paragraph must specify the accounting period in respect of which it is made.

(5) The election must be made by notice in writing to the Inland Revenue.

(6) The notice must be given before the end of the period of two years beginning with the end of the company's accounting period to which the election relates.

Entitlement to R&D tax credit

15.—(1) A company may claim an R&D tax credit for an accounting period in which it has a surrenderable loss.

(2) A company has a "surrenderable loss" for this purpose if in an accounting period—

(a) paragraph 13 applies and the company incurs a trading loss in that period in the trade mentioned in sub-paragraph (1)(b) of that paragraph, or

(b) paragraph 14 applies and the company is treated under that paragraph as incurring a trading loss.

(3) The amount of the surrenderable loss is equal to—

(a) so much of that trading loss as is unrelieved, or

(b) if less, 150% of the related qualifying R&D expenditure.

(4) For this purpose the amount of a trading loss that is "unrelieved" means the amount of that loss reduced by the amount of—

(a) any relief that was or could have been obtained by the company making a claim under section 393A(1)(a) of the Taxes Act 1988 to set the loss against profits of whatever description of the same accounting period,

(b) any other relief obtained by the company in respect of the loss, including relief under section 393A(1)(b) of that Act (losses set against profits of an earlier accounting period), and

(c) any loss surrendered under section 403(1) (surrender of relief to group or consortium members) of that Act.

(5) No account shall be taken for this purpose of any losses—

(a) brought forward from an earlier accounting period under section 393(1) of the Taxes Act 1988, or

(b) carried back from a later accounting period under section 393A(1)(b) of that Act.

Amount of credit

16.—(1) The amount of the R&D tax credit to which a company is entitled for an accounting period is an amount equal to—

(a) 16% of the amount of the surrenderable loss for the period, or

(b) if less, the total amount of the company's PAYE and NICs liabilities for payment periods ending in the accounting period.

(2) The Treasury may by order substitute for the percentage for the time being specified in sub-paragraph (1)(a) such other percentage as they think fit.

(3) An order under sub-paragraph (2) may make such incidental, supplemental, consequential and transitional provision as the Treasury think fit.

Total amount of company's PAYE and NICs liabilities

17.—(1) For the purposes of paragraph 16 the total amount of the company's PAYE and NICs liabilities for a payment period is the total of—

(a) the amount of income tax for which the company is required to account to the Inland Revenue for that period under the PAYE regulations, disregarding any deduction the company is authorised to make in respect of the working families' tax credit or disabled person's tax credit, and

(b) the Class 1 national insurance contributions for which the company is required to account to the Inland Revenue for that period, disregarding any deduction the company is authorised to make in respect of payments of statutory sick pay, statutory maternity pay, working families' tax credit or disabled person's tax credit.

(2) A "payment period" means a period which ends on the 5th day of a month and for which the company is liable to account for income tax and national insurance contributions to the Inland Revenue.

Payment in respect of R&D tax credit

18.—(1) Where—

(a) the company is entitled to an R&D tax credit for an accounting period, and

(b) makes a claim,

the Inland Revenue shall pay to the company the amount of the credit.

(2) An amount payable in respect of—

(a) an R&D tax credit, or

(b) interest on an R&D tax credit under section 826 of the Taxes Act 1988,

may be applied in discharging any liability of the company's to pay corporation tax, and to the extent that it is so applied the Inland Revenue's obligation under sub-paragraph (1) is discharged.

(3) Where the company's company tax return for the accounting period is enquired into by the Inland Revenue, no payment in respect of an R&D tax credit for that period need be made before the Inland Revenue's enquiries are completed (see paragraph 32 of Schedule 18 to the Finance Act 1998). 1998 c. 36.

In those circumstances the Inland Revenue may make a payment on a provisional basis of such amount as they think fit.

(4) No payment need be made in respect of an R&D tax credit for an accounting period before the company has paid to the Inland Revenue any amount that it is required to pay for payment periods ending in that accounting period—

(a) under the PAYE regulations, or

(b) in respect of Class 1 national insurance contributions.

Restriction on losses carried forward

19.—(1) For the purposes of section 393 of the Taxes Act 1988 (relief of trading losses against future trading profits), a company's trading loss for a period for which it claims an R&D tax credit is treated as reduced by the amount of the loss surrendered.

(2) The amount of the loss surrendered is—

(a) where the maximum amount of R&D tax credit was claimed, the whole of the surrenderable loss for that period;

(b) where less than the maximum amount was claimed, a corresponding proportion of the surrenderable loss for that period.

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The "maximum amount" here means the amount specified in paragraph 16(1)(a).

Payment in respect of R&D tax credit not income

20. A payment in respect of an R&D tax credit is not income of the company for any tax purposes.

PART III

SUPPLEMENTARY PROVISIONS

Artificially inflated claims for deduction or R&D tax credit

21.—(1) To the extent that a transaction is attributable to arrangements entered into wholly or mainly for a disqualifying purpose, it shall be disregarded in determining for an accounting period the amount of—

(a) any relief to which a company is entitled under paragraph 13 or 14, and

(b) any R&D tax credit to which a company is entitled.

(2) Arrangements are entered into wholly or mainly for a "disqualifying purpose" if their main object, or one of their main objects, is to enable a company to obtain—

(a) relief under paragraph 13 or 14 to which it would not otherwise be entitled or of a greater amount than that to which it would otherwise be entitled; or

(b) an R&D tax credit to which it would not otherwise be entitled or of a greater amount than that to which it would otherwise be entitled.

(3) In this paragraph "arrangements" includes any scheme, agreement or understanding, whether or not legally enforceable.

Restriction on consortium relief

22. Where—

(a) the company claims relief under paragraph 13 or 14 in respect of an accounting period, and

(b) at any time during that period the company is owned by a consortium at least one of the members of which is a company which is not a small or medium-sized enterprise,

no amount in respect of that period may be surrendered by the company, for the purposes of a claim to group relief under section 402(3) of the Taxes Act 1988 (group relief available where surrendering company owned by consortium), to any other company that is not a small or medium-sized enterprise.

Treatment of deemed trading loss

23.—(1) This paragraph applies where under paragraph 14 (alternative treatment of pre-trading expenditure) a company is treated as incurring a trading loss in an accounting period ("the accounting period").

(2) The trading loss may not be set off against profits of a preceding accounting period under section 393A(1)(b) of the Taxes Act 1988 unless the company is entitled to R&D tax relief under paragraph 14 above for that earlier period.

(3) If the company begins, in the accounting period or a later period, to carry on a trade which falls within sub-paragraph (4), then—

(a) subject to paragraph 19 (restriction on losses carried forward), and

(b) to the extent that—

(i) the company has not obtained relief in respect of the trading loss under any other provision, and

(ii) the loss has not been surrendered under section 403(1) of the Taxes Act 1988 (surrender of relief to group or consortium members),

the loss shall be treated as if it were a loss of that trade brought forward under section 393 of the Taxes Act 1988 (relief of trading losses against future trading profits).

(4) A trade falls within this sub-paragraph if it is derived from the research and development in relation to which the R&D tax relief in question was obtained under paragraph 14.

Funding of R&D tax credits

24. Section 10 of the Exchequer and Audit Departments Act 1866 (gross revenues to be paid to Exchequer) shall be construed as allowing the Commissioners of Inland Revenue to deduct payments for or in respect of R&D tax credits before causing the gross revenues of their department to be paid to the accounts mentioned in that section. 1866 c. 39.

Interpretation

25.—(1) In this Schedule—

"the Inland Revenue" means any officer of the Board;

"national insurance contributions" means contributions under Part I of the Social Security Contributions and Benefits Act 1992 or Part I of the Social Security Contributions and Benefits (Northern Ireland) Act 1992; 1992 c. 4. 1992 c. 7.

"normal accounting practice" means normal accounting practice in relation to the accounts of companies incorporated in any part of the United Kingdom;

"PAYE regulations" means regulations under section 203 of the Taxes Act 1988;

"payment period" has the meaning given in paragraph 17(2);

"research and development" has the meaning given by section 837A of the Taxes Act 1988; and

"surrenderable loss" has the meaning given in paragraph 15(2).

(2) Section 839 of the Taxes Act 1988 (connected persons) applies for the purposes of this Schedule.

(3) For the purposes of this Schedule a company not within the charge to corporation tax which incurs qualifying R&D expenditure is treated as having such accounting periods as it would have if—

(a) it carried on a trade consisting of the activities in respect of which the expenditure is incurred, and

(b) it had started to carry on that trade when it started to carry on relevant research and development.

Transitional provisions

26.—(1) This Schedule does not apply to expenditure incurred before 1st April 2000.

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(2) For this purpose no account shall be taken of section 401 of the Taxes Act 1988 (pre-trading expenditure treated as incurred when trading begins).

Section 69(2).

SCHEDULE 21

R&D TAX CREDITS: CONSEQUENTIAL AMENDMENTS

Interest

1.—(1) Section 826 of the Taxes Act 1988 (interest on tax overpaid) is amended as follows.

(2) In subsection (1) (payments which carry interest) after paragraph (c) insert "; or

(d) a payment of R&D tax credit falls to be made to a company under Schedule 20 to the Finance Act 2000 in respect of an accounting period,".

(3) After subsection (3) (material date for repayments of income tax etc.) insert—

"(3A) In relation to a payment of R&D tax credit falling within subsection (1)(d) above the material date is whichever is the later of—

(a) the filing date for the company's company tax return for the accounting period for which the R&D tax credit is claimed, and

(b) the date on which the company tax return or amended company tax return containing the claim for payment of the R&D tax credit is delivered to the Inland Revenue.

For this purpose 'the filing date', in relation to a company tax return, has the same meaning as in Schedule 18 to the Finance Act 1998.".

1998 c. 36.

(4) In subsection (8A) (recovery of overpaid interest)—

(a) in paragraph (a), after "subsection (1)(a)" insert "or (d)",

(b) for paragraph (b) substitute—

"(b) there is—

(i) a change in the company's assessed liability to corporation tax, or

(ii) a change in the amount of the R&D tax credit payable to the company (which does not result in a change falling within sub-paragraph (i)),

other than a change which in whole or in part corrects an error made by the Board or an officer of the Board, and".

(5) After subsection (8B) insert—

"(8BA) For the purposes of subsection (8A)(b) above, the cases where there is a change in the amount of the R&D tax credit payable to the company are those cases where an assessment, or an amendment to an assessment, is made to recover an amount of R&D tax credit paid to the company for the accounting period in question.".

Claim must be made in tax return

2. In Schedule 18 to the Finance Act 1998 (company tax returns, assessments and related matters), in paragraph 10 (other claims and elections to be included in return), for sub-paragraph (2) substitute— 1998 c. 36.

"(2) A claim to which Part VIII, IX or IXA of this Schedule applies (claims for group relief, capital allowances or R&D tax credit) can only be made by being included in a company tax return (see paragraphs 67, 79 and 83B).".

Recovery of excessive R&D tax credit

3. In paragraph 52 of that Schedule (recovery of excessive repayments, etc.)—

(a) in sub-paragraph (2) (excessive repayments to which paragraphs 41 to 48 apply), before "or" at the end of paragraph (b) insert—

"(ba) R&D tax credit under Schedule 20 to the Finance Act 2000,"; and

(b) in sub-paragraph (5) (connection of assessment for excessive payment to an accounting period), before "or" at the end of paragraph (a) insert—

"(ab) an amount of R&D tax credit paid to a company for an accounting period,"; and

(c) at the end of that sub-paragraph after "(a)" insert ", (ab)".

Claims for R&D tax credits

4. After Part IX of that Schedule (claims for capital allowances) insert—

"PART IXA

CLAIMS FOR R&D TAX CREDIT

Introduction

83A. This Part of this Schedule applies to claims for R&D tax credits under Schedule 20 to the Finance Act 2000.

Claim to be included in company tax return

83B.—(1) A claim for an R&D tax credit must be made by being included in the claimant company's company tax return for the accounting period for which the claim is made.

(2) It may be included in the return originally made or by amendment.

Content of claim

83C. A claim for an R&D tax credit must specify the amount of the relief claimed, which must be an amount quantified at the time the claim is made.

Amendment or withdrawal of claim

83D. A claim for an R&D tax credit may be amended or withdrawn by the claimant company only by amending its company tax return.

Time limit for claims

83E.—(1) A claim for an R&D tax credit may be made, amended or withdrawn at any time up to the first anniversary of the filing date for the company tax return of the claimant company for the accounting period for which the claim is made.

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(2) The claim may be made, amended or withdrawn at a later date if the Inland Revenue allow it.

Penalty

83F.—(1) The company is liable to a penalty where it—

(a) fraudulently or negligently makes a claim for an R&D tax credit which is incorrect, or

(b) discovers that a claim for an R&D tax credit made by it (neither fraudulently or negligently) is incorrect and does not remedy the error without unreasonable delay.

(2) The penalty is an amount not exceeding the excess R&D tax credit claimed, that is, the difference between—

(a) the amount of the R&D tax credit to which the company is entitled for the accounting period to which the claim relates, and

(b) the amount of the R&D tax credit claimed by the company for that period.".

Section 82.

SCHEDULE 22

TONNAGE TAX

PART I

INTRODUCTORY

Tonnage tax

1.—(1) This Schedule provides an alternative regime ("tonnage tax") for calculating the profits of a shipping company for the purposes of corporation tax.

(2) The regime applies only if an election to that effect (a "tonnage tax election") is made (see Part II of this Schedule).

Companies that are members of a group must join in a group election.

(3) A tonnage tax election may only be made if—

(a) the company or group is a qualifying company or group (see Part III of this Schedule), and

(b) certain requirements are met as to training (see Part IV of this Schedule) and other matters (see Part V of this Schedule).

Tonnage tax companies and groups

2.—(1) In this Schedule a "tonnage tax company" or "tonnage tax group" means a company or group in relation to which a tonnage tax election has effect.

(2) References in this Schedule to a company entering or leaving tonnage tax are to its becoming or ceasing to be a tonnage tax company.

References to a company being subject to tonnage tax have a corresponding meaning.

Profits of tonnage tax company

3.—(1) In the case of a tonnage tax company, its tonnage tax profits are brought into charge to corporation tax in place of its relevant shipping profits (see Part VI of this Schedule).

(2) Where profits would be relevant shipping income, any loss accruing to the company is similarly left out of account for the purposes of corporation tax.

Tonnage tax profits: method of calculation

4.—(1) A company's tonnage tax profits for an accounting period are calculated in accordance with this paragraph by reference to the net tonnage of the qualifying ships operated by the company.

For the purposes of the calculation the net tonnage of a ship is rounded down (if necessary) to the nearest multiple of 100 tons.

(2) The calculation is as follows:

Step One

Determine the daily profit for each qualifying ship operated by the company by reference to the following table and the net tonnage of the ship:

For each 100 tons up to 1,000 tons	£0.60
For each 100 tons between 1,000 and 10,000 tons	£0.45
For each 100 tons between 10,000 and 25,000 tons	£0.30
For each 100 tons above 25,000 tons	£0.15

Step Two

Work out the ship's profit for the accounting period by multiplying the daily profit by—

(a) the number of days in the accounting period, or

(b) if the ship was operated by the company as a qualifying ship for only part of the period, by the number of days in that part.

Step Three

Follow Steps One and Two for each of the qualifying ships operated by the company in the accounting period.

Step Four

Add together the resulting amounts and the total is the amount of the company's tonnage tax profits for that accounting period.

Tonnage tax profits: calculation in case of joint operation etc.

5.—(1) If two or more companies fall to be regarded as operators of a ship by virtue of a joint interest in the ship, or in an agreement for the use of the ship, the tonnage tax profits of each are calculated as if each were entitled to a share of the profits proportionate to its share of that interest.

(2) If two or more companies fall to be treated as the operator of a ship otherwise than as mentioned in sub-paragraph (1), the tonnage tax profits of each are computed as if each were the only operator.

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Measurement of tonnage of ship

6.—(1) References in this Schedule to the gross or net tonnage of a ship are to that tonnage as determined—

(a) in the case of a vessel of 24 metres in length or over, in accordance with the IMO International Convention on Tonnage Measurement of Ships (ITC69);

(b) in the case of a vessel under 24 metres in length, in accordance with tonnage regulations.

(2) A ship shall not be treated as a qualifying ship for the purposes of this Schedule unless there is in force—

(a) a valid International Tonnage Certificate (1969), or

(b) a valid certificate recording its tonnage as measured in accordance with tonnage regulations.

(3) In this paragraph "tonnage regulations" means regulations under section 19 of the Merchant Shipping Act 1995 or provisions of the law of a country or territory outside the United Kingdom corresponding to those regulations.

1995 c. 21.

PART II

TONNAGE TAX ELECTIONS

Company or group election

7.—(1) A tonnage tax election may be made in respect of—

(a) a qualifying single company (a "company election"), or

(b) a qualifying group (a "group election").

(2) A group election has effect in relation to all qualifying companies in the group.

Method of making election

8.—(1) A tonnage tax election is made by notice to the Inland Revenue.

(2) The notice must contain such particulars and be supported by such evidence as the Inland Revenue may require.

Person by whom election to be made

9.—(1) A company election must be made by the company concerned.

(2) A group election must be made jointly by all the qualifying companies in the group.

When election may be made

10.—(1) A tonnage tax election may be made at any time before the end of the period of twelve months beginning with the day on which this Act is passed ("the initial period").

After the end of the initial period a tonnage tax election may only be made—

(a) in the circumstances specified in the following provisions of this paragraph, or

(b) as provided by an order under paragraph 11 (power to provide further opportunities for election).

(2) An election may be made after the end of the initial period in respect of a single company that—

(a) becomes a qualifying company, and

(b) has not previously been a qualifying company at any time after the passing of this Act.

Any such election must be made before the end of the period of twelve months beginning with the day on which the company became a qualifying company.

(3) An election may be made after the end of the initial period in respect of a group that becomes a qualifying group by virtue of a member of the group becoming a qualifying company, not previously having been a qualifying company at any time after the passing of this Act.

This does not apply if the group—

(a) was previously a qualifying group at any time after the passing of this Act, or

(b) is substantially the same as a group that was previously a qualifying group at any such time.

An election under this sub-paragraph must be made before the end of the period of twelve months beginning with the day on which the group became a qualifying group.

(4) This paragraph does not prevent an election being made under the provisions of Part XII of this Schedule relating to mergers and demergers.

Power to provide further opportunities for election

11.—(1) The Treasury may by order provide for further periods during which tonnage tax elections may be made.

(2) Any such order may provide for this Part of this Schedule to apply, with such consequential adaptations as appear to the Treasury to be appropriate, in relation to any such further period as it applies in relation to the initial period.

The consequential adaptations that may be made include adaptations of the references to the passing of this Act or to 1st January 2000.

When election takes effect

12.—(1) The general rule is that a tonnage tax election has effect from the beginning of the accounting period in which it is made.

This is subject to the following exceptions.

(2) A tonnage tax election cannot have effect in relation to an accounting period beginning before 1st January 2000.

If the general rule would produce that effect, the election has effect instead from the beginning of the accounting period following that in which it is made.

(3) The Inland Revenue may agree that a tonnage tax election made before the end of the initial period shall have effect from the beginning of an accounting period earlier than that in which it is made (but not one beginning before 1st January 2000).

(4) The Inland Revenue may agree that a tonnage tax election made before the end of the initial period shall have effect from the beginning of the accounting period following that in which it is made.

In exceptional circumstances they may agree that it shall have effect from the beginning of the accounting period following that one.

(5) In the case of a group election in respect of a group where the members have different accounting periods—

(a) sub-paragraph (1), or

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(b) any agreement under sub-paragraph (3) or (4),

has effect in relation to each qualifying company by reference to that company's accounting periods.

(6) A tonnage tax election under paragraph 10(2) or (3) (election in consequence of company becoming a qualifying company) has effect from the time at which the company in question became a qualifying company.

This is subject to paragraph 38(2)(a) and (b) (effect in certain cases of exceeding the 75% limit on chartered in tonnage).

Period for which election is in force

13.—(1) The general rule is that a tonnage tax election remains in force until it expires at the end of the period of ten years beginning—

(a) in the case of a company election, with the first day on which the election has effect in relation to the company;

(b) in the case of a group election, with the first day on which the election has effect in relation to any member of the group.

This is subject to the following exceptions.

(2) A tonnage tax election ceases to be in force—

(a) in the case of a company election, if the company ceases to be a qualifying company;

(b) in the case of a group election, if the group ceases to be a qualifying group.

(3) A tonnage tax election may also cease to be in force under—

(a) the provisions of Part V of this Schedule, or

(b) the provisions of Part XII of this Schedule relating to mergers and demergers.

(4) This paragraph has effect subject to paragraph 15(4) (election superseded by renewal election).

Effect of election ceasing to be in force

14. A tonnage tax election that ceases to be in force ceases to have effect in relation to any company.

Renewal election

15.—(1) At any time when a tonnage tax election is in force in respect of a single company or group a further tonnage tax election (a "renewal election") may be made in respect of that company or group.

(2) This is subject to paragraph 32(5) (training requirement: no renewal election if non-compliance notice in force).

(3) The provisions of—

paragraphs 7 to 9 (type of election, method of election and person by whom election to be made), and

paragraphs 13 and 14 (period for which election is in force and when election ceases to have effect),

apply in relation to a renewal election as they apply in relation to an original tonnage tax election.

(4) A renewal election supersedes the existing tonnage tax election.

PART III

QUALIFYING COMPANIES AND GROUPS

Qualifying companies and groups

16.—(1) For the purposes of this Schedule a company is a "qualifying company" if—

(a) it is within the charge to corporation tax,

(b) it operates qualifying ships, and

(c) those ships are strategically and commercially managed in the United Kingdom.

(2) A "qualifying group" means a group of which one or more members are qualifying companies.

Effect of temporarily ceasing to operate qualifying ships

17.—(1) This paragraph applies where a company temporarily ceases to operate any qualifying ships.

It does not apply where a company continues to operate a ship that temporarily ceases to be a qualifying ship.

(2) If the company gives notice to the Inland Revenue stating—

(a) its intention to resume operating qualifying ships, and

(b) its wish to remain within tonnage tax,

the company shall be treated for the purposes of this Schedule as if it had continued to operate the qualifying ship or ships it operated immediately before the temporary cessation.

(3) The notice must be given not later than the date which is the filing date for the company's company tax return for the accounting period in which the temporary cessation begins.

"Filing date" and "company tax return" here have the same meaning as in Schedule 18 to the Finance Act 1998. 1998 c. 36.

(4) This paragraph ceases to apply if and when the company—

(a) abandons its intention to resume operating qualifying ships, or

(b) again in fact operates a qualifying ship.

Meaning of operating a ship

18.—(1) A company is regarded for the purposes of this Schedule as operating any ship owned by, or chartered to, the company, subject to the following provisions.

(2) A company is not regarded as the operator of a ship where part only of the ship has been chartered to it.

For this purpose a company is not to be taken as having part only of a ship chartered to it by reason only of the ship being chartered to it jointly with one or more other persons.

(3) A company is not regarded as the operator of a ship that has been chartered out by it on bareboat charter terms, except as provided by the following provisions.

(4) A company is regarded as operating a ship that has been chartered out by it on bareboat charter terms if the person to whom it is chartered is not a third party.

For this purpose a "third party" means—

(a) in the case of a single company, any other person;

(b) in the case of a member of a group—

(i) any member of the group that is not a tonnage tax company (and does not become a tonnage tax company by virtue of the ship being chartered to it), or

(ii) any person who is not a member of the group.

(5) A company is not regarded as ceasing to operate a ship that has been chartered out by it on bareboat charter terms if—

(a) the ship is chartered out because of short-term over-capacity, and

(b) the term of the charter does not exceed three years.

(6) A company is regarded as operating a ship that has been chartered out by it on bareboat charter terms if the ship—

(a) is registered in the United Kingdom, and

(b) is in the service of a government department by reason of a charter by demise to the Crown,

1995 c. 21. and there is in force under section 308(2) of the Merchant Shipping Act 1995 an Order in Council providing for the registration of government ships in the service of that department.

In this sub-paragraph "government department" includes a Northern Ireland department.

Qualifying ships

19.—(1) For the purposes of this Schedule a "qualifying ship" means, subject to sub-paragraph (2), a seagoing ship of 100 tons or more gross tonnage used for—

(a) the carriage of passengers,

(b) the carriage of cargo,

(c) towage, salvage or other marine assistance, or

(d) transport in connection with other services of a kind necessarily provided at sea.

(2) A vessel is not a qualifying ship for the purposes of this Schedule if the main purpose for which it is used is the provision of goods or services of a kind normally provided on land.

(3) Sub-paragraph (1) is also subject to paragraph 20 (vessels excluded from being qualifying ships).

(4) For the purposes of this paragraph a ship is a seagoing ship if it is certificated for navigation at sea by the competent authority of any country or territory.

Vessels excluded from being qualifying ships

20.—(1) The following kinds of vessel are not qualifying ships for the purposes of this Schedule—

(a) fishing vessels or factory ships;

(b) pleasure craft;

(c) harbour or river ferries;

(d) offshore installations;

(e) tankers dedicated to a particular oil field;

(f) dredgers.

(2) In sub-paragraph (1)(a) "factory ship" means a vessel providing processing services for the fishing industry.

(3) In sub-paragraph (1)(b) "pleasure craft" means a vessel of a kind whose primary use is for the purposes of sport or recreation.

(4) In sub-paragraph (1)(c) "harbour or river ferry" means a vessel used for harbour, estuary or river crossings.

(5) In sub-paragraph (1)(d) "offshore installation" means—

(a) an offshore installation within the meaning of the Mineral Workings (Offshore Installations) Act 1971, or 1971 c. 61.

(b) what would be such an installation if the references in that Act to controlled waters were to any waters.

(6) For the purposes of sub-paragraph (1)(e) whether a tanker is dedicated to a particular oil field shall be determined in accordance with section 2 of the Oil Taxation Act 1983 (dedicated mobile assets). 1983 c. 56.

Power to modify exclusions

21. The Treasury may make provision by order amending paragraph 20 so as to add any description of vessel to, or remove any description of vessel from, the kinds of vessel that are excluded from being qualifying ships for the purposes of this Schedule.

Effect of change of use

22.—(1) A qualifying ship that begins to be used as a vessel of an excluded kind ceases to be a qualifying ship when it begins to be so used, subject to the following provisions.

(2) If—

(a) a company operates a ship throughout an accounting period of the company, and

(b) in that period the ship is used as a vessel of an excluded kind on not more than 30 days,

that use shall be disregarded in determining whether the ship is a qualifying ship at any time during that period.

(3) In the case of an accounting period shorter than a year, the figure of 30 days in sub-paragraph (2) shall be proportionately reduced.

(4) If a company operates a ship during part only of an accounting period of the company, sub-paragraph (2) has effect as if for "30 days", or the number of days substituted by sub-paragraph (3), there were substituted the number of days that bear to the length of that part of the accounting period the same proportion that 30 days does to a year.

(5) In this paragraph references to use as a vessel of an excluded kind are to use as a vessel of a kind excluded by paragraph 20 from being a qualifying ship.

PART IV

THE TRAINING REQUIREMENT

Introduction

23.—(1) It is a condition of entering tonnage tax or making a renewal election that—

(a) in the case of a single company, the company, or

(b) in the case of a group, the group,

meets certain minimum obligations in connection with the training of seafarers.

(2) The provisions of this Part of this Schedule have effect for securing that result.

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The minimum training obligation

24.—(1) The Secretary of State may make provision by regulations as to the minimum obligation of a tonnage tax company as regards the training of seafarers.

(2) The regulations may—

(a) require the company to provide training for a minimum number of seafarers calculated on such basis as may be prescribed, and

(b) impose different requirements with respect to the training of officers and ratings.

Paragraph (b) is without prejudice to the general power to make different provision for different cases (see paragraph 36(2)(a)).

(3) The regulations may impose such requirements as to the nationality and ordinary residence of trainees as appear to the Secretary of State to be appropriate.

(4) References in this Part of this Schedule to "the minimum training obligation" are—

(a) in relation to a single company, to the minimum obligation of that company, and

(b) in relation to a group, to the minimum obligations of the qualifying companies in the group taken as a whole.

Meaning of "training commitment"

25.—(1) References in this Part of this Schedule to a "training commitment" are to a statement by a company or group setting out how it proposes to meet the minimum training obligation.

(2) A training commitment is not effective for the purposes of this Part of this Schedule unless approved by the Secretary of State.

(3) Sub-paragraphs (1) and (2) are subject to—

paragraph 27(4) and (5) (power of Secretary of State to set training commitment), and

paragraph 28(2) (power of Secretary of State to adjust training commitment to take account of changed circumstances).

Approval of initial training commitment

26.—(1) A company or group proposing to make a tonnage tax election must produce, and submit to the Secretary of State for approval, an initial training commitment.

(2) If the Secretary of State is satisfied that the proposals are adequate to meet the minimum training obligation, he shall approve the initial training commitment and issue a certificate to that effect.

(3) A tonnage tax election is ineffective unless such a certificate of approval is in force with respect to the training commitment of the company or group in respect of which the election is made.

Annual training commitment

27.—(1) The Secretary of State may by regulations require a tonnage tax company or tonnage tax group—

(a) to produce a training commitment at such annual or other intervals as may be prescribed in respect of such period as may be prescribed, and

(b) to submit it to the Secretary of State for approval.

(2) If the Secretary of State is satisfied that the proposals are adequate to meet the minimum training obligation, he shall approve the training commitment and issue a certificate to that effect.

(3) It is an offence to fail to comply with any requirement imposed by regulations under sub-paragraph (1).

(4) The Secretary of State may make provision by regulations enabling him—

(a) to set the training commitment for a company or group if, after such period as may be prescribed, no training commitment has been submitted to and approved by him; and

(b) on the application of the company or group concerned, made after consultation with any prescribed person involved in the training of seafarers, to vary a training commitment set by him.

(5) A training commitment set by the Secretary of State has effect as if submitted by the company or group and approved by him.

Supplementary provisions about training commitments

28.—(1) The Secretary of State may make provision by regulations—

(a) as to the form and contents of a training commitment;

(b) requiring an application for approval of a training commitment to be in such form and contain such information as may be prescribed;

(c) authorising the Secretary of State, when considering a training commitment, to consult any prescribed person involved in the training of seafarers;

(d) as to the procedure to be followed where the Secretary of State is minded not to approve a training commitment.

(2) The Secretary of State may make provision by regulations—

(a) enabling him, on the application of the company or group concerned, to adjust a training commitment (to any extent) to take account of changed circumstances;

(b) requiring an application for adjustment to be in such form and contain such information as may be prescribed;

(c) authorising the Secretary of State, when considering an application for adjustment, to consult any prescribed person involved in the training of seafarers;

(d) as to the procedure to be followed where the Secretary of State is minded not to make the adjustment applied for.

(3) The Secretary of State may by regulations make such provision as he thinks appropriate as to the effect in relation to a training commitment of a merger or other transaction resulting in a change of control of one or more companies.

Payments in lieu of training

29.—(1) The Secretary of State may make provision by regulations—

(a) allowing a company or group, in such circumstances and to such extent as may be prescribed, to propose in its training commitment to meet the minimum training obligation by making payments in lieu of training; and

(b) requiring a company or group to make payments in lieu of training—

(i) where its training commitment provides for such payments;

(ii) where training is not provided in accordance with its training commitment.

(2) The regulations shall provide for payments in lieu of training—

(a) to be calculated on such basis as may be prescribed,

(b) to be made to or for the benefit of any prescribed person involved in the training of seafarers, and

(c) to be made at such intervals and in such manner as may be prescribed.

(3) The regulations may provide that if in any case there is a failure in relation to a company or group to comply with the requirements of this Part of this Schedule with respect to—

(a) the submission of training commitments, or

(b) the making of returns or provision of information,

the Secretary of State may determine to the best of his information and belief the amount of the payments in lieu of training to be made by the company or group.

(4) The regulations may provide that a payment in lieu of training that has become due but is unpaid—

(a) is a debt due to the Secretary of State or any prescribed person involved in the training of seafarers, and

(b) carries interest at such rate as may be prescribed.

(5) The regulations may provide for the costs or expenses of any legal or other proceedings for recovering the debt or interest to be recoverable, and to carry interest, in the same way as the debt.

Monitoring of compliance with training commitment

30.—(1) The Secretary of State may make provision by regulations—

(a) requiring a return to be made to the Secretary of State or any prescribed person involved in the training of seafarers, at such intervals as may be prescribed, of such information as may be prescribed relating to—

(i) the training provided, and

(ii) any payments in lieu of training made,

by a tonnage tax company or tonnage tax group;

(b) authorising the Secretary of State to direct any person to provide such information as the Secretary of State may reasonably require for the purposes of ascertaining—

(i) what the minimum training obligation of a company or group should be,

(ii) whether the proposals in a training commitment are adequate to meet the minimum training obligation of a company or group, or

(iii) whether a company or group has complied with its training commitment;

(c) enabling an audit to be carried on on behalf of the Secretary of State of the accounts or other records—

(i) of a qualifying single company, or

(ii) of the qualifying companies in a group,

for the purpose of checking that any return or information provided to the Secretary of State is correct.

(2) A person commits an offence if without reasonable excuse—

(a) he fails to make a return that he is required to make by regulations under sub-paragraph (1)(a),

(b) having been directed under regulations under sub-paragraph (1)(b) to provide any information, he fails to comply with the direction, or

(c) he obstructs a person carrying out an audit under regulations under sub-paragraph (1)(c).

Higher rate of payment in case of failure to meet training commitment

31.—(1) The Secretary of State may by regulations provide that—

(a) if a company fails to meet its training commitment in any period, the amount of any payments in lieu of training that fall to be made by the company in a subsequent period shall be at a higher rate; and

(b) if a group fails to meet its training commitment in any period, the amount of any payments in lieu of training that fall to be made by any member of the group in a subsequent period shall be at a higher rate.

(2) The regulations may contain provision as to—

(a) the periods by reference to which it is to be determined whether a company or group has met its training commitment;

(b) the circumstances in which a company or group is to be treated as failing to meet its training commitment;

(c) the method of calculating the higher rate of payment; and

(d) any circumstances in which the higher rate is not to be payable despite the failure of a company or group to meet its training commitment.

(3) The regulations may make provision having the effect that the rate of payments in lieu of training is progressively increased if a company or group fails to meet its training commitment in successive periods.

Certificate of non-compliance

32.—(1) The Secretary of State may by regulations make provision authorising the Secretary of State to issue a certificate of non-compliance in the following cases.

(2) The regulations may authorise the issue of a certificate of non-compliance in respect of a single company if—

(a) the company fails to meet its training commitment for successive periods amounting to not less than two years, or

(b) the company, or any of its officers, commits an offence under this Schedule.

(3) The regulations may authorise the issue of a certificate of non-compliance in respect of a group if—

(a) the group fails to meet its training commitment for successive periods amounting to not less than two years, or

(b) a member of the group, or an officer of a member, commits an offence under this Schedule.

(4) If such regulations are made they shall provide that a certificate of non-compliance must be issued unless the Secretary of State is satisfied that there are good reasons why a certificate should not be issued.

(5) No renewal election may be made in respect of a company or group in relation to which a certificate of non-compliance is in force.

Certificates of non-compliance: supplementary provisions

33.—(1) The Secretary of State may make provision by regulations—

(a) enabling a company or group in respect of which a certificate of non-compliance has been issued to apply to the Secretary of State to cancel the certificate;

(b) requiring any such application to be in such form and contain such information as may be prescribed;

(c) authorising or requiring the Secretary of State, when considering such an application, to consult any prescribed person involved in the training of seafarers;

(d) as to the procedure to be followed where the Secretary of State is minded not to cancel a certificate of non-compliance.

(2) The Secretary of State may by regulations make such provision as he thinks appropriate as to the effect on a certificate of non-compliance of a merger or demerger relating to the company or group in respect of which the certificate is in force.

Disclosure of information

34.—(1) No obligation as to secrecy or other restriction on the disclosure of information imposed by statute or otherwise prevents the disclosure of information—

(a) by the Secretary of State to the Inland Revenue for the purpose of assisting the Inland Revenue to discharge their functions under the Corporation Tax Acts so far as relating to matters arising under this Schedule, or

(b) by the Inland Revenue to the Secretary of State for the purpose of assisting the Secretary of State to discharge his functions under this Part of this Schedule.

(2) No obligation as to secrecy or other restriction on the disclosure of information imposed by statute or otherwise prevents the disclosure of information—

(a) by the Secretary of State to any prescribed person involved in the training of seafarers, or

(b) by any such person to the Secretary of State,

for the purposes of assisting the Secretary of State to discharge his functions under this Part of this Schedule.

(3) Information obtained by such disclosure as is mentioned in sub-paragraph (1) or (2) shall not be further disclosed except for the purposes of legal proceedings arising out of the functions referred to.

Offences

35.—(1) It is an offence for a person to provide for any of the purposes of this Part of this Schedule information that he knows or has reasonable cause to believe is false in a material particular.

(2) A person committing any offence under this Part of this Schedule, is liable—

(a) on summary conviction, to a fine not exceeding the statutory maximum, and

(b) on conviction on indictment, to a fine.

General provisions about regulations

36.—(1) Regulations under this Part of this Schedule shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of the House of Commons.

(2) Regulations under this Part of this Schedule—

(a) may make different provision for different cases, and

(b) may contain such supplementary, incidental and transitional provisions as appear to the Secretary of State to be necessary or expedient.

(3) In this Part of this Schedule "prescribed" means prescribed by regulations made by the Secretary of State.

(4) Regulations under this Part of this Schedule may make provision as to the obligations of a company in respect of any part of the period—

(a) beginning with 1st January 2000, and

(b) ending immediately before the first regulations under this Part come into force,

during which the company is, or is treated as having been, subject to tonnage tax.

This includes power to require payments in lieu of training to be made in respect of any such part of that period.

PART V

OTHER REQUIREMENTS

The requirement that not more than 75% of fleet tonnage is chartered in

37.—(1) It is a requirement of entering or remaining within tonnage tax—

(a) in the case of a single company, that not more than 75% of the net tonnage of the qualifying ships operated by it is chartered in;

(b) in the case of a group, that not more than 75% of the aggregate net tonnage of the qualifying ships operated by the members of the group that are qualifying companies is chartered in.

(2) For this purpose a ship is "chartered in"—

(a) in relation to a single company, if it is chartered to the company otherwise than on bareboat charter terms, or

(b) in relation to a group, if it is chartered otherwise than on bareboat charter terms to a qualifying member of the group by a person who is not a qualifying member of the group.

In paragraph (b) "qualifying member of the group" means a qualifying company that is a member of the group.

(3) A ship shall not be counted more than once in determining for the purposes of sub-paragraph (1)(b) the aggregate net tonnage of the qualifying ships operated by the members of a group that are qualifying companies.

(4) In the following provisions the requirement in this paragraph is referred to as "the 75% limit"—

paragraph 38 (election not effective if limit exceeded), and

paragraphs 39 and 40 (exclusion of company or group where limit exceeded).

(5) References to the limit being exceeded in an accounting period are to its being exceeded on average over the period in question.

The 75% limit: election not effective if limit exceeded

38.—(1) Where a tonnage tax election is made before the end of the initial period and the 75% limit is exceeded in the first relevant accounting period, the election is treated as never having been of any effect.

(2) Where a tonnage tax election is made after the end of the initial period, then—

(a) if the 75% limit is exceeded in the first relevant accounting period, the election does not have effect in relation to that period;

(b) if the 75% limit is exceeded in the first and second relevant accounting periods, the election does not have effect in relation to either of those periods; and

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(c) if the 75% limit is exceeded in the first, second and third relevant accounting periods, the election is treated as never having been of any effect.

(3) For the purposes of sub-paragraphs (1) and (2) the first, second or third relevant accounting period means—

(a) in relation to a single company, the accounting period that, if the election had been effective, would have been the first, second or third accounting period of the company after its entry into tonnage tax;

(b) in relation to a group, the accounting period that, if the election had been effective, would have been the first, second or third accounting period of a member of the group that would have been a tonnage tax company.

(4) Sub-paragraphs (1) and (2) do not apply to a renewal election.

The 75% limit: exclusion of company if limit exceeded

39.—(1) If the 75% limit is exceeded in two or more consecutive accounting periods of a single company subject to tonnage tax, the Inland Revenue may give notice excluding the company from tonnage tax.

(2) The effect of the notice is that the company's tonnage tax election ceases to be in force from such date as may be specified in the notice.

The specified date must not be earlier than the beginning of the accounting period of the company that follows the second consecutive accounting period of the company in which the limit is exceeded.

The 75% limit: exclusion of group if limit exceeded

40.—(1) If the 75% limit is exceeded in relation to a tonnage tax group in two or more consecutive accounting periods of any tonnage tax company that is a member of the group ("the relevant company"), the Inland Revenue may give notice excluding the group from tonnage tax.

(2) The effect of the notice is that the group's tonnage tax election ceases to be in force from such date as may be specified in the notice.

The specified date must not be earlier than the beginning of the accounting period of the relevant company that follows the second consecutive accounting period of that company in which the limit is exceeded.

(3) Notice under this paragraph need only be given to the relevant company.

This is subject to any arrangements under paragraph 120 (arrangements for dealing with group matters).

The requirement not to enter into tax avoidance arrangements

41.—(1) It is a condition of remaining within tonnage tax that a company is not a party to any transaction or arrangement that is an abuse of the tonnage tax regime.

(2) A transaction or arrangement is such an abuse if in consequence of its being, or having been, entered into the provisions of this Schedule fall to be applied in a way that results (or would but for this paragraph result) in—

(a) a tax advantage being obtained for—

(i) a company other than a tonnage tax company, or

(ii) a tonnage tax company in respect of its non-tonnage tax activities,

or

(b) the amount of the tonnage tax profits of a tonnage tax company being artificially reduced.

(3) In this paragraph "tax advantage" has the same meaning as in Chapter I of Part XVII of the Taxes Act 1988 (tax avoidance) (see section 709 of that Act).

(4) A finance lease is not to be taken as being an abuse of the tonnage tax regime by reason of the lessor obtaining capital allowances as a result of the lease being, or having been, entered into.

In this sub-paragraph "finance lease", and "lessor" in relation to such a lease, have the meaning given by section 82A of the Capital Allowances Act 1990. 1990 c. 1.

Tax avoidance: exclusion from tonnage tax

42.—(1) If a tonnage tax company is a party to any such transaction or arrangement as is mentioned in paragraph 41(1), the Inland Revenue may—

(a) if it is a single company, give notice excluding it from tonnage tax;

(b) if it is a member of a group, give notice excluding the group from tonnage tax.

(2) The effect of the notice in the case of a single company is that the company's tonnage tax election ceases to be in force from the beginning of the accounting period in which the transaction or arrangement was entered into.

(3) The effect of such a notice in the case of a group is that the group's tonnage tax election ceases to be in force from such date as may be specified in the notice.

The specified date must not be earlier than the beginning of the earliest accounting period in which any member of the group entered into the transaction or arrangement in question.

(4) The provisions of paragraphs 138 and 139 (exit charge: chargeable gains and balancing charges) apply where a company ceases to be a tonnage tax company by virtue of this paragraph.

(5) Notice under this sub-paragraph (1)(b) need only be given to the company mentioned in the opening words of that sub-paragraph.

This is subject to any arrangements under paragraph 120 (arrangements for dealing with group matters).

Appeals

43.—(1) An appeal lies to the Special Commissioners against a notice given by the Inland Revenue under—

paragraph 39 or 40 (exclusion of company or group from tonnage tax if 75% limit exceeded), or

paragraph 42 (exclusion from tonnage tax of company or group where tax avoidance arrangement entered into).

(2) Notice of appeal must be given to the Inland Revenue within 30 days of the date of issue of the notice appealed against.

(3) In the case of a notice under paragraph 40 or 42(1)(b) only one appeal may be brought, but it may be brought jointly by two or more members of the group concerned.

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PART VI

RELEVANT SHIPPING PROFITS

Introduction

44.—(1) For the purposes of this Schedule the relevant shipping profits of a tonnage tax company are—

(a) its relevant shipping income (as defined below), and

(b) so much of its chargeable gains as is effectively excluded from the charge to tax by the provisions of Part VIII of this Schedule.

(2) The "relevant shipping income" of a tonnage tax company means—

(a) its income from tonnage tax activities (see paragraphs 45 to 48), and

(b) any income that is relevant shipping income under—

paragraph 49 (distributions of overseas shipping companies), or

paragraph 50 (certain interest etc.),

but subject to paragraph 51 (general exclusion of investment income).

Tonnage tax activities

45.—(1) References in this Schedule to the "tonnage tax activities" of a tonnage tax company are to—

(a) its core qualifying activities (see paragraph 46),

(b) its qualifying secondary activities to the extent that they do not exceed the permitted level (see paragraph 47), and

(c) its qualifying incidental activities (see paragraph 48).

(2) Sub-paragraph (1) has effect subject to paragraph 51(2) (exclusion of activities giving rise to investment income).

Core qualifying activities

46.—(1) A tonnage tax company's "core qualifying activities" are—

(a) its activities in operating qualifying ships, and

(b) other ship-related activities that are a necessary and integral part of the business of operating its qualifying ships.

(2) A company's activities in operating qualifying ships means the activities mentioned in paragraph 19(1)(a) to (d) by virtue of which the ship is a qualifying ship.

Qualifying secondary activities

47.—(1) The Inland Revenue may make provision by regulations as to—

(a) the descriptions of activity that are to be regarded as qualifying secondary activities, and

(b) the permitted level in relation to any such activity or description of activity.

(2) The regulations may set the permitted level or provide for its determination by reference to such factors as may be specified in the regulations.

Qualifying incidental activities

48.—(1) A company's incidental activities means its ship-related activities that—

(a) are incidental to its core qualifying activities, and

(b) are not qualifying secondary activities.

(2) If the turnover in an accounting period of the company from its incidental activities (taken together) does not exceed 0.25% of the company's turnover in that period from—

(a) its core qualifying activities, and

(b) its qualifying secondary activities to the extent that they do not exceed the permitted level,

the company's incidental activities in that period are qualifying incidental activities.

Relevant shipping income: distributions of overseas shipping companies

49.—(1) Income of a tonnage tax company consisting in a dividend or other distribution of an overseas company is relevant shipping income if the following conditions are met.

(2) The conditions are—

(a) that the overseas company operates qualifying ships;

(b) that more than 50% of the voting power in the overseas company is held by a company resident in a member State, or that two or more companies each of which is resident in a member State hold in aggregate more than 50% of that voting power;

(c) that the 75% limit is not exceeded in relation to the overseas company in any accounting period in respect of which the distribution is paid;

(d) that all the income of the overseas company is such that, if it were a tonnage tax company, it would be relevant shipping income;

(e) that the distribution is paid entirely out of profits arising at a time when—

(i) the conditions in paragraphs (a) to (d) were met, and

(ii) the tonnage tax company was subject to tonnage tax; and

(f) the profits of the overseas company out of which the distribution is paid are subject to a tax on profits (in the country of residence of the company or elsewhere, or partly in that country and partly elsewhere).

(3) For the purposes of sub-paragraph (2)(c) the "75% limit" is the requirement set out in paragraph 37 (requirement that not more than 75% of tonnage is chartered in) as it applies to a single company.

(4) In this paragraph an "overseas company" means a company that is not resident in the United Kingdom.

Relevant shipping income: certain interest etc.

50.—(1) Income to which this paragraph applies is relevant shipping income only to the extent that it would apart from this Schedule fall to be taken into account as trading income from a trade consisting of the company's tonnage tax activities.

(2) This paragraph applies to—

(a) anything giving rise to a credit that would fall to be brought into account for the purposes of Chapter II of Part IV of the Finance Act 1996 (loan relationships); 1996 c. 8.

(b) any exchange gain under Chapter II of Part II of the Finance Act 1993 (exchange gains and losses); and 1993 c. 34.

(c) any profit on a qualifying contract under Chapter II of Part IV of the Finance Act 1994 (interest rate and currency contracts). 1994 c. 9.

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General exclusion of investment income

51.—(1) Income from investments is not relevant shipping income.

(2) To the extent that an activity gives rise to income from investments it is not regarded as part of a company's tonnage tax activities.

(3) For the purposes of this paragraph "income from investments" includes—

(a) any income chargeable to tax under Schedule A or Case III of Schedule D, and

(b) any equivalent foreign income.

(4) "Equivalent foreign income" means income chargeable under Case V of Schedule D that—

(a) consists in income of an overseas property business, or

(b) is equivalent to a description of income chargeable to tax under Case III of Schedule D but arises from a possession outside the United Kingdom.

(5) Sub-paragraph (1) above does not affect income that is relevant shipping income under—

paragraph 49 (distributions of overseas shipping companies), or

paragraph 50 (certain interest etc.).

PART VII

THE RING FENCE: GENERAL PROVISIONS

Accounting period ends on entry or exit

52. An accounting period ends (if it would not otherwise do so) when a company enters or leaves tonnage tax.

Tonnage tax trade

53.—(1) The tonnage tax activities of a tonnage tax company are treated for corporation tax purposes as a separate trade (the company's "tonnage tax trade") distinct from all other activities carried on by the company.

(2) Sub-paragraph (1) shall not be read as requiring a company to be treated—

(a) as setting up and commencing a new trade on entry into tonnage tax, or

(b) as permanently ceasing to carry on a trade on leaving tonnage tax.

Profits of controlled foreign companies

54.—(1) A tonnage tax company is not subject to any liability under section 747 of the Taxes Act 1988 in any accounting period in respect of profits of a controlled foreign company if in that period distributions of the controlled foreign company made to the tonnage tax company would be relevant shipping income of the latter (see paragraph 49).

(2) Schedule 24 to that Act (assumptions for calculating chargeable profits of controlled foreign companies) has effect subject to the following provisions.

(3) If a company in relation to which that Schedule applies—

(a) is a member of a tonnage tax group, and

(b) is a tonnage tax company by virtue of the group's tonnage tax election, or would be if it were within the charge to corporation tax,

it shall be assumed for the purposes for which that Schedule applies to be a single company that is a tonnage tax company.

(4) Nothing in paragraph 5(1) of that Schedule (controlled foreign company assumed not to be member of a group) affects sub-paragraph (3) above.

For accounting periods ending before 1st April 2000 the reference to paragraph 5(1) has effect as a reference to paragraph 5 of that Schedule.

(5) Paragraph 20 of that Schedule (provisions for avoiding double charge) does not apply where, or to the extent that, the transaction in question is one any profits from which would be, or would be reflected in, relevant shipping profits of a party to the transaction.

General exclusion of reliefs, deductions and set-offs

55. No relief, deduction or set-off of any description is allowed against the amount of a company's tonnage tax profits.

Exclusion of loss relief

56.—(1) When a company enters tonnage tax, any losses that have accrued to it before entry and are attributable—

(a) to activities that under tonnage tax become part of the company's tonnage tax trade, or

(b) to a source of income that under tonnage tax becomes relevant shipping income,

are not available for loss relief in any accounting period beginning on or after the company's entry into tonnage tax.

(2) Any apportionment necessary to determine the losses so attributable shall be made on a just and reasonable basis.

(3) In sub-paragraph (1) "loss relief" includes any means by which a loss might be used to reduce the amount in respect of which that company, or any other company, is chargeable to tax.

Exclusion of relief or set-off against tax liability

57.—(1) Any relief or set-off against a company's tax liability for an accounting period does not apply in relation to—

(a) so much of that tax liability as is attributable to the company's tonnage tax profits, or

(b) so much of that tax liability as is attributable to tonnage profits of a controlled foreign company apportioned to the company under section 747(3) of the Taxes Act 1988.

(2) Relief to which this paragraph applies includes, but is not limited to, any relief or set-off under—

(a) section 788 or 790 of the Taxes Act 1988 (double taxation relief), or

(b) regulations under section 32 of the Finance Act 1998 (unrelieved surplus advance corporation tax). 1998 c. 36.

(3) Sub-paragraph (1)(b) applies whether or not the company to which the profits are apportioned is subject to tonnage tax.

(4) For the purposes of sub-paragraph (1)(b)—

(a) "tonnage profits" means so much of the chargeable profits of the controlled foreign company as, on the assumptions in Schedule 24 to the Taxes Act 1988, are calculated in accordance with paragraph 4 of this Schedule; and

(b) so much of a controlled foreign company's chargeable profits for any accounting period as are tonnage profits shall be treated as apportioned under section 747(3) of that Act in the same proportions as those chargeable profits (taken generally) are apportioned.

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(5) For the purposes of any such regulations as are mentioned in sub-paragraph (2)(b), a company's tonnage tax profits shall be left out of account in determining the company's profits charged to corporation tax.

This does not affect the computation under those regulations of shadow ACT on distributions made by a tonnage tax company, whether paid out of tonnage tax profits or other profits.

(6) This paragraph does not affect—

(a) any reduction under section 13(2) of the Taxes Act 1988 (marginal small companies' relief), or

(b) any set off under section 7(2) or 11(3) of the Taxes Act 1988 (set off for income tax borne by deduction).

Transactions not at arm's length: between tonnage tax company and another person

58.—(1) In relation to provision made or imposed as between a tonnage tax company and another person by a transaction or series of transactions that—

(a) falls in relation to the tonnage tax company to be regarded as made or imposed in the course of, or with respect to, its tonnage tax trade, and

(b) does not fall in relation to the other person to be regarded as made or imposed in the course of, or with respect to, a tonnage tax trade carried on by that person,

Schedule 28AA to the Taxes Act 1988 (transactions not at arm's length) has effect with the omission of paragraphs 5(2) to (6), 6 and 7 (exclusion of intra-UK transactions).

(2) Expressions used in Schedule 28AA have the same meaning in this paragraph.

(3) Nothing in this paragraph affects the computation of a company's tonnage tax profits.

Transactions not at arm's length: between tonnage tax trade and other activities of same company

59.—(1) Schedule 28AA of the Taxes Act 1988 (transactions not at arm's length) applies to provision made or imposed as between a company's tonnage tax trade and other activities carried on by it as if—

(a) that trade and those activities were carried on by two different persons,

(b) the provision were made or imposed between those persons by means of a transaction, and

(c) the two persons were both controlled by the same person at the time of the making or imposition of the provision.

(2) As applied by sub-paragraph (1), Schedule 28AA has effect with the omission of paragraphs 5(2) to (6), 6 and 7 (exclusion of intra-UK transactions).

(3) Expressions used in Schedule 28AA have the same meaning in this paragraph.

(4) Nothing in this paragraph affects the computation of a company's tonnage tax profits.

Transactions not at arm's length: duty to give notice

60.—(1) Not more than 90 days after—

(a) the making of an election under this Schedule, or the occurrence of any other event, as a result of which a company enters, or is taken to have entered, tonnage tax, or

(b) the making of an election under this Schedule as a result of which a company will become a tonnage tax company at a later date,

the company shall give notice under this paragraph to any person whose tax liability may be affected by paragraph 58 (transactions not at arm's length).

(2) The notice must state—

(a) that the company has become a tonnage tax company, or

(b) that an election has been made under this Schedule as a result of which the company will become a tonnage tax company,

and inform the person to whom it is given of the possible application of the provisions of Schedule 28AA in relation to transactions between the company and that person.

Treatment of finance costs: single company

61.—(1) This paragraph applies to a tonnage tax company which is a single company carrying on tonnage tax activities and other activities.

(2) An adjustment shall be made if it appears, in relation to an accounting period of the company, that the company's deductible finance costs outside the ring fence exceed a fair proportion of the company's total finance costs.

(3) The company's "deductible finance costs outside the ring fence" means the total of the amounts that may be brought into account in respect of finance costs in calculating for the purposes of corporation tax the company's profits other than relevant shipping profits.

(4) A company's "total finance costs" means so much of the company's finance costs as could, if there were no tonnage tax election, be brought into account in calculating the company's profits for the purposes of corporation tax.

(5) What proportion of the company's total finance costs should be deductible outside the ring fence shall be determined on a just and reasonable basis by reference to the extent to which the funding in relation to which the costs are incurred is applied in such a way that any profits arising, directly or indirectly, would be relevant shipping profits.

(6) Where an adjustment falls to be made under this paragraph, an amount equal to the excess referred to in sub-paragraph (2) shall be brought into account as if it were a non-trading credit falling for the purposes of Chapter II of Part IV of the Finance Act 1996 (loan relationships) to be brought into account in respect of a loan relationship of the company in respect of non-tonnage tax activities. 1996 c. 8.

Treatment of finance costs: group company

62.—(1) This paragraph applies to a tonnage tax company which is a member of a tonnage tax group where the activities carried on by the members of the group include activities other than tonnage tax activities.

(2) An adjustment shall be made if it appears, in relation to an accounting period of the company, that the group's deductible finance costs outside the ring fence exceed a fair proportion of the total finance costs of the group.

(3) A group's "deductible finance costs outside the ring fence" means so much of the group's finance costs as may be brought into account in calculating for the purposes of corporation tax—

(a) in the case of a group member that is a tonnage tax company, the company's profits other than relevant shipping profits, and

(b) in the case of a group member that is not a tonnage tax company, the company's profits.

(4) A group's "total finance costs" means so much of the group's finance costs as could, if there were no tonnage tax election, be brought into account in calculating for the purposes of corporation tax the profits of any member of the group.

(5) What proportion of the group's total finance costs should be deductible outside the ring fence shall be determined on a just and reasonable basis by reference to the extent to which the funding in relation to which the costs are incurred is applied in such a way that any profits arising, directly or indirectly, would be relevant shipping profits.

(6) Where an adjustment falls to be made under this paragraph, an amount equal to the relevant proportion of the excess referred to in sub-paragraph (2) shall be brought into account as if it were a non-trading credit falling for the purposes of Chapter II of Part IV of the Finance Act 1996 (loan relationships) to be brought into account in respect of a loan relationship of the company in respect of non-tonnage tax activities.

1996 c. 8.

For this purpose "the relevant proportion" is the proportion that the company's tonnage tax profits bear to the tonnage tax profits of all the members of the group.

Meaning of "finance costs"

63.—(1) For the purposes of paragraphs 61 and 62 "finance costs" means the costs of debt finance.

(2) In calculating the costs of debt finance, the matters to be taken into account include—

(a) any costs giving rise to a trading or non-trading debit under Chapter II of Part IV of the Finance Act 1996 (loan relationships);

(b) any trading profit or loss, under Chapter II of Part IV of the Finance Act 1994 (interest rate and currency contracts), in relation to debt finance;

1994 c. 9.

(c) any exchange gain or loss within the meaning of Chapter II of Part II of the Finance Act 1993 in relation to debt finance;

1993 c. 34.

(d) the finance cost—

(i) implicit in a payment under a finance lease, or

(ii) payable on debt factoring or any similar transaction; and

(e) any other costs arising from what would be considered on normal accounting principles to be a financing transaction.

(3) No adjustment shall be made under paragraph 61 or 62 if, in calculating for a period the company's, or as the case may be, the group's deductible finance costs outside the ring fence, the amount taken into account in respect of costs and losses is exceeded by the amount taken into account in respect of profits and gains.

PART VIII

CHARGEABLE GAINS AND ALLOWABLE LOSSES ON TONNAGE TAX ASSETS

Chargeable gains: tonnage tax assets

64.—(1) In this Part of this Schedule a "tonnage tax asset" means an asset that is used wholly and exclusively for the purposes of the tonnage tax activities of a tonnage tax company.

(2) Where for one or more continuous periods of at least a year part of an asset has been used wholly and exclusively for the purposes of the tonnage tax activities of a tonnage tax company and part has not, this Part of this Schedule shall apply as if the part so used were a separate asset.

(3) Where sub-paragraph (2) applies, any necessary apportionment of the gain or loss on the whole asset shall be made on a just and reasonable basis.

Chargeable gains: disposal of tonnage tax asset

65.—(1) When an asset is disposed of that is or has been a tonnage tax asset—

(a) any gain or loss on the disposal is a chargeable gain or allowable loss only to the extent (if any) to which it is referable to periods during which the asset was not a tonnage tax asset, and

(b) any such chargeable gain or allowable loss on a disposal by a tonnage tax company is treated as arising otherwise than in the course of the company's tonnage tax trade.

(2) For the purposes of sub-paragraph (1) the amount of the gain or loss on a disposal means what would be the amount of the chargeable gain or allowable loss apart from this paragraph.

(3) The proportion of that gain or loss referable to periods during which the asset was not a tonnage tax asset is given by:

$$\frac{P - PTTA}{P}$$

where:

P is the total length of the period since the asset was created or, if later, the last third-party disposal, and

PTTA is the length of the period (or the aggregate length of the periods) since—

(a) the asset was created, or

(b) if later, the last third-party disposal,

during which the asset was a tonnage tax asset.

(4) In sub-paragraph (3) a "third-party disposal" means a disposal (or deemed disposal) that is not treated as one on which neither a gain nor a loss accrues to the person making the disposal.

Chargeable gains: losses brought forward

66. A tonnage tax election does not affect the deduction under section 8(1) of the Taxation of Chargeable Gains Act 1992 (corporation tax: computation of chargeable gains) of allowable losses that accrued to a company before it became a tonnage tax company. 1992 c. 12.

Chargeable gains: roll-over relief for business assets

67.—(1) Sections 152 and 153 of the Taxation of Chargeable Gains Act 1992 (roll-over relief for business assets) do not apply if or to the extent that the new assets are tonnage tax assets.

(2) Where relief under either of those sections is, or has been, claimed in respect of the disposal of an asset ("Asset No.1") and the acquisition of another asset ("Asset No.2") that subsequently becomes a tonnage tax asset, the claimant is not (or, as the case may be, shall cease to be) entitled under that section to—

(a) a reduction of the consideration for the disposal of Asset No.1, and

(b) a corresponding reduction of the expenditure for the acquisition of Asset No.2,

but so much of the chargeable gain arising on the disposal of Asset No.1 as is equal to the amount of the reduction that would have been made is treated as not accruing until Asset No.2 is disposed of.

(3) Any chargeable gain accruing as a result of the rules in sub-paragraph (1) or (2) is treated as arising otherwise than in the course of the company's tonnage tax trade.

PART IX

THE RING FENCE: CAPITAL ALLOWANCES: GENERAL

Introduction

68.—(1) This Part of this Schedule makes provision about capital allowances where a company enters, leaves or is subject to tonnage tax.

(2) The general scheme of this Part of this Schedule is that—

(a) entry of a company into tonnage tax does not of itself give rise to any balancing charges or balancing allowances,

(b) a company subject to tonnage tax is not entitled to capital allowances in respect of expenditure incurred for the purposes of its tonnage tax trade, whether before or after its entry into tonnage tax, and

(c) on leaving tonnage tax a company is put broadly in the position it would have been in if it had never been subject to tonnage tax.

(3) A company's tonnage tax trade is not a qualifying activity for the purposes of determining the company's entitlement to capital allowances.

Entry: plant and machinery: assets to be used wholly for tonnage tax trade

69.—(1) On a company's entry into tonnage tax any unrelieved qualifying expenditure attributable to plant or machinery that is to be used wholly for the purposes of the company's tonnage tax trade is taken to a single pool (the company's "tonnage tax pool").

(2) For the purposes of this paragraph "unrelieved qualifying expenditure" means the balance that would otherwise have been carried forward under Part II of the Capital Allowances Act 1990.

1990 c. 1.

(3) The amount of unrelieved qualifying expenditure attributable to plant or machinery in a class pool, or the main pool, is the proportion of the whole given by:

$$\frac{AV}{PV}$$

where:

AV is the aggregate market value of the assets concerned immediately before entry into tonnage tax, and

PV is the aggregate market value at that time of all the assets in the pool.

(4) References in this paragraph to unrelieved qualifying expenditure include qualifying expenditure to the extent to which it is unrelieved by virtue of notice having been given under—

(a) section 30(1) of the Capital Allowances Act 1990 (postponement or reduction of first year allowances), or

(b) section 31(3) of that Act (postponement of writing-down allowance in respect of expenditure in single ship pool).

No allowance may be claimed in respect of any such expenditure taken to the company's tonnage tax pool.

Entry: plant and machinery: assets to be used partly for tonnage tax trade

70.—(1) This paragraph applies where, on a company's entry into tonnage tax, plant and machinery is to be used partly for the purposes of the company's tonnage tax trade and partly for the purposes of a qualifying activity carried on by the company.

(2) The provisions of sections 24(6)(c)(iv) and 79(3) to (6) of the Capital Allowances Act 1990 (effect of use partly for trade and partly for other purposes) apply as follows— 1990 c. 1.

(a) references to a trade shall be read as references to the qualifying activity (and not as including a reference to the tonnage tax trade), and

(b) references to purposes other than those of a trade shall be read as including references to the purposes of the tonnage tax trade.

Entry: ships acquired and disposed of within twelve months

71.—(1) This paragraph applies if a company—

(a) acquires a qualifying ship within the period of six months before the company enters tonnage tax, and

(b) disposes of the ship before the end of the period of twelve months beginning with the day on which the ship was acquired.

(2) The aggregate amount of the capital allowances to which the company is entitled for the period or periods before entry into tonnage tax in respect of its expenditure on acquiring the ship is limited to the amount by which that expenditure exceeds the market value of the ship on the company's entry into tonnage tax.

Entry: deferred balancing charge on disposal of ship

72.—(1) This paragraph applies where deferment of a balancing charge has been claimed under sections 33A to 33F of the Capital Allowances Act 1990 (balancing charge on disposal of ship to be deferred and set against new expenditure incurred within six years) by a company that subsequently enters tonnage tax.

(2) Expenditure on new shipping incurred by a company subject to tonnage tax shall not be taken into account for the purposes of those sections unless the company that incurred the balancing charge—

(a) was a qualifying company for the purposes of this Schedule at the time the balancing charge arose, or

(b) would have been such a company had this Schedule been in force at that time.

(3) Subject to sub-paragraph (2)—

(a) the company's entry into tonnage tax does not affect the operation of those sections, and

(b) the expenditure on new shipping that is to be taken into account for the purposes of those sections shall be determined as if the company was not subject to tonnage tax.

During: plant and machinery: new expenditure partly for tonnage tax purposes

73.—(1) This paragraph applies where a company subject to tonnage tax incurs expenditure on the provision of plant or machinery partly for the purposes of its tonnage tax trade and partly for the purposes of a qualifying activity.

(2) The provisions of section 79(2) and (4) to (6) of the Capital Allowances Act 1990 (operation of single asset pool for mixed use assets) apply as follows—

(a) references to a trade shall be read as references to the qualifying activity (and not as including a reference to the tonnage tax trade), and

(b) references to purposes other than those of a trade shall be read as including references to the purposes of the tonnage tax trade.

During: plant and machinery: asset beginning to be used for tonnage tax trade

74. A company's tonnage tax pool is not increased by reason of an asset beginning to be used for the purposes of the company's tonnage tax trade after the company's entry into tonnage tax.

During: plant and machinery: change of use of tonnage tax asset

75.—(1) This paragraph applies where, at a time when a company is subject to tonnage tax, plant or machinery used for the purposes of the company's tonnage tax trade begins to be used wholly or partly for purposes other than those of that trade.

(2) If the asset was acquired before entry into tonnage tax, section 24(6)(c)(iv) of the Capital Allowances Act 1990 applies (disposal value to be brought into account on plant of machinery beginning to be used wholly or partly for purposes other than those of the trade for which it was provided).

1990 c. 1.

The reference to the trade shall be read as a reference to the tonnage tax trade.

(3) If the asset was acquired after entry into tonnage tax and begins to be used wholly or partly for the purposes of a qualifying activity carried on by the company, section 81(1)(a) of the Capital Allowances Act 1990 (effect of use after user not attracting capital allowances) applies as follows—

(a) the reference to the trade shall be read as a reference to the qualifying activity (and as not including a reference to the tonnage tax trade), and

(b) the reference to purposes such that the expenditure has not been taken into account in computing any capital allowance shall be read as including the purposes of the tonnage tax trade.

During: plant and machinery: change of use of non-tonnage tax asset

76.—(1) This paragraph applies where, at a time when a company is subject to tonnage tax, plant or machinery used for the purposes of a qualifying activity carried on by the company begins to be used wholly or partly for the purposes of the company's tonnage tax trade.

(2) The provisions of sections 24(6)(c)(iv) and 79(3) to (6) of the Capital Allowances Act 1990 (disposal value to be brought into account on plant or machinery beginning to be used wholly or partly for purposes other than those of trade for which it was provided) apply as follows—

(a) references to a trade shall be read as references to the qualifying activity (and not as including a reference to the tonnage tax trade), and

(b) references to purposes other than those of a trade shall be read as including references to the purposes of the tonnage tax trade.

During: plant and machinery: disposals

77.—(1) This paragraph applies if when a company is subject to tonnage tax a disposal event occurs in relation to plant or machinery—

(a) in respect of which qualifying expenditure was incurred by the company before its entry into tonnage tax,

(b) some or all of the expenditure on which was carried to the tonnage tax pool on the company's entry into tonnage tax, and

(c) which is used by the company for the purposes of its tonnage tax trade.

(2) A "disposal event" means an event as a result of which the company is required under Part II of the Capital Allowances Act 1990 to bring a disposal value into account. 1990 c. 1.

In determining whether such an event has occurred references in that Part of that Act to a trade shall be read as including the company's tonnage tax trade.

(3) Where this paragraph applies—

(a) the disposal value to be brought into account in respect of any plant or machinery is limited to its market value when the company entered tonnage tax, and

(b) the disposal value is set against the unrelieved qualifying expenditure in the company's tonnage tax pool.

(4) If the amount of the disposal value is less than or equal to the amount of unrelieved qualifying expenditure in the company's tonnage tax pool, the amount of unrelieved qualifying expenditure is reduced or extinguished accordingly.

(5) If—

(a) the amount of the disposal value exceeds the amount of unrelieved qualifying expenditure, or

(b) there is no unrelieved qualifying expenditure in the pool,

the company is liable to a balancing charge.

(6) The amount of the balancing charge is—

(a) where sub-paragraph (5)(a) applies, the amount of the excess, or

(b) where sub-paragraph (5)(b) applies, the amount of the disposal value.

This is subject to any reduction under paragraph 78.

During: plant and machinery: reduction of balancing charges

78.—(1) The amount of any balancing charge under this Part of this Schedule is reduced by reference to the number of whole years the company has been subject to tonnage tax at the time of the disposal event giving rise to the charge.

(2) The following table shows the percentage reduction:

Number of years	*Percentage reduction*
1	15%
2	30%
3	45%
4	60%
5	75%
6	90%
7 or more	100%

During: plant and machinery: giving effect to balancing charge

79.—(1) A balancing charge under this Part of this Schedule—

(a) is treated as arising in connection with a trade (other than its tonnage tax trade) carried on by the company, and

(b) is made in taxing that trade.

(2) Subject to paragraph 80 (deferment of balancing charge in case of reinvestment), the charge must be given effect in the accounting period in which it arises.

During: plant and machinery: deferment of balancing charge

80.—(1) If—

(a) a balancing charge under this Part of this Schedule arises in connection with the disposal of a qualifying ship, and

(b) within the requisite period the company incurs capital expenditure on acquiring one or more other qualifying ships, and

(c) the company claims relief under this paragraph,

only the amount (if any) by which the balancing charge exceeds that expenditure must be given effect in the accounting period in which the charge arises and the rest may be held over.

(2) For the purposes of this paragraph—

(a) the disposal of a qualifying ship includes any event within section 24(6)(c)(i) to (iii) of the Capital Allowances Act 1990 occurring with respect to a qualifying ship, and

1990 c. 1.

(b) the requisite period is the period beginning one year before, and ending two years after, the date of the disposal.

(3) If the new qualifying ship (or any of them) is disposed of before the end of the period of seven years after the company in question entered tonnage tax—

(a) there is a balancing charge under this paragraph when the disposal occurs, and

(b) the amount of that charge is equal to the amount held over under sub-paragraph (1) by reference to the acquisition of that ship.

This is subject to any reduction under paragraph 78 and to any further deferment under this paragraph.

(4) Sections 33A to 33F of the Capital Allowances Act 1990 (deferment of balancing charges) do not apply in relation to balancing charges arising when the company is subject to tonnage tax.

(5) The fact that there is a balancing charge under this paragraph does not affect the operation of paragraph 77 in a case where that paragraph also applies.

During: plant and machinery: surrender of unrelieved qualifying expenditure

81.—(1) This paragraph applies where—

(a) a company subject to tonnage tax is liable to a balancing charge under this Part of this Schedule,

(b) another tonnage tax company which is a member of the same group has unrelieved qualifying expenditure in its tonnage tax pool, and

(c) the two companies have been members of the same group for not less than a year at the date of the disposal giving rise to the balancing charge.

(2) The latter company may surrender to the former all or part of its unrelieved qualifying expenditure, and the amount of the balancing charge shall be reduced or extinguished accordingly.

1998 c. 36.

(3) The provisions of Part VIII of Schedule 18 to the Finance Act 1998 (corporation tax self-assessment: claims for group relief), except paragraph 77 (joint amended returns), apply in relation to relief under this paragraph as they apply in relation to group relief.

During: industrial buildings: mixed use

82. Where any identifiable part of a building or structure is used for the purposes of a company's tonnage tax trade, that part is treated for the purposes of Part I of the Capital Allowances Act 1990 as used otherwise than as an industrial building or structure. 1990 c. 1.

During: industrial buildings: balancing charges

83.—(1) This paragraph applies where, in an accounting period during which a company is subject to tonnage tax, a disposal event occurs in relation to an industrial building or structure in respect of which qualifying expenditure was incurred by the company before its entry into tonnage tax.

(2) A "disposal event" means an event by reason of which the company is required by Part I of the Capital Allowances Act 1990 to bring into account sale, insurance, salvage or compensation moneys.

In determining whether such an event has occurred references in that Part of that Act to a trade or undertaking shall be read as including the company's tonnage tax trade.

(3) Where this paragraph applies—

(a) the sale, insurance, salvage or compensation moneys to be brought into account in respect of any industrial building or structure are limited to the market value of the relevant interest when the company entered tonnage tax; and

(b) the amount of any balancing charge under that Part is reduced in accordance with paragraph 78.

During: industrial buildings: residue of qualifying expenditure

84.—(1) This paragraph applies where a company subject to tonnage tax disposes of the relevant interest in an industrial building or structure.

(2) The provisions of section 8(1) to (12) of the Capital Allowances Act 1990 (writing off of expenditure and meaning of "residue of expenditure") apply to determine the residue of expenditure in the hands of the person who acquires the relevant interest, as if—

(a) the company had not been subject to tonnage tax, and

(b) all writing-down allowances, and balancing allowances and charges, had been made as could have been made if the company had not been subject to tonnage tax.

Exit: plant and machinery

85.—(1) If a company leaves tonnage tax—

(a) the amount of qualifying expenditure under Part II of the Capital Allowances Act 1990 (plant and machinery), and

(b) the pools to which such expenditure is to be allocated for the purposes of that Part,

shall be determined under this paragraph.

(2) For each asset used by the company for the purposes of its tonnage tax activities and held by the company when it leaves tonnage tax there shall be determined—

(a) the amount of expenditure incurred on the provision of the asset that would have been qualifying expenditure if the company had not been subject to tonnage tax, and

(b) the written down value of that amount by reference to the period since the expenditure was incurred.

(3) The Inland Revenue shall make provision by regulations as to the basis on which the writing down is to be done.

The regulations may make different provision for different descriptions of asset.

Exit: industrial buildings

86. If a company leaves tonnage tax the amount of unrelieved qualifying expenditure under Part I of the Capital Allowances Act 1990 (industrial buildings) is calculated as if— 1990 c. 1.

(a) the company had never been subject to tonnage tax, and

(b) all such allowances and charges under that Part had been made as could have been made.

Meaning of "not entitled to capital allowances"

87.—(1) Where any provision of this Part of this Schedule states that a person is not entitled to capital allowances in respect of expenditure on plant or machinery—

(a) a first-year allowance shall not be given in respect of that expenditure, and

(b) the expenditure shall be disregarded for the purposes of sections 24, 25 and 26 of the Capital Allowances Act 1990.

(2) If there is no entitlement to capital allowances in respect of expenditure, there is no entitlement to capital allowances in respect of any additional VAT liability incurred in respect of it.

Interpretation

88.—(1) In this Part of this Schedule—

"capital allowance" means any allowance under the Capital Allowances Act 1990 or any provision of the Taxes Act 1988 that is to be construed as one with that Act;

"qualifying activity" means—

(a) a trade, or

(b) an activity treated as a trade or to which capital allowance provisions apply as they apply to a trade,

in respect of which a person may be entitled to a capital allowance;

"qualifying expenditure" means expenditure in respect of which a person is or may be entitled to a capital allowance.

(2) In this Part of this Schedule references to pooling are to the way in which effect is given to provisions requiring expenditure to be aggregated for the purpose of determining a person's entitlement to, or the amount of, a capital allowance.

(3) In the context of capital allowances for plant and machinery—

(a) "single asset pool" refers to the way in which effect is given to provisions under which an asset is be treated as having been provided for the purposes of a notional trade separate from all other trades,

(b) "class pool" refers to the way in which effect is given to provisions under which assets of a particular description are so treated, and

(c) "main pool" refers to the way in which effect is given to provisions relating to assets not allocated to a single asset pool or class pool.

(4) Other expressions relating to capital allowances have the same meaning in this Part of this Schedule as in the Capital Allowances Act 1990.

PART X

THE RING FENCE: CAPITAL ALLOWANCES: SHIP LEASING

Introduction

89.—(1) In the case of a finance lease of a qualifying ship provided, directly or indirectly, to a company within tonnage tax, the provisions of Part II of the Capital Allowances Act 1990 have effect subject to and in accordance with the provisions of— 1990 c. 1.

paragraphs 90 and 91 (defeased leasing),

paragraph 92 (sale and lease back arrangements, and

paragraphs 94 to 102 (quantitative restrictions on allowances).

(2) In this Part of this Schedule "finance lease", and "lessor" and "lessee" in relation to a finance lease, have the same meaning as in that Part (see section 82A of the 1990 Act).

(3) Other expressions used in this Part of this Schedule have the same meaning as in Part IX of this Schedule (the ring fence: capital allowances: general).

Defeased leasing

90.—(1) The lessor under the finance lease is not entitled to capital allowances in respect of expenditure on the provision of the ship if—

(a) the lease, or

(b) any transaction or series of transaction of which the lease forms a part,

makes provision the effect of which is to remove the whole, or the greater part of, any non-compliance risk which, apart from that provision, would fall directly or indirectly on the lessor.

(2) For this purpose a "non-compliance risk" means a risk that a loss will be sustained by any person if payments under the lease are not made in accordance with its terms.

(3) For the purposes of this paragraph the lessor and any persons connected with him shall be treated as the same person.

(4) In this paragraph "connected person" has the meaning given by section 839 of the Taxes Act 1988.

Defeased leasing: excepted forms of security

91.—(1) Paragraph 90 (defeased leasing) is subject to the following exceptions.

(2) It does not apply to the provision of security of any of the following kinds by the lessee, or a person connected with the lessee—

(a) a mortgage of the ship;

(b) security attaching—

(i) to the ship's earnings, or

(ii) to the proceeds of insurance policies on the ship;

(c) security over rental rebates arising from the arm's length sale of the ship;

(d) any other form of security relating to assets, sums or rights arising directly from the ordinary operation of the ship or from arm's length transactions involving the ship.

In this sub-paragraph "the ship" means the ship that is the subject of the lease.

(3) It does not apply to the provision of security by the lessee, or a person connected with the lessee, if the following conditions are met—

(a) no deposit of money or other property by way of security is obtained by the lessor or any third party;

(b) any payments under the security are limited to the amount of any rental payments under the lease in respect of which the lessee is in default.

(4) It does not apply to the provision of security by a third party where no security other than security of a kind mentioned in sub-paragraph (2)(a) to (d) is held by the third party or any person connected with the third party.

(5) It does not apply to the provision of security by a third party if the following conditions are met—

(a) no deposit of money or other property by way of security is obtained by the lessor or any third party;

(b) the security does not involve the assumption of any obligations of the lessee under the lease in return for a payment made (directly or indirectly) by the lessee or a person connected with him;

(c) the security does not give rise to any payments to the lessor unless the lessee defaults on the rental payments under the lease;

(d) any payments under the security are limited to the amount of the rental payments in default.

(6) For the purposes of this paragraph the lessor and any persons connected with him shall be treated as the same person.

(7) In this paragraph—

"connected person" has the meaning given by section 839 of the Taxes Act 1988; and

"third party" means a person not connected with either the lessor or the lessee.

Sale and lease-back arrangements

92.—(1) The lessor under the finance lease is not entitled to capital allowances if the lease is part of sale and lease-back arrangements.

(2) For this purpose "sale and lease-back arrangements" means, subject to sub-paragraph (3), any arrangements that take the following form:

Step One

The ship is owned by a tonnage tax company and used for the purposes of its tonnage tax trade.

Step Two

A transaction is entered into, as a result of which (apart from this paragraph) capital allowances would become available to the lessor, under which—

(a) the ship (or an interest in it) is sold, or

(b) a person enters into a contract on the performance of which he will or may become the owner of the ship (or an interest in it), or

(c) a person entitled to the benefit of any such contract assigns the benefit of it so far as it relates to the ship (or an interest in it).

Step Three

After the time of that transaction the ship is used for the purposes of a tonnage tax trade carried on—

(a) by the original company, or

(b) by another tonnage tax company that is a member of the same group,

without having been used since that time for the purposes of any other trade (except that of leasing).

(3) This paragraph does not apply if the ship is newly-constructed and the transaction mentioned in Step Two in sub-paragraph (2) is effected not more than four months after the first occasion on which the ship is brought into use by any person for any purpose.

(4) A person is regarded for the purposes of this paragraph as owning a ship if it is treated as belonging to him for the purposes of Part II of the Capital Allowances Act 1990. 1990 c. 1.

Certificates required to support claim by finance lessor

93.—(1) Any claim by the lessor under a finance lease for capital allowances in respect of expenditure on the provision of a qualifying ship must be accompanied by a certificate by the lessor and the lessee stating either—

(a) that the ship is not leased, directly or indirectly, to a company subject to tonnage tax, or

(b) that neither paragraph 90 (defeased leasing) nor paragraph 92 (sale and lease-back arrangements) applies in relation to the lease.

(2) If any matter so certified ceases to be the case, the lessor must give notice of that fact to the Inland Revenue.

(3) Any such notice must be given within three months after the end of the chargeable period in which the change takes place.

(4) In the second column of the Table in section 98 of the Taxes Management Act 1970 (penalty for failure to provide information etc.), after the final entry insert— 1970 c. 9.

"Paragraph 93(2) of Schedule 22 to the Finance Act 2000.".

Quantitative restrictions on allowances

94.—(1) Where the lessor under the finance lease is entitled to capital allowances in respect of expenditure on the provision of the ship, the following provisions apply.

(2) There is no entitlement to any first-year allowance.

(3) The lessor is entitled—

(a) in respect of the first £40 million of the cost of providing the ship, to writing-down allowances at a rate of 25% per annum on the reducing balance, and

(b) in respect of the next £40 million, to writing-down allowances at a rate of 10% per annum on the reducing balance.

(4) The expenditure within each of those bands shall be allocated to separate pools and dealt with under Part II of the Capital Allowances Act 1990 in the same way as expenditure allocated to a class pool.

These pools are referred to below as "the 25% pool" and "the 10% pool".

(5) If the cost of providing the ship exceeds £80 million, the lessor is not entitled to capital allowances in respect of the excess.

Quantitative restrictions: further provisions as to rate bands, limit and pooling

95.—(1) The rate bands and limit in paragraph 94 (quantitative restrictions on allowances) apply separately in relation to each ship.

(2) The amounts specified in that paragraph apply in relation to the whole cost of providing the ship.

(3) If—

(a) the cost is shared by two or more persons, or

(b) a person acquires a part share in the ship,

that paragraph applies as if there were substituted in sub-paragraph (3)(a) and (b) and sub-paragraph (5) in relation to each person the proportion of the figure specified that his share of the cost bears to the whole cost.

(4) The pools referred to in sub-paragraph (4) of that paragraph are class pools of all expenditure of a lessor that falls to be allocated to a 25% or 10% pool in respect of ships leased by him.

Quantitative restrictions: meaning of "cost of providing ship"

96.—(1) For the purposes of paragraph 94 (quantitative restrictions on allowances) the cost of providing the ship means the total cost of providing it in a state ready to be brought into use for the purposes for which it is normally to be used.

This includes the cost of any accessories or additional equipment, or fitting out, necessary for the operation of the ship for those purposes.

(2) The cost of providing the ship shall be determined without regard to the provisions of the Capital Allowances Act 1990 as to— 1990 c. 1.

(a) when expenditure is treated as incurred, or

(b) when expenditure may be brought into account as qualifying expenditure.

(3) Further capital expenditure by the lessor on the ship shall be added to the original cost of providing the ship to determine—

(a) whether the lessor is entitled to capital allowances in respect of the further expenditure, and

(b) if he is, the rate of writing-down allowances to which he is entitled.

References to the cost of providing the ship shall accordingly be read as including any such further expenditure.

(4) The amounts to be taken into account under this paragraph are limited to the amounts that would otherwise have been qualifying expenditure for the purposes of capital allowances.

Quantitative restrictions: treatment of disposal proceeds

97.—(1) The following provisions apply where—

(a) there is a disposal of a ship in relation to which paragraph 94 applies to restrict the capital allowances available, and

(b) a disposal value falls fall to be brought into account.

The reference in paragraph (a) to a disposal of ship includes a disposal of a part of a ship, or of an interest in a ship or a part of a ship.

(2) The disposal value is first allocated between the 25% pool and the 10% pool in the same proportions as the cost of providing the ship was allocated to those pools.

(3) If the amount allocated to the 25% pool exceeds the amount of qualifying expenditure remaining in that pool, any excess shall be taken to the 10% pool.

(4) A balancing charge arises only if the amount taken to the 10% pool exceeds the amount of qualifying expenditure remaining in that pool.

Quantitative restrictions: change of circumstances bringing case within restrictions

98.—(1) The provisions of this paragraph apply where—

(a) the lessor under a finance lease has been entitled to capital allowances in circumstances in which paragraph 94 (quantitative restrictions on allowances) did not apply, and

(b) a change of circumstances brings the case within paragraph 89(1) so that the restrictions in paragraph 94 do apply.

(2) In this paragraph—

"the relevant period" means the period beginning—

(a) with the beginning of the accounting period of the lessor in which there occurs the change of circumstances in relation to which this paragraph applies, or

(b) if since the beginning of that period there has been a change of circumstances in relation to which paragraph 99 applied (change taking case out of restrictions), with the time of that change (or if there has been more than one such change, the last of them),

and ending with the time of the change of circumstances in relation to which this paragraph applies; and

"the lessor's normal pool" means the lessor's pool that contains the qualifying expenditure relating to the ship at the beginning of the relevant period.

(3) At the beginning of the relevant period an amount ("amount A") equal to—

(a) the tax written down value of the ship as at that time, or

(b) if less, the amount of unrelieved qualifying expenditure in the lessor's normal pool at that time,

shall be brought into account as a disposal value in the lessor's normal pool.

(4) At the same time an amount of qualifying expenditure equal to amount A shall be taken to a separate single-asset pool ("the temporary pool").

(5) Any qualifying expenditure or other items relating to the ship that would otherwise have been brought into account in the lessor's normal pool in the relevant period shall instead be brought into account in the temporary pool.

(6) At the end of the relevant period, the temporary pool shall be closed as if the ship had been disposed of by the lessor for an amount equal to its tax written down value at that time ("amount B"), and any resulting balancing allowance or balancing charge shall be given effect.

(7) The lessor shall be treated as if he had incurred qualifying expenditure equal to amount B on the provision of the ship for the purposes of the lessee's tonnage tax trade immediately after the end of the relevant period.

(8) There shall be allocated to the lessor's 25% and 10% pools the same proportions of amount B as the proportions of the actual cost of providing the ship that would have been so allocated if the case had been within paragraph 89(1) at all material times.

Quantitative restrictions: change of circumstances taking case out of restrictions

99.—(1) The provisions of this paragraph apply where—

(a) the lessor under a finance lease has been entitled to capital allowances in circumstances in which paragraph 94 (quantitative restrictions on allowances) applied, and

(b) a change of circumstances takes the case out of paragraph 89(1) so that the restrictions in paragraph 94 no longer apply.

(2) When the change of circumstances occurs a disposal value shall be brought into account by the lessor equal to the tax written down value of the ship as at that time.

The provisions of paragraph 97 (treatment of disposal proceeds) apply as regards the allocation of that amount to the lessor's 25% and 10% pools.

(3) The lessor shall be treated as if he had incurred qualifying expenditure on the provision of the ship for the purposes of the lessee's non-tonnage tax trade immediately after the change of circumstances occurs.

(4) The amount of that expenditure shall be taken to be the whole of the expenditure on the ship that would have qualified for capital allowances if paragraph 94 had never applied, written down at 25% per annum on the reducing balance for the period beginning with the time when it was actually incurred and ending when the change of circumstances occurs.

Determination of tax written down value, etc.

100.—(1) This paragraph supplements paragraphs 98 and 99.

(2) The "tax written down value" of the ship at any time means what would be the amount of unrelieved qualifying expenditure at that time determined on the following assumptions—

(a) that the qualifying expenditure relating to the ship had been held in a single asset pool, and

(b) that there had been made to the lessor—

(i) the first-year allowance (if any) that was actually made to him,

(ii) any first-year allowance falling to be made to him that was postponed under section 30(1)(a) or (c) of the Capital Allowances Act 1990, and

1990 c. 1.

(iii) the maximum amount of any writing-down allowances that, on the preceding assumptions, could have been made.

(3) The references in paragraph 98(3)(b) and sub-paragraph (2) above to the amount of "unrelieved qualifying expenditure" are to the balance that would otherwise have been carried forward under Part II of the Capital Allowances Act 1990.

(4) For the purpose of determining that amount at a time other than the beginning or end of an accounting period of the lessor, it shall be assumed that an accounting period of the lessor began or ended at that time.

Quantitative restrictions: power to alter amounts by regulations

101.—(1) The Inland Revenue may by regulations alter the amounts for the time being specified in sub-paragraph (3)(a) and (b) and sub-paragraph (5) of paragraph 94 (quantitative restrictions on allowances).

(2) The regulations may contain such incidental, supplementary and transitional provisions as appear to the Inland Revenue to be appropriate.

Exclusion of leases entered into on or before 23rd December 1999

102. The provisions of this Part do not apply in relation to a finance lease entered into on or before 23rd December 1999.

PART XI

SPECIAL RULES FOR OFFSHORE ACTIVITIES

Introduction

103.—(1) This Part of this Schedule sets out special rules that apply where a qualifying ship operated by a tonnage tax company is engaged in offshore activities.

(2) The rules in this Part of this Schedule do not apply in an accounting period unless the total number of days in that period on which qualifying ships operated by that company are engaged in offshore activities exceeds 30.

Meaning of "offshore activities"

104.—(1) In this Part of this Schedule "offshore activities" means activities in connection with the exploration or exploitation of so much of the seabed or subsoil or their natural resources as is situated in the UK sector of the continental shelf.

(2) The "UK sector of the continental shelf" means—

(a) any area designated by Order in Council under section 1(7) of the Continental Shelf Act 1964, and 1964 c. 29.

(b) any waters within the seaward limits of the territorial sea of the United Kingdom.

Vessels to which special provisions do not apply

105.—(1) The provisions of this Part of this Schedule do not apply to—

(a) offshore supply vessels,

(b) tugs,

(c) anchor-handling vessels, or

(d) tankers.

(2) The Treasury may make provision by order excluding other kinds of vessel from the application of the provisions of this Part of this Schedule.

Treatment of periods of inactivity

106. A period between contracts when a qualifying ship is not working shall not be taken to be a period during which the ship is engaged in offshore activities unless—

(a) the period of inactivity is specifically related to a forthcoming offshore activity, and

(b) it is impractical for the vessel to undertake other work in the meantime.

Profits from offshore activities to be computed according to ordinary rules

107.—(1) The profits of a tonnage tax company from a qualifying ship in respect of periods during which the ship is engaged in offshore activities (its "offshore profits") are computed and charged to tax in accordance with ordinary corporation tax principles as if they were not part of the company's relevant shipping profits.

(2) Accordingly, the number of days in an accounting period during which a qualifying ship is so engaged shall be left out of account for the purposes of paragraph 4 (calculation of tonnage tax profits by reference to daily profit).

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Application of ring fence provisions

108.—(1) The provisions of Part VII (the ring fence: general provisions) apply in relation to a company's offshore activities as if they were not tonnage tax activities.

(2) The provisions of this Schedule apply in relation to a company's offshore profits as they apply to profits other than relevant shipping profits.

Chargeable gains from assets used for offshore activities

109. A period during which an asset is used for the purposes of offshore activities is treated for the purposes of paragraph 65 (chargeable gains on disposal of tonnage tax asset) as if it were a period during which the asset was not a tonnage tax asset.

Capital allowances: general

110.—(1) A tonnage tax company may claim capital allowances for capital expenditure incurred in providing plant or machinery for the purposes of its offshore activities.

1990 c. 1.

(2) In such a case the provisions of Part II of the Capital Allowances Act 1990 apply as if—

(a) an asset used for the purposes of the company's offshore activities were provided by the company for those purposes on the first occasion after entry into tonnage tax on which it is brought into use for those purposes, and

(b) an amount of capital expenditure (the "notional qualifying expenditure") had been incurred at that time on its provision.

(3) The amount of the notional qualifying expenditure is given by paragraph 112 (existing assets) or paragraph 113 (new assets).

(4) Where an asset to which this paragraph applies ceases permanently to be used for the purposes of the company's offshore activities, it is treated for the purposes of Part II of the Capital Allowances Act 1990 as it applies by virtue of this paragraph as if it had been disposed of at market value.

This does not apply if a disposal value is required to be brought into account under section 24(6)(c) of that Act apart from this sub-paragraph.

Capital allowances: proportionate reduction of allowances

111.—(1) This paragraph applies where in an accounting period of the company an asset to which paragraph 110 applies is used for the purposes of the company's offshore activities on some only of the days in the period.

(2) The amount of any writing-down allowance for that period in respect of expenditure incurred on the provision of the asset is restricted to the relevant proportion of the full allowance.

(3) Any writing-down allowance for a subsequent accounting period of the company in respect of such expenditure shall be calculated as if an allowance had been made of an amount equal to the full allowance, whether or not that amount (or any amount) was in fact claimed.

(4) For the purposes of this paragraph the full allowance means the allowance (if any) that would have been available apart from this paragraph.

(5) For the purposes of this paragraph the relevant proportion of the full allowance is given by:

$$\frac{\text{OSD}}{\text{APD}}$$

where:

OSD is the number of days in the accounting period on which the asset was used for the purposes of the company's offshore activities; and

APD is the number of days in that period.

Capital allowances: notional qualifying expenditure: existing assets

112.—(1) This paragraph applies to determine the amount of notional qualifying expenditure for the purposes of paragraph 110 where the company was entitled before entry into tonnage tax to capital allowances in respect of expenditure on providing the asset.

(2) If the asset was brought into use for the purposes of the company's offshore activities immediately on entry into tonnage tax, the notional qualifying expenditure is equal to any unrelieved qualifying expenditure attributable to the asset.

(3) For the purposes of this paragraph "unrelieved qualifying expenditure" means the balance that would otherwise have been carried forward under Part II of the Capital Allowances Act 1990. 1990 c. 1.

(4) The amount of unrelieved qualifying expenditure attributable to plant or machinery in a class pool, or the main pool, is the proportion of the whole given by:

$$\frac{\text{AV}}{\text{PV}}$$

where:

AV is the market value of the asset concerned immediately before entry into tonnage tax, and

PV is the aggregate market value at that time of all the assets in the pool.

(5) References in this paragraph to unrelieved qualifying expenditure include qualifying expenditure to the extent to which it is unrelieved by virtue of notice having been given under—

(a) section 30(1) of the Capital Allowances Act 1990 (postponement or reduction of first year allowances), or

(b) section 31(3) of that Act (postponement of writing-down allowance in respect of expenditure in single ship pool).

(6) If the asset was not brought into use for the purposes of the company's offshore activities immediately on entry into tonnage tax, the notional qualifying expenditure is the amount given by sub-paragraph (2) but written down in respect of the period between the company's entry into tonnage tax and the asset being brought into use for those purposes.

(7) The Inland Revenue shall make provision by regulations as to the basis on which the writing down mentioned in sub-paragraph (6) is to be done.

The regulations may make different provision for different descriptions of asset.

Capital allowances: notional qualifying expenditure: new assets

113.—(1) This paragraph applies to determine the amount of notional qualifying expenditure for the purposes of paragraph 110 where the company was not entitled before entry into tonnage tax to capital allowances in respect of expenditure on providing the asset.

(2) If the asset was brought into use for the purposes of the company's offshore activities immediately on being acquired by the company, the notional qualifying expenditure is equal to the amount that would fall to be brought into account as qualifying expenditure under Part II of the Capital Allowances Act 1990 apart from this Schedule.

1990 c. 1.

(3) If the asset was not brought into use for the purposes of the company's offshore activities immediately on being acquired by the company, the notional qualifying expenditure is the amount referred to in sub-paragraph (2) written down in respect of the period between its acquisition by the company and its being brought into use for those purposes.

(4) The Inland Revenue shall make provision by regulations as to the basis on which the writing down mentioned in sub-paragraph (3) is to be done.

The regulations may make different provision for different descriptions of asset.

The training requirement

114.—(1) The fact that a qualifying ship is used for the purposes of offshore activities does not affect the training requirement but an allowance is made under this paragraph.

(2) The amount of the allowance in an accounting period is equal to the aggregate of—

(a) the cash equivalent of the training provided that would not have had to be provided, and

(b) any payments in lieu of training made that would not have had to be made,

if the days on which the ship was engaged in offshore activities had been days on which it was not engaged in tonnage tax activities.

For the purposes of paragraph (a) the cash equivalent of training shall be calculated by reference to the current rate of payments in lieu of training.

(3) The amount of the allowance may be deducted by the company in computing the amount of corporation tax payable for that accounting period, so far as that is attributable to offshore activities.

(4) If in any accounting period the company is unable to deduct the full amount of—

(a) any allowance to which it is entitled under this paragraph for that period, and

(b) any amount brought forward under this sub-paragraph,

the balance may be carried forward and set against the amount of corporation tax payable in the next accounting period, so far as that is attributable to offshore activities.

(5) No deduction may be made by a company in computing its profits from offshore activities in respect of expenditure incurred in meeting the training requirement.

Interpretation

115. Expressions used in this Part of this Schedule that are defined for the purposes of Part VIII or IX of this Schedule have the same meaning in this Part.

PART XII

GROUPS, MERGERS AND RELATED MATTERS

Meaning of "group" and "member of group"

116. In this Schedule a "group" means—

(a) all the companies controlled by an individual, or

(b) where a company that is not controlled by another person controls one or more other companies, that company and all the companies controlled by it.

References to membership of a group shall be construed accordingly.

Companies treated as controlled by an individual

117.—(1) For the purposes of this Schedule an individual is treated as controlling any company that is controlled—

(a) by him alone, or

(b) by him together with one or more associates of his, or

(c) subject to sub-paragraph (2), by any associate of his, with or without any other such associates.

(2) An individual shall not be treated as controlling a company by virtue of sub-paragraph (1)(c) if he does not have any significant influence over the affairs of the company in question.

Meaning of "control"

118.—(1) In this Schedule "control", in relation to a company, means the power of a person to secure—

(a) by means of the holding of shares or the possession of voting power in or in relation to that or any other company, or

(b) by virtue of any powers conferred by the articles of association or other document regulating that or any other company,

that the affairs of the company are conducted in accordance with his wishes.

(2) For the purposes of this paragraph there shall be attributed to a person—

(a) any rights or powers which another person holds on his behalf or may be required to exercise at his direction or on his behalf,

(b) any rights or powers—

(i) of a company of which he has, or he and his associates have, control, or

(ii) of any two or more such companies, and

(c) any rights or powers of any associate of his, or of any two or more associates of his.

(3) The references in paragraphs (b) and (c) of sub-paragraph (2) to rights or powers of a company or associate include rights or powers attributed to the company or associate under paragraph (a) of that sub-paragraph.

(4) The references in paragraphs (b) and (c) of sub-paragraph (2) to rights or powers of an associate do not include rights or powers attributed to the associate under those paragraphs.

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Company not to be treated as member of more than one group

119.—(1) For the purposes of this Schedule a company may not, at the same time, be a member—

(a) of a tonnage tax group and a qualifying non-tonnage tax group, or

(b) of more than one tonnage tax group.

(2) If the rules in paragraphs 116 to 118 would produce that result in relation to a company, the following rules apply.

(3) As between a tonnage tax group and a qualifying non-tonnage tax group, the company shall be treated as a member of the tonnage tax group and not of the non-tonnage tax group.

(4) As between two tonnage tax groups, the company shall be treated as a member of the group whose tonnage tax election was made first and not of the other tonnage tax group.

(5) In the case of group elections made at the same time, the company may choose which election it joins in.

It is treated for the purposes of this Schedule as a member of the group in respect of which that election is made and not of any other tonnage tax group.

Arrangements for dealing with group matters

120.—(1) The Inland Revenue may enter into arrangements with the qualifying companies in a group for one of those companies to deal on behalf of the group in relation to matters arising under this Schedule that may conveniently be dealt with on a group basis.

(2) Any such arrangements—

(a) may make provision in relation to cases where companies become or cease to be members of a group;

(b) may make provision for or in connection with the termination of the arrangements; and

(c) may make such supplementary, incidental, consequential or transitional provision as is necessary or expedient for the purposes of the arrangements.

(3) Any such arrangements do not affect—

(a) any requirement under this Schedule that an election be made jointly by all the qualifying companies in the group; or

(b) any liability under this Schedule or any other provision of the Tax Acts of a company to which the arrangements relate.

(4) The Secretary of State may also make such arrangements in relation to matters arising under this Schedule in relation to which he has functions.

Meaning of "merger" and "demerger"

121.—(1) In this Schedule—

"merger" means a transaction by which one or more companies become members of a group, and

"demerger" means a transaction by which one or more companies cease to be members of a group.

(2) References to a merger to which a group is a party include any merger affecting a member of the group.

Merger: between tonnage tax groups or companies

122.—(1) This paragraph applies where there is a merger—

(a) between two or more tonnage tax groups,

(b) between one or more tonnage tax groups and one or more tonnage tax companies, or

(c) between two or more tonnage tax companies.

(2) In all those cases the group resulting from the merger is a tonnage tax group as if a group election had been made.

(3) That deemed election continues in force, subject to the provisions of this Schedule—

(a) if there is a dominant party to the merger, until that party's tonnage tax election would have expired;

(b) if there is no dominant party, until whichever of the existing tonnage tax elections had the longest period left to run would have expired.

Merger: tonnage tax group or company and qualifying non-tonnage tax group or company

123.—(1) This paragraph applies where there is a merger between a tonnage tax group or company ("T") and a qualifying non-tonnage tax group or company ("QNT").

(2) If T is the dominant party, the group resulting from the merger is a tonnage tax group as if a group election had been made.

That deemed election continues in force, subject to the provisions of this Schedule, until T's election would have expired.

(3) If QNT is the dominant party, T's tonnage tax election ceases to be in force as from the date of the merger.

(4) If there is no dominant party—

(a) the group resulting from the merger may elect that T shall be treated as the dominant party (with the result that sub-paragraph (2) applies), and

(b) if it does not do so, T's tonnage tax election ceases to be in force as from the date of the merger.

(5) Any election under sub-paragraph (4)(a) must be made—

(a) jointly by all the qualifying companies in the group resulting from the merger,

(b) by notice to the Inland Revenue,

(c) within twelve months of the merger.

Merger: tonnage tax group or company and non-qualifying group or company

124.—(1) This paragraph applies where there is a merger between a tonnage tax group or company ("T") and a non-qualifying group or company.

(2) In that case the group resulting from the merger is a tonnage tax group by virtue of T's election.

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Merger: non-qualifying group or company and qualifying non-tonnage tax group or company

125.—(1) This paragraph applies where there is a merger between a non-qualifying group or company ("NQ") and a qualifying non-tonnage tax group or company.

(2) In that case, if NQ is the dominant party the group resulting from the merger may make a tonnage tax election having effect as from the date of the merger.

(3) Any such election must be made—

(a) jointly by all the qualifying companies in the group resulting from the merger,

(b) by notice to the Inland Revenue,

(c) within twelve months of the merger.

Meaning of "dominant party" in relation to merger

126.—(1) This paragraph explains what is meant by the references in this Schedule to the "dominant party" in relation to a merger.

(2) The "dominant party" is determined as follows—

(a) if the turnover generated by the relevant activities of one of the parties to the merger is more than twice that of the other, that one is the dominant party;

(b) if not, there is no dominant party.

(3) The relevant activities of a party to a merger are—

(a) for the purposes of—

(i) paragraph 122 (merger between tonnage tax groups or companies), or

(ii) paragraph 123 (merger between tonnage tax group or company and qualifying non-tonnage tax group or company),

the tonnage tax activities of that party;

(b) for the purposes of paragraph 125 (merger between non-qualifying group or company and qualifying non-tonnage tax group or company), all the activities of that party.

(4) The basis on which (and the periods by reference to which) the turnover from relevant activities is to be determined for the purposes of those paragraphs shall be such as may be agreed between the parties and the Inland Revenue.

(5) In default of such agreement—

(a) the Inland Revenue shall decide, and

(b) an appeal lies to the Special Commissioners against their decision.

(6) Notice of appeal must be given to the Inland Revenue within 30 days of their decision being notified to the parties.

Demerger: single company

127.—(1) This paragraph applies where a tonnage tax company ceases to be a member of a tonnage tax group and does not become a member of another group.

(2) In that case—

(a) the company in question remains a tonnage tax company as if a single company election had been made, and

(b) that deemed election continues in force, subject to the provisions of this Schedule, until the group election would have expired.

(3) If two or more members of the previous group remain, and any of them is a qualifying company, the group consisting of those companies is a tonnage tax group by virtue of the previous group election.

Demerger: group

128.—(1) This paragraph applies where a tonnage tax group splits into two or more groups.

(2) In that case each new group that contains a qualifying company that was a tonnage tax company before the demerger is a tonnage tax group as if a group election had been made.

(3) That deemed election continues in force, subject to the provisions of this Schedule, until the group election would have expired.

Duty to notify Inland Revenue of group changes

129.—(1) A tonnage tax company that becomes or ceases to be a member of a group, or of a particular group, must give notice to the Inland Revenue of that fact.

(2) The notice must be given within the period of twelve months beginning with the date on which the company became or ceased to be a member of the group.

(3) In the second column of the Table in section 98 of the Taxes Management Act 1970 (penalties for failure to provide information etc.), after the final entry insert— 1970 c. 9.

"Paragraph 129 of Schedule 22 to the Finance Act 2000.".

PART XIII

APPLICATION OF PROVISIONS TO PARTNERSHIPS

Introduction

130.—(1) The Inland Revenue may make provision by regulations as to the application of this Schedule in relation to activities carried on by a company in partnership.

(2) Nothing in the following provisions of this Part of this Schedule shall be read as restricting the generality of this power.

Calculation of partnership profits

131. The regulations may provide that—

(a) for the purpose of calculating the profits of a partner which is a tonnage tax company, the profits of the partnership shall be calculated as if the partnership were a tonnage tax company, and

(b) for the purpose of calculating the profits of a partner which is not a tonnage tax company, the profits of the partnership shall be calculated as if the partnership were not a tonnage tax company.

Qualifying partnerships

132.—(1) The regulations may provide that activities carried on by a company in partnership are not to be regarded as qualifying activities of that company unless the partnership is a qualifying partnership.

"Qualifying activities" here means core qualifying activities, qualifying secondary activities or qualifying incidental activities.

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(2) Subject to any provision made by the regulations, a "qualifying partnership" means a partnership that if it were a company would meet the requirements in paragraph 16(1) (qualifying companies).

Ships owned by or chartered to partners

133. The regulations may provide that a ship which is not partnership property but which—

(a) is owned by or chartered to a member (or two or more members) of a partnership, and

(b) is a ship in relation to which activities of the partnership business are carried on,

shall be treated as if it were owned by or chartered to every member of the partnership and as if everything done by or to any of the partners in relation to it had been done by or to all the partners.

Transactions not at arm's length

134. The regulations may provide that for the purposes of paragraphs 58 and 59 (transactions not at arm's length) the partnership shall be treated—

(a) as an entity separate and distinct from the persons that are its members, and

(b) as if it were a tonnage tax company.

Adjustments for capital allowance purposes

135. The regulations may provide that where a partner leaves tonnage tax, such adjustments shall be made for capital allowance purposes, in relation to that partner and all or any of the other partners, with respect to—

1990 c. 1.

(a) the amount of qualifying expenditure under Part II of the Capital Allowances Act 1990 (plant and machinery), and

(b) the amount of unrelieved qualifying expenditure under Part I of that Act (industrial buildings),

as may be specified in the regulations.

General

136. Regulations under this Part of this Schedule—

(a) may make different provision for different cases, and

(b) may contain such supplementary, incidental and transitional provision as appears to the Inland Revenue to be appropriate.

PART XIV

WITHDRAWAL OF RELIEF ETC. ON COMPANY LEAVING TONNAGE TAX

Introduction

137.—(1) This Part of this Schedule applies where a company ceases to be a tonnage tax company.

(2) The provisions of paragraphs 138 and 139 (exit charges: chargeable gains and balancing charges) apply where a company ceases to be a tonnage tax company—

(a) on ceasing to be a qualifying company for reasons relating wholly or mainly to tax, or

(b) under paragraph 42 (exclusion from tonnage tax where tax avoidance arrangements entered into).

(3) Paragraph 140 (ten year disqualification from re-entry into tonnage tax) applies in every case where a company ceases to be a tonnage tax company otherwise than on the expiry of a tonnage tax election.

Exit charge: chargeable gains

138.—(1) Paragraph 65(1)(a) (chargeable gain: disposal of tonnage tax assets) has effect in relation to gains (but not losses) on all relevant disposals as if the company had never been a tonnage tax company.

(2) For this purpose a "relevant disposal" means a disposal—

(a) on or after the day on which the company ceases to be a tonnage tax company, or

(b) at any time during the period of six years immediately preceding that day when the company was a tonnage tax company.

(3) Where sub-paragraph (1) operates to increase the amount of the chargeable gain on a disposal made at a time within the period mentioned in sub-paragraph (2)(b), the gain is treated to the extent of the increase—

(a) as arising immediately before the company ceased to be a tonnage tax company, and

(b) as not being relevant shipping profits of the company.

(4) No relief, deduction or set-off of any description is allowed against the amount of that increase or the corporation tax on that amount.

Exit charge: balancing charges

139.—(1) This paragraph applies if in a relevant accounting period during which the company was a tonnage tax company it was liable to a balancing charge in relation to which paragraph 78 (phasing-out of balancing charges) applied to reduce the amount of the charge.

(2) For this purpose a "relevant accounting period" means an accounting period ending not more than six years before the day on which the company ceased to be a tonnage tax company.

(3) The company is treated as having received an additional amount of profits chargeable to corporation tax equal to the aggregate of the amounts by which those balancing charges were reduced.

(4) Those additional profits are treated—

(a) as arising immediately before the company ceased to be a tonnage tax company, and

(b) as not being relevant shipping profits of the company.

(5) No relief, deduction or set-off of any description is allowed against those profits or against corporation tax on them.

Ten year disqualification from re-entry into tonnage tax

140.—(1) A company election made by a former tonnage tax company is ineffective if made before the end of the period of ten years beginning with the date on which the company ceased to be a tonnage tax company.

(2) A group election that—

(a) is made in respect of a group whose members include a former tonnage tax company, and

(b) would result in that company becoming a tonnage tax company,

is ineffective if made before the end of the period of ten years beginning with the date on which that company ceased to be a tonnage tax company.

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(3) Sub-paragraphs (1) and (2) do not prevent a company becoming a tonnage tax company under and in accordance with the rules in Part XII of this Schedule (groups, mergers and related matters).

(4) In this paragraph "former tonnage tax company" means a company that is not a tonnage tax company but has previously been a tonnage tax company.

Second or subsequent application of this Part

141. Where this Part of this Schedule applies on a second or subsequent occasion on which a company ceases to be a tonnage tax company (whether or not this Part applied on any of the previous occasions)—

(a) the references to the company ceasing to be a tonnage tax company shall be read as references to the last occasion on which it did so, and

(b) the references to the period during which the company was a tonnage tax company do not include any period before its most recent entry into tonnage tax.

PART XV

SUPPLEMENTARY PROVISIONS

Meaning of "ship"

142. In this Schedule "ship" means any vessel used in navigation, and includes a hovercraft.

Meaning of "on bareboat charter terms"

143. In this Schedule a charter "on bareboat charter terms" means a hiring of a ship for a stipulated period on terms which give the charterer possession and control of the ship, including the right to appoint the master and crew.

Meaning of "associate"

144.—(1) In this Schedule "associate", in relation to an individual, means—

(a) a relative of that individual;

(b) a partner of that individual;

(c) the trustee or trustees of any settlement in relation to which—

(i) that individual, or

(ii) any relative (whether living or dead) of that individual,

is or was a settlor;

(d) where that individual is interested in any shares or obligations of a company that are subject to a trust, the trustee or trustees of the settlement concerned;

(e) where that individual is interested in any shares or obligations of a company that are part of the estate of a deceased person, the personal representatives of the deceased.

(2) In sub-paragraph (1)(a) and (c)(ii) "relative" means husband or wife, parent or remoter forebear, child or remoter issue, or brother or sister.

Section 831(4) of the Taxes Act 1988 applies for the purposes of this paragraph as it applies for the purposes of that Act.

(3) In sub-paragraph (1)(c) and (d) "settlement" and "settlor" have the same meaning as in Chapter IA of Part XV of the Taxes Act 1988 (see section 660G(1) and (2) of that Act).

Exercise of functions conferred on "the Inland Revenue"

145.—(1) Any power to make regulations conferred by this Schedule on "the Inland Revenue" is exercisable only by the Board.

(2) Subject to that, references in this Schedule to "the Inland Revenue" are to any officer of the Board.

Meaning of "company" and related expressions

146. In this Schedule—

"company" means a body corporate or unincorporated association, but does not include a partnership;

"controlled foreign company" has the same meaning as in Chapter IV of Part XVII of the Taxes Act 1988 (tax avoidance: controlled foreign companies);

"single company" means a company that is not a member of a group.

Index of defined expressions

147. In this Schedule the following expressions are defined or otherwise explained by the provisions indicated:

associate (of an individual)	paragraph 144
bareboat charter terms	paragraph 143
capital allowances (in Part IX)	paragraph 88(1)
certificate of non-compliance (with training requirement)	paragraph 32
company	paragraph 146
company election	paragraph 7(1)(a)
control	paragraph 118 (and see paragraph 117)
controlled foreign company	paragraph 146
core qualifying activities	paragraph 46
cost of providing the ship (in Part X)	paragraph 96
demerger	paragraph 121(1)
dominant party (in relation to a merger)	paragraph 126
entering (or leaving) tonnage tax	paragraph 2(2)
finance costs (in paragraphs 61 and 62)	paragraph 63
finance lease (and lessor and lessee) (in Part X)	paragraph 89(2)
group	paragraph 116
group election	paragraph 7(1)(b)
initial period	paragraph 10(1) (and see paragraph 11(2))
Inland Revenue	paragraph 145
leaving (or entering) tonnage tax	paragraph 2(2)
member of group	paragraph 116
merger	paragraph 121(1)
minimum training obligation	paragraph 24
offshore activities (in Part XI)	paragraph 104
offshore profits (in Part XI)	paragraph 107(1)
payments in lieu of training	paragraph 29
pooling and related expressions (in Parts IX, X and XI)	paragraph 88(2) and (3)
operating (a ship)	paragraph 18
qualifying activity and qualifying expenditure (in Parts IX, X and XI)	paragraph 88(1)

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qualifying company	paragraph 16(1) (and see paragraph 17)
qualifying group	paragraph 16(2)
qualifying incidental activities	paragraph 48
qualifying secondary activities	paragraph 47
qualifying ship	paragraphs 19 to 22
relevant shipping income	paragraph 44(2)
relevant shipping profits	paragraph 44(1) (and see paragraph 108(2))
renewal election	paragraph 15(1)
the 75% limit (on chartered-in tonnage)	paragraph 37
ship	paragraph 142
single company	paragraph 146
subject to tonnage tax	paragraph 2(2)
tonnage	paragraph 6(1)
tonnage tax	paragraph 1(1)
tonnage tax activities	paragraph 45 (and see paragraph 108(1))
tonnage tax asset (in Parts VIII and XI)	paragraph 64
tonnage tax company	paragraph 2(1)
tonnage tax election	paragraph 1(2) (and see Part II)
tonnage tax group	paragraph 2(1)
tonnage tax pool (in Part IX)	paragraph 69
tonnage tax profits	paragraphs 3 to 5 (and see Part XI)
tonnage tax trade	paragraph 53(1)
training commitment	paragraph 25 (and see paragraphs 27(4) and (5) and 28(2))

Section 87.

SCHEDULE 23

TAX TREATMENT OF AMOUNTS RELATING TO ACQUISITION ETC. OF CERTAIN RIGHTS

Rights to which this Schedule applies

1. This Schedule applies to—

1949 c. 54.
1998 c. 6.

(a) licences granted under section 1 of the Wireless Telegraph Act 1949 in accordance with regulations made under section 3 of the Wireless Telegraphy Act 1998 (bidding for licences), and

(b) indefeasible rights to use a telecommunications cable system ("IRUs"),

and to any right derived, directly or indirectly, from a right within paragraph (a) or (b).

Tax treatment of expenditure on acquisition and receipts from disposal

2.—(1) Amounts that may in accordance with normal accounting practice be taken into account in determining profit or loss for accounting purposes in respect of—

(a) expenditure on the acquisition of a right to which this section applies, or

(b) receipts from the disposal of any such right,

shall be treated as items of a revenue nature for tax purposes provided they are so taken into account in any relevant statutory accounts of the taxpayer.

(2) The reference in sub-paragraph (1) to the acquisition of a right to which this Schedule applies includes—

(a) the extension of rights attached to such a right, and

(b) in relation to a right subject to a derivative right, the cancellation or restriction of rights attached to the derivative right.

(3) The reference in sub-paragraph (1) to the disposal of a right to which this Schedule applies includes—

(a) the cancellation or restriction of rights attached to such a right, and

(b) the granting of a derivative right or the extension of rights attached to a derivative right.

Tax treatment of amounts arising from revaluation

3.—(1) There shall also be taken into account for tax purposes as an item of a revenue nature any amount in respect of the revaluation of a right to which this Schedule applies that, in accordance with normal accounting practice, falls to be taken into account for accounting purposes.

(2) This paragraph applies whether or not the item—

(a) may be so taken into account in determining profit or loss, or

(b) is so taken into account in any relevant statutory accounts of the taxpayer.

(3) An item taken into account for tax purposes under this paragraph shall be so taken into account as a credit or debit for the period of account in which it is recognised for accounting purposes in accordance with normal accounting practice.

Tax treatment must accord with accounting approach in relevant group accounts

4.—(1) If the taxpayer is a member of a group of companies for which consolidated group accounts are required to be prepared, the accounting approach adopted by the taxpayer for tax purposes in respect of items within paragraph 2 or 3 must not be more cautious than that adopted in the group accounts.

(2) The "accounting approach" means the accounting policies used in preparing the accounts and the methods of applying those policies.

(3) Where consolidated group accounts are required to be prepared for more than one group of which the taxpayer is a member, this paragraph applies in relation to each of them.

(4) In this paragraph—

"consolidated group accounts" means group accounts that satisfy the requirements of—

(a) section 227 of the Companies Act 1985, or 1985 c. 6.

(b) in Northern Ireland, Article 235 of the Companies (Northern Ireland) Order 1986, S.I. 1986/1032 (N.I. 6).

or the corresponding requirements of the law of a country outside the United Kingdom; and

"group of companies" means a group as defined in—

(a) section 262(1) of the Companies Act 1985, or

(b) in Northern Ireland, Article 270(1) of the Companies (Northern Ireland) Order 1986,

or the corresponding provisions of the law of a country outside the United Kingdom.

SCH. 23

Interpretation

5. In this Schedule—

"normal accounting practice" means normal accounting practice with respect to the statutory accounts of companies incorporated in a part of the United Kingdom;

"statutory accounts" means accounts that are required by law to be prepared and which meet the requirements of—

1985 c. 6. (a) section 226 of the Companies Act 1985, or

S.I. 1986/1032 (N.I. 6). (b) in Northern Ireland, Article 234 of the Companies (Northern Ireland) Order 1986,

or the corresponding requirements of the law of a country outside the United Kingdom; and

"for tax purposes" means for the purposes of calculating the amount of any profits chargeable to income tax or corporation tax.

Transitional provision in relation to IRUs

6.—(1) This Schedule does not apply to IRUs acquired before 21st March 2000.

(2) This Schedule does not apply to an IRU by virtue of its being acquired on or after that date, directly or indirectly, from an associate or an associated company if the associate or associated company acquired the IRU before that date.

For this purpose—

"associate" has the meaning given by section 417(3) and (4) of the Taxes Act 1988; and

"associated company"—

(a) in relation to another company, has the meaning given by section 416(1) of that Act, and

(a) in relation to an individual, means a company of which that individual has control within the meaning of subsections (2) to (6) of that section.

Section 91(2).

SCHEDULE 24

NEW SCHEDULE 4A TO THE TAXATION OF CHARGEABLE GAINS ACT 1992

The Schedule inserted after Schedule 4 to the Taxation of Chargeable Gains Act 1992 is as follows:

"SCHEDULE 4A

DISPOSAL OF INTEREST IN SETTLED PROPERTY: DEEMED DISPOSAL OF UNDERLYING ASSETS

Circumstances in which this Schedule applies

1. This Schedule applies where there is a disposal of an interest in settled property for consideration.

Meaning of "interest in settled property"

2.—(1) For the purposes of this Schedule an "interest in settled property" means any interest created by or arising under a settlement.

(2) This includes any right to, or in connection with, the enjoyment of a benefit—

(a) created by or arising directly under a settlement, or

(b) arising as a result of the exercise of a discretion or power—

(i) by the trustees of a settlement, or

(ii) by any person in relation to settled property.

Meaning of "for consideration"

3.—(1) For the purposes of this Schedule a disposal is "for consideration" if consideration is given or received by any person for, or otherwise in connection with, any transaction by virtue of which the disposal is effected.

(2) In determining for the purposes of this Schedule whether a disposal is for consideration there shall be disregarded any consideration consisting of another interest under the same settlement that has not previously been disposed of by any person for consideration.

(3) In this Schedule "consideration" means actual consideration, as opposed to consideration deemed to be given by any provision of this Act.

Deemed disposal of underlying assets

4.—(1) Where this Schedule applies and the following conditions are met—

(a) the condition as to UK residence of the trustees (see paragraph 5),

(b) the condition as to UK residence of the settlor (see paragraph 6), and

(c) the condition as to settlor interest in the settlement (see paragraph 7),

the trustees of the settlement are treated for all purposes of this Act as disposing of and immediately reacquiring the relevant underlying assets.

This is referred to below in this Schedule as the "deemed disposal".

(2) In paragraphs 5, 6 and 7 "the relevant year of assessment" means the year of assessment in which the disposal of the interest in settled property is made.

(3) The deemed disposal is treated as taking place when the disposal of the interest in settled property is made.

This is subject to paragraph 13(3)(a) where the beginning of the disposal and its effective completion fall in different years of assessment.

Condition as to UK residence of trustees

5.—(1) The condition as to UK residence of the trustees is that the trustees of the settlement were either—

(a) resident in the United Kingdom during the whole or part of the relevant year of assessment, or

(b) ordinarily resident in the United Kingdom during that year.

(2) For this purpose the trustees shall not be regarded as resident or ordinarily resident in the United Kingdom at any time when they fall to be regarded for the purposes of any double taxation relief arrangements as resident in a territory outside the United Kingdom.

(3) This paragraph has effect subject to paragraph 13(3)(b) where the beginning of the disposal and its effective completion fall in different years of assessment.

SCH. 24

Condition as to UK residence of settlor

6.—(1) The condition as to UK residence of the settlor is that in the relevant year of assessment, or any of the previous five years of assessment, a person who is a settlor in relation to the settlement either—

(a) was resident in the United Kingdom during the whole or part of the year, or

(b) was ordinarily resident in the United Kingdom during the year.

(2) Sub-paragraph (1) has effect subject to paragraph 13(3)(c) where the beginning of the disposal and its effective completion fall in different years of assessment.

(3) No account shall be taken for the purposes of this paragraph of any year of assessment before the year 1999-00.

Condition as to settlor interest in the settlement

7.—(1) The condition as to settlor interest in the settlement is that at any time in the relevant period the settlement—

(a) was a settlor-interested settlement, or

(b) comprised property derived, directly or indirectly, from a settlement that at any time in that period was a settlor-interested settlement.

(2) The relevant period for this purpose is the period—

(a) beginning two years before the beginning of the relevant year of assessment, and

(b) ending with the date of the disposal of the interest in settled property.

This is subject to paragraph 13(3)(d) where the beginning of the disposal and its effective completion fall in different years of assessment.

(3) The relevant period shall not be treated as beginning before 6th April 1999.

If the rule in sub-paragraph (2) (or, where relevant, that in paragraph 13(3)(d)) would produce that result, the relevant period shall be treated as beginning on that date.

(4) For the purposes of this paragraph a "settlor-interested settlement" means a settlement in which a person who is a settlor in relation to the settlement has an interest or had an interest at any time in the relevant period.

The provisions of section 77(2) to (5) and (8) apply to determine for the purposes of this paragraph whether a settlor has (or had) an interest in the settlement.

(5) The condition as to settlor interest in the settlement is treated as not met in a year of assessment—

(a) where the settlor dies during the year, or

(b) in a case where the settlor is regarded as having an interest in the settlement by reason only of—

(i) the fact that property is, or will or may become, payable to or applicable for the benefit of his spouse, or

(ii) the fact that a benefit is enjoyed by his spouse,

where the spouse dies, or the settlor and the spouse cease to be married, during the year.

The relevant underlying assets

8.—(1) Where the interest disposed of is a right in relation to a specific fund or other defined part of the settled property, the deemed disposal is of the whole or part of each of the assets comprised in that fund or part.

In any other case the deemed disposal is of the whole or part of each of the assets comprised in the settled property.

(2) Where the interest disposed of is an interest in a specific fraction or amount of the income or capital of—

(a) the settled property, or

(b) a specific fund or other defined part of the settled property,

the deemed disposal is of a corresponding part of each of the assets comprised in the settled property or, as the case may be, each of the assets comprised in that fund or part.

In any other case the deemed disposal is of the whole of each of the assets so comprised.

(3) Sub-paragraphs (1) and (2) have effect subject to paragraph 13(4)(a) where the identity of the underlying assets changes during the period between the beginning of the disposal and its effective completion.

(4) Where part only of an asset is comprised in a specific fund or other defined part of the settled property, that part of the asset shall be treated for the purposes of this Schedule as if it were a separate asset.

Character of deemed disposal

9.—(1) The deemed disposal shall be taken—

(a) to be for a consideration equal to the whole or, as the case may be, a corresponding part of the market value of each of the assets concerned, and

(b) to be a disposal under a bargain at arm's length.

(2) Sub-paragraph (1)(a) shall be read with paragraph 13(4)(b) where the value of the assets changes during the period between the beginning of the disposal and its effective completion.

Avoidance of double-counting

10.—(1) The provisions of this paragraph have effect to prevent there being both a deemed disposal under this Schedule in relation to the disposal of an interest in settled property and a chargeable disposal of the interest itself.

A "chargeable disposal" means one in relation to which section 76(1) does not apply.

(2) If there would be a chargeable gain on the disposal of the interest in the settlement, then—

(a) if—

(i) the chargeable gain on the disposal of the interest would be greater than the net chargeable gain on the deemed disposal, or

(ii) there would be no net chargeable gain on the deemed disposal,

the provisions of this Schedule as to a deemed disposal do not apply; and

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(b) in any other case, the provisions of this Schedule as to a deemed disposal apply and no chargeable gain is treated as accruing on the disposal of the interest in the settlement.

(3) If there would be an allowable loss on the disposal of the interest in the settlement, then—

(a) if there would be a greater net allowable loss on the deemed disposal, the provisions of this Schedule as to a deemed disposal do not apply; and

(b) in any other case, the provisions of this Schedule as to a deemed disposal apply and no allowable loss is treated as accruing on the disposal of the interest in the settlement.

(4) If there would be neither a chargeable gain nor an allowable loss on the disposal of the interest in the settlement, then—

(a) if there would be a net allowable loss on the deemed disposal, the provisions of this Schedule as to a deemed disposal do not apply; and

(b) in any other case, the provisions of this Schedule as to a deemed disposal apply.

(5) For the purposes of this paragraph—

(a) there is a net chargeable gain on a deemed disposal if the aggregate of the chargeable gains accruing to the trustees in respect of the assets involved exceeds the aggregate of the allowable losses so accruing; and

(b) there is a net allowable loss on a deemed disposal if the aggregate of the allowable losses accruing to the trustees in respect of the assets involved exceeds the aggregate of the chargeable gains so accruing.

Recovery of tax from person disposing of interest

11.—(1) This paragraph applies where chargeable gains accrue to the trustees on the deemed disposal and—

(a) tax becomes chargeable on and is paid by the trustees in respect of those gains, or

(b) a person who is a settlor in relation to the settlement recovers from the trustees under section 78 an amount of tax in respect of those gains.

(2) The trustees are entitled to recover the amount of the tax referred to in sub-paragraph (1)(a) or (b) from the person who disposed of the interest in the settlement.

(3) For this purpose the trustees may require an inspector to give that person a certificate specifying—

(a) the amount of the gains in question, and

(b) the amount of tax that has been paid.

Any such certificate shall be conclusive evidence of the facts stated in it.

Meaning of "settlor"

12. The provisions of section 79(1) and (3) to (5) (meaning of "settlor") apply for the purposes of this Schedule as they apply for the purposes of sections 77 and 78.

Cases where there is a period between the beginning of the disposal and its effective completion

13.—(1) This paragraph applies in a case where there is a period between the beginning of the disposal of an interest in settled property and the effective completion of the disposal.

(2) For the purposes of this Schedule—

(a) the beginning of the disposal is—

(i) in the case of a disposal involving the exercise of an option, when the option is granted, and

(ii) in any other case of a disposal under a contract, when the contract is entered into; and

(b) the effective completion of the disposal means the point at which the person acquiring the interest becomes for practical purposes unconditionally entitled to the whole of the intended subject matter of the disposal.

(3) Where this paragraph applies and the beginning of the disposal and its effective completion fall in different years of assessment—

(a) the deemed disposal is treated as taking place in the year of assessment in which the disposal is effectively completed;

(b) the condition in paragraph 5 (condition as to residence of trustees) is treated as met if it is met in relation to either of those years of assessment or any intervening year;

(c) the condition in paragraph 6 (condition as to residence of settlor) is treated as met if it is met in relation to either or both of those years of assessment or any intervening year; and

(d) the relevant period for the purposes of paragraph 7 (condition as to settlor interest) is the period—

(i) beginning two years before the beginning of the first of those years of assessment, and

(ii) ending with the effective completion of the disposal.

(4) If the identity or value of the underlying assets changes during the period between the beginning of the disposal and its effective completion, the following provisions apply—

(a) an asset is treated as comprised in the settled property and, where relevant, in any specific fund or other defined part of the settled property to which the deemed disposal relates if it is so comprised at any time in that period;

(b) the market value of any asset for the purposes of the deemed disposal is taken to be its highest market value at any time during that period.

(5) The provisions in sub-paragraph (4) do not apply to an asset if during that period it is disposed of by the trustees under a bargain at arm's length and is not reacquired.

SCH. 24

Exception: maintenance funds for historic buildings

14. If the trustees of a settlement have elected that section 691(2) of the Taxes Act (certain income of maintenance funds for historic buildings not to be income of settlor etc.) shall have effect in the case of a settlement or part of a settlement in relation to a year of assessment, this Schedule does not apply in relation to the settlement or part for that year.".

Section 92(2).

SCHEDULE 25

NEW SCHEDULE 4B TO THE TAXATION OF CHARGEABLE GAINS ACT 1992

1992 c. 12.

The Schedule inserted after Schedule 4A to the Taxation of Chargeable Gains Act 1992 is as follows:

"SCHEDULE 4B

TRANSFERS OF VALUE BY TRUSTEES LINKED WITH TRUSTEE BORROWING

General scheme of this Schedule

1.—(1) This Schedule applies where trustees of a settlement—

(a) make a transfer of value (see paragraph 2) in a year of assessment in which the settlement is within section 77, 86 or 87 (see paragraph 3), and

(b) in accordance with this Schedule the transfer of value is treated as linked with trustee borrowing (see paragraphs 4 to 9).

(2) Where this Schedule applies the trustees are treated as disposing of and immediately reacquiring the whole or a proportion of each of the chargeable assets that continue to form part of the settled property (see paragraphs 10 to 13).

Transfers of value

2.—(1) For the purposes of this Schedule trustees of a settlement make a transfer of value if they—

(a) lend money or any other asset to any person,

(b) transfer an asset to any person and receive either no consideration or a consideration whose amount or value is less than the market value of the asset transferred, or

(c) issue a security of any description to any person and receive either no consideration or a consideration whose amount or value is less than the value of the security.

(2) References in this Schedule to "the material time", in relation to a transfer of value, are to the time when the loan is made, the transfer is effectively completed or the security is issued.

The effective completion of a transfer means the point at which the person acquiring the asset becomes for practical purposes unconditionally entitled to the whole of the intended subject matter of the transfer.

(3) In the case of a loan, the amount of value transferred is taken to be the market value of the asset.

(4) In the case of a transfer, the amount of value transferred is taken to be—

(a) if any part of the value of the asset is attributable to trustee borrowing, the market value of the asset;

(b) if no part of the value of the asset is attributable to trustee borrowing, the market value of the asset reduced by the amount or value of any consideration received for it.

Paragraph 12 below explains what is meant by the value of an asset being attributable to trustee borrowing.

(5) In the case of the issue of a security, the amount of value transferred shall be taken to be the value of the security reduced by the amount or value of any consideration received by the trustees for it.

(6) References in this paragraph to the value of an asset are to its value immediately before the material time, unless the asset does not exist before that time in which case its value immediately after that time shall be taken.

Settlements within section 77, 86 or 87

3.—(1) This paragraph explains what is meant in this Schedule by a settlement being "within section 77, 86 or 87" in a year of assessment.

(2) A settlement is "within section 77" in a year of assessment if, assuming—

(a) that there were chargeable gains accruing to the trustees from the disposal of any or all of the settled property, and

(b) that the condition in subsection (1)(b) of that section was met,

chargeable gains would, under that section, be treated as accruing to the settlor in that year.

Expressions used in this sub-paragraph have the same meaning as in section 77.

(3) A settlement is "within section 86" in a year of assessment if, assuming—

(a) that there were chargeable gains accruing to the trustees by virtue of disposals of any of the settled property originating from the settlor, and

(b) that the other elements of the condition in subsection (1)(e) of that section were met,

chargeable gains would, under that section, be treated as accruing to the settlor in that year.

Expressions used in this sub-paragraph have the same meaning as in section 86.

(4) A settlement is "within section 87" in a year of assessment if, assuming—

(a) there were trust gains for the year within the meaning of subsection (2) of that section, and

(b) that beneficiaries of the settlement received capital payments from the trustees in that year or had received such payments in an earlier year,

chargeable gains would, under that section or section 89(2), be treated as accruing to the beneficiaries in that year.

Expressions used in this sub-paragraph have the same meaning as in section 87.

SCH. 25

Trustee borrowing

4.—(1) For the purposes of this Schedule trustees of a settlement are treated as borrowing if—

(a) money or any other asset is lent to them, or

(b) an asset is transferred to them and in connection with the transfer the trustees assume a contractual obligation (whether absolute or conditional) to restore or transfer to any person that or any other asset.

In the following provisions of this Schedule "loan obligation" includes any such obligation as is mentioned in paragraph (b).

(2) The amount borrowed (the "proceeds" of the borrowing) is taken to be—

(a) in the case of a loan, the market value of the asset;

(b) in the case of a transfer, the market value of the asset reduced by the amount or value of any consideration received for it.

(3) References in this paragraph to the market value of an asset are to its market value immediately before the loan is made, or the transfer is effectively completed, unless the asset does not exist before that time in which case its market value immediately after that time shall be taken.

The effective completion of a transfer means the point at which the person acquiring the asset becomes for practical purposes unconditionally entitled to the whole of the intended subject matter of the transfer.

Transfer of value linked with trustee borrowing

5.—(1) For the purposes of this Schedule a transfer of value by trustees is treated as linked with trustee borrowing if at the material time there is outstanding trustee borrowing.

(2) For the purposes of this Schedule there is outstanding trustee borrowing at any time to the extent that—

(a) any loan obligation is outstanding, and

(b) there are proceeds of trustee borrowing that have not been either—

(i) applied for normal trust purposes, or

(ii) taken into account under this Schedule in relation to an earlier transfer of value.

(3) An amount of trustee borrowing is "taken into account" under this Schedule in relation to a transfer of value if the transfer of value is in accordance with this Schedule treated as linked with trustee borrowing.

The amount so taken into account is—

(a) the amount of the value transferred by that transfer of value, or

(b) if less, the amount of outstanding trustee borrowing at the material time in relation to that transfer of value.

Application of proceeds of borrowing for normal trust purposes

6.—(1) For the purposes of this Schedule the proceeds of trustee borrowing are applied for normal trust purposes in the following circumstances, and not otherwise.

(2) They are applied for normal trust purposes if they are applied by the trustees in making a payment in respect of an ordinary trust asset and the following conditions are met—

(a) the payment is made under a transaction at arm's length or is not more than the payment that would be made if the transaction were at arm's length;

(b) the asset forms part of the settled property immediately after the material time or, if it does not do so, the alternative condition in paragraph 8 below is met; and

(c) the sum paid is (or but for section 17 or 39 would be) allowable under section 38 as a deduction in computing a gain accruing to the trustees on a disposal of the asset.

(3) They are applied for normal trust purposes if—

(a) they are applied by the trustees in wholly or partly discharging a loan obligation of the trustees, and

(b) the whole of the proceeds of the borrowing connected with that obligation (or all but an insignificant amount) have been applied by the trustees for normal trust purposes.

(4) They are applied for normal trust purposes if they are applied by the trustees in making payments to meet bona fide current expenses incurred by them in administering the settlement or any of the settled property.

Ordinary trust assets

7.—(1) The following are "ordinary trust assets" for the purposes of this Schedule—

(a) shares or securities;

(b) tangible property, whether movable or immovable, or a lease of such property;

(c) property not within paragraph (a) or (b) which is used for the purposes of a trade, profession or vocation carried on—

(i) by the trustees, or

(ii) by a beneficiary who has an interest in possession in the settled property;

(d) any right in or over, or any interest in, property of a description within paragraph (b) or (c).

(2) In sub-paragraph (1)(a) "securities" has the same meaning as in section 132.

The alternative condition for assets no longer part of the settled property

8.—(1) The alternative condition referred to in paragraph 6(2)(b) in relation to an asset which no longer forms part of the settled property is that—

(a) the asset is treated as having been disposed of by virtue of section 24(1), or

(b) one or more ordinary trust assets which taken together directly or indirectly represent the asset—

(i) form part of the settled property immediately after the material time, or

(ii) are treated as having been disposed of by virtue of section 24(1).

(2) Where there has been a part disposal of the asset, the condition in paragraph 6(2)(b) and the provisions of sub-paragraph (1) above may be applied in any combination in relation to the subject matter of the part disposal and what remains.

(3) References in this paragraph to an asset include part of an asset.

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Normal trust purposes: power to make provision by regulations

9.—(1) The Treasury may make provision by regulations as to the circumstances in which the proceeds of trustee borrowing are to be treated for the purposes of this Schedule as applied for normal trust purposes.

(2) The regulations may—

(a) add to, amend or repeal any of the provisions of paragraphs 6 to 8 above,

(b) make different provision for different cases, and

(c) contain such supplementary, incidental, consequential and transitional provision as the Treasury may think fit.

Deemed disposal of remaining chargeable assets

10.—(1) Where in accordance with this Schedule a transfer of value by trustees is treated as linked with trustee borrowing, the trustees are treated for all purposes of this Act—

(a) as having at the material time disposed of, and

(b) as having immediately reacquired,

the whole or a proportion (see paragraph 11) of each of the chargeable assets that form part of the settled property immediately after the material time ("the remaining chargeable assets").

(2) The deemed disposal and reacquisition shall be taken—

(a) to be for a consideration equal to the whole or, as the case may be, a proportion of the market value of each of those assets, and

(b) to be under a bargain at arm's length.

(3) For the purposes of sub-paragraph (1) an asset is a chargeable asset if a gain on a disposal of the asset by the trustees at the material time would be a chargeable gain.

Whether deemed disposal is of whole or a proportion of the assets

11.—(1) This paragraph provides for determining whether the deemed disposal and reacquisition is of the whole or a proportion of each of the remaining chargeable assets.

(2) If the amount of value transferred—

(a) is less than the amount of outstanding trustee borrowing, and

(b) is also less than the effective value of the remaining chargeable assets,

the deemed disposal and reacquisition is of the proportion of each of the remaining chargeable assets given by:

$$\frac{VT}{EV}$$

where—

VT is the amount of value transferred, and

EV is the effective value of the remaining chargeable assets.

(3) If the amount of value transferred—

(a) is not less than the amount of outstanding trustee borrowing, but

(b) is less than the effective value of the remaining chargeable assets,

the deemed disposal and reacquisition is of the proportion of each of the remaining chargeable assets given by:

$$\frac{TB}{EV}$$

where—

TB is the amount of outstanding trustee borrowing, and

EV is the effective value of the remaining chargeable assets.

(4) In any other case the deemed disposal and reacquisition is of the whole of each of the remaining chargeable assets.

(5) For the purposes of this paragraph the effective value of the remaining chargeable assets means the aggregate market value of those assets reduced by so much of that value as is attributable to trustee borrowing.

(6) References in this paragraph to amounts or values, except in relation to the amount of value transferred, are to amounts or values immediately after the material time.

Value attributable to trustee borrowing

12.—(1) For the purposes of this Schedule the value of an asset is attributable to trustee borrowing to the extent determined in accordance with the following rules.

(2) Where the asset itself has been borrowed by trustees, the value of the asset is attributable to trustee borrowing to the extent that the proceeds of that borrowing have not been applied for normal trust purposes.

This is in addition to any extent to which the value of the asset may be attributable to trustee borrowing by virtue of sub-paragraph (3).

(3) The value of any asset is attributable to trustee borrowing to the extent that—

(a) the trustees have applied the proceeds of trustee borrowing in acquiring or enhancing the value of the asset, or

(b) the asset represents directly or indirectly an asset whose value was attributable to the trustees having so applied the proceeds of trustee borrowing.

(4) For the purposes of this paragraph an amount is applied by the trustees in acquiring or enhancing the value of an asset if it is applied wholly and exclusively by them—

(a) as consideration in money or money's worth for the acquisition of the asset,

(b) for the purpose of enhancing the value of the asset in a way that is reflected in the state or nature of the asset,

(c) in establishing, preserving or defending their title to, or to a right over, the asset, or

(d) where the asset is a holding of shares or securities that is treated as a single asset, by way of consideration in money or money's worth for additional shares or securities forming part of the same holding.

(5) Trustees are treated as applying the proceeds of borrowing as mentioned in sub-paragraph (4) if and to the extent that at the time the expenditure is incurred there is outstanding trustee borrowing.

(6) In sub-paragraph (4)(d) "securities" has the same meaning as in section 132.

SCH. 25

Assets and transfers

13.—(1) In this Schedule any reference to an asset includes money expressed in sterling.

References to the value or market value of such an asset are to its amount.

(2) Subject to sub-paragraph (3), references in this Schedule to the transfer of an asset include anything that is or is treated as a disposal of the asset for the purposes of this Act, or would be if sub-paragraph (1) above applied generally for the purposes of this Act.

(3) References in this Schedule to a transfer of an asset do not include a transfer of an asset that is created by the part disposal of another asset.".

Section 92(4).

SCHEDULE 26

TRANSFERS OF VALUE: ATTRIBUTION OF GAINS TO BENEFICIARIES

PART I

NEW SCHEDULE 4C TO THE TAXATION OF CHARGEABLE GAINS ACT 1992

1992 c. 12.

1. The Schedule inserted after Schedule 4B to the Taxation of Chargeable Gains Act 1992 is as follows:

"SCHEDULE 4C

TRANSFERS OF VALUE: ATTRIBUTION OF GAINS TO BENEFICIARIES

Introduction

1.—(1) This Schedule applies where in any year of assessment a chargeable gain or allowable loss accrues by virtue of Schedule 4B to trustees of a settlement within section 87.

For this purpose a settlement is "within section 87" for a year of assessment if in that year the conditions specified in section 87(1) or section 88(1) are met in relation to the trustees of the settlement.

(2) The provisions of this Schedule have effect in relation to any such chargeable gain or allowable loss as is mentioned in sub-paragraph (1) above in place of the provisions of sections 86A to 95.

(3) No account shall be taken—

(a) of any such chargeable gain or allowable loss in computing the trust gains for a year of assessment in accordance with sections 87 to 89; or

(b) of any chargeable gain or allowable loss to which those sections apply in computing the Schedule 4B trust gains in accordance with this Schedule.

General scheme of this Schedule

2. The general scheme of this Schedule is that—

(a) Schedule 4B trust gains are attributed to beneficiaries—

(i) of the transferor settlement, or

(ii) of any transferee settlement,

who have received capital payments from the trustees; and

(b) any allowable loss accruing by virtue of Schedule 4B may only be set against a chargeable gain so accruing.

Computation of Schedule 4B trust gains

3.—(1) This paragraph explains what is meant for the purposes of this Schedule by "Schedule 4B trust gains".

(2) The Schedule 4B trust gains are computed in relation to each transfer of value to which that Schedule applies.

(3) In relation to a transfer of value the amount of the Schedule 4B trust gains for the purposes of this Schedule is given by—

CA - SG - AL

where—

CA is the chargeable amount computed under paragraph 4 or 5 below,

SG is the amount of any gains attributed to the settlor that fall to be deducted under paragraph 6 below, and

AL is the amount of any allowable losses that may be deducted under paragraph 7 below.

Chargeable amount: non-resident settlement

4.—(1) If the transfer of value is made in a year of assessment during which the trustees of the transferor settlement are at no time resident or ordinarily resident in the United Kingdom the chargeable amount is computed under this paragraph.

(2) Where this paragraph applies the chargeable amount is the amount on which the trustees would have been chargeable to tax under section 2(2) by virtue of Schedule 4B if they had been resident or ordinarily resident in the United Kingdom in the year.

Chargeable amount: dual resident settlement

5.—(1) If the transfer of value is made in a year of assessment where—

(a) the trustees of the transferor settlement are resident in the United Kingdom during any part of the year or ordinarily resident in the United Kingdom during the year, and

(b) at any time of such residence or ordinary residence they fall to be regarded for the purposes of any double taxation relief arrangements as resident in a territory outside the United Kingdom,

the chargeable amount is computed under this paragraph.

(2) Where this paragraph applies the chargeable amount is the lesser of—

(a) the amount on which the trustees would be chargeable to tax under section 2(2) by virtue of Schedule 4B on the assumption that the double taxation relief arrangements did not apply, and

(b) the amount on which the trustees would be so chargeable to tax by virtue of disposals of protected assets.

(3) For this purpose "protected assets" has the meaning given by section 88(4).

Gains attributed to settlor

6.—(1) For the purposes of this Schedule the chargeable amount in relation to a transfer of value shall be reduced by the amount of any chargeable gains arising by virtue of that transfer of value that—

(a) are by virtue of section 86(4) treated as accruing to the settlor, or

(b) where section 10A applies, are treated by virtue of that section (as it has effect subject to paragraph 12 below) as accruing to the settlor in the year of return.

(2) In determining for the purposes of sub-paragraph (1)(a) the amount of chargeable gains arising by virtue of a transfer of value that are treated as accruing to the settlor, there shall be disregarded any losses which arise otherwise than by virtue of Schedule 4B.

(3) In computing the chargeable amount in relation to a transfer of value the effect of sections 77 to 79 shall be ignored.

Reduction for allowable losses

7.—(1) An allowable loss arising under Schedule 4B in relation to a transfer of value by the trustees of a settlement may be taken into account in accordance with this paragraph to reduce for the purposes of this Schedule the chargeable amount in relation to another transfer of value by those trustees.

(2) Any such allowable loss goes first to reduce chargeable amounts arising from other transfers of value made in the same year of assessment.

If there is more than one chargeable amount and the aggregate amount of the allowable losses is less than the aggregate of the chargeable amounts, each of the chargeable amounts is reduced proportionately.

(3) If in any year of assessment the aggregate amount of the allowable losses exceeds the aggregate of the chargeable amounts, the excess shall be carried forward to the next year of assessment and treated for the purposes of this paragraph as if it were an allowable loss arising in relation to a transfer of value made in that year.

(4) Any reduction of a chargeable amount under this paragraph is made after any deduction under paragraph 6.

Attribution of gains to beneficiaries

8.—(1) The Schedule 4B trust gains relating to a transfer of value shall be treated as chargeable gains accruing to beneficiaries—

(a) of the transferor settlement, and

(b) of any transferee settlement,

in accordance with the following rules.

(2) The Schedule 4B trust gains shall be treated as chargeable gains accruing to beneficiaries who—

(a) receive capital payments from the trustees in the year of assessment in which the transfer of value is made, or

(b) have received such payments in any earlier year,

to the extent that such payments exceed the amount of any gains attributed to the beneficiaries under section 87(4) or 89(2).

(3) Any Schedule 4B trust gains remaining after the application of sub-paragraph (2) in relation to the year of assessment in which the transfer of value was made shall be carried forward to the following year of assessment and treated for the purposes of this paragraph as if they were gains from a transfer of value made in that year.

(4) The attribution of chargeable gains to beneficiaries under this paragraph shall be made in proportion to, but shall not exceed, the amounts of the capital payments received by them.

Attribution of gains to beneficiaries: supplementary

9.—(1) A capital payment shall be left out of account—

(a) for the purposes of paragraph 8, to the extent that chargeable gains have, by reason of it, been treated as accruing to the recipient in an earlier year of assessment; and

(b) for the purposes of sections 87(4) and (5) and 89(2), to the extent that chargeable gains have, by reason of it, been treated as accruing to the recipient under paragraph 8.

(2) A beneficiary shall not be charged to tax on chargeable gains treated by virtue of paragraph 8 as accruing to him in any year unless he is domiciled in the United Kingdom at some time in that year.

(3) For the purposes of paragraph 8 capital payments received—

(a) before 21st March 2000, or

(b) before the year of assessment preceding the year of assessment in which the transfer of value is made,

shall be disregarded.

Residence of trustees from whom capital payment received

10.—(1) Subject to sub-paragraph (2) below, it is immaterial for the purposes of paragraph 8 that the trustees of the transferor settlement, or any transferee settlement, are or have at any time been resident or ordinarily resident in the United Kingdom.

(2) A capital payment received by a beneficiary of a settlement from the trustees in a year of assessment—

(a) during the whole of which the trustees are resident in the United Kingdom, or

(b) in which the trustees are ordinarily resident in the United Kingdom,

shall be disregarded for the purposes of paragraph 8 if it was made before, but was not made in anticipation of, chargeable gains accruing under Schedule 4B or of a transfer of value being made to which that Schedule applies.

(3) For the purposes of sub-paragraph (2) the trustees of a settlement shall not be regarded as resident or ordinarily resident in the United Kingdom at any time when they fall to be regarded for the purposes of any double taxation relief arrangements as resident in a territory outside the United Kingdom.

Taper relief

11. Without prejudice to so much of this Schedule as requires section 2A to be applied in the computation of the amount of Schedule 4B trust gains, chargeable gains that are treated as accruing to beneficiaries under this Schedule shall not be eligible for taper relief.

Attribution of gains to settlor in section 10A cases

12.—(1) This paragraph applies where by virtue of section 10A an amount of gains—

(a) arising under Schedule 4B in an intervening year, and

(b) falling within section 86(1)(e),

would (apart from this Schedule) be treated as accruing to a person ("the settlor") in the year of return.

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(2) Where this paragraph applies, only so much (if any) of the Schedule 4B trust gains falling within section 86(1)(e) as exceeds the amount charged to beneficiaries shall fall in accordance with section 10A to be attributed to the settlor for the year of return.

(3) The "amount charged to beneficiaries" means, subject to sub-paragraph (4) below, the total of the amounts on which beneficiaries of the transferor or transferee settlements are charged to tax under this Schedule by reference to those gains for all the intervening years.

(4) Where the property comprised in the transferor settlement has at any time included property not originating from the settlor, only so much (if any) of any capital payment taken into account for the purposes of paragraph 8 above as, on a just and reasonable apportionment, is properly referable to property originating from the settlor shall be taken into account in computing the amount charged to beneficiaries.

(5) Expressions used in this paragraph and section 10A have the same meanings in this paragraph as in that section; and paragraph 8 of Schedule 5 shall apply for the construction of the references in sub-paragraph (4) above to property originating from the settlor as it applies for the purposes of that Schedule.

Increase in tax payable under this Schedule

13.—(1) This paragraph applies where—

(a) a capital payment is made by the trustees of a settlement,

(b) the payment is made in circumstances where paragraph 8 above treats chargeable gains as accruing in respect of the payment, and

(c) a beneficiary is charged to tax in respect of the payment by virtue of that paragraph.

(2) The tax payable by the beneficiary in respect of the payment shall be increased by the amount found under sub-paragraph (3) below, except that it shall not be increased beyond the amount of the payment; and an assessment may charge tax accordingly.

(3) The amount is one equal to the interest that would be yielded if an amount equal to the tax which would be payable by the beneficiary in respect of the payment (apart from this paragraph) carried interest for the chargeable period at the specified rate.

The "specified rate" means the rate for the time being specified in section 91(3).

(4) The chargeable period is the period which—

(a) begins with the later of the 2 days specified in sub-paragraph (5) below, and

(b) ends with 30th November in the year of assessment following that in which the capital payment is made.

(5) The 2 days are—

(a) 1st December in the year of assessment following that in which the transfer of value was made, and

(b) 1st December falling 6 years before 1st December in the year of assessment following that in which the capital payment is made.

Interpretation

14.—(1) In this Schedule—

(a) "transfer of value" has the same meaning as in Schedule 4B; and

(b) references to the time at which a transfer of value was made are to the time which is the material time for the purposes of that Schedule.

(2) In this Schedule, in relation to a transfer of value—

(a) references to the transferor settlement are to the settlement the trustees of which made the transfer of value; and

(b) references to a transferee settlement are to any settlement of which the settled property includes property representing, directly or indirectly, the proceeds of the transfer of value.

(3) References in this Schedule to beneficiaries of a settlement include—

(a) persons who have ceased to be beneficiaries by the time the chargeable gains accrue, and

(b) persons who were beneficiaries of the settlement before it ceased to exist,

but who were beneficiaries of the settlement at a time in a previous year of assessment when a capital payment was made to them.".

PART II

CONSEQUENTIAL AMENDMENTS

Taxation of Chargeable Gains Act 1992 (c.12)

2. In section 90 of the Taxation of Chargeable Gains Act 1992 (transfers between settlements), after subsection (4) add—

"(5) This section shall not apply—

(a) to a transfer to the extent that it is in accordance with Schedule 4B treated as linked with trustee borrowing; or

(b) to any chargeable gains arising by virtue of that Schedule.".

3. In section 96 of the Taxation of Chargeable Gains Act 1992 (payments by and to companies), in subsections (1) and (2) after "sections 87 to 90" insert "and Schedule 4C"

4. In section 97 of the Taxation of Chargeable Gains Act 1992 (supplementary provisions)—

(a) in subsections (1), (3)(a), (4) and (7), after "sections 86A to 96", and

(b) in subsections (5) and (8), after "sections 86A to 90",

insert "and Schedule 4C".

5. In section 98 of the Taxation of Chargeable Gains Act 1992, after subsection (2) add—

"(3) The provisions of subsections (1) and (2) above have effect as if the references to sections 87 to 90 included references to Schedule 4C.".

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Taxes Act 1988

6. In section 740(6) of the Taxes Act 1988 (income tax charge in case of transfer of assets to non-resident: exclusion of benefit giving rise to charge to capital gains tax)—

(a) for "within the meaning of section 87 or 89(2) of the 1992 Act" substitute "to which section 87 or 89(2) of, or paragraph 8 of Schedule 4C to, the 1992 Act applies";

(b) for "non-resident and migrant settlements" substitute "gains attributed to beneficiaries"; and

(c) after "either of those sections" insert ", or that paragraph,".

Section 97.

SCHEDULE 27

GROUP RELIEF IN CASE OF NON-RESIDENT COMPANIES ETC.

PART I

AMENDMENTS OF CHAPTER IV OF PART X OF THE TAXES ACT 1988

Availability of relief

1. In section 402 of the Taxes Act 1988 (availability of group relief), after subsection (3) insert—

"(3A) Group relief is not available unless the following condition is satisfied in the case of both the surrendering company and the claimant company.

(3B) The condition is that the company is resident in the United Kingdom or is a non-resident company carrying on a trade in the United Kingdom through a branch or agency.".

2.—(1) In section 413 of that Act (interpretation of Chapter IV), in subsection (2), insert the following definitions at the appropriate places—

"'company' means any body corporate;"

"'non-resident company' means a company that is not resident in the United Kingdom;".

(2) In subsection (5) of that section, the words from the beginning to "Kingdom; and", paragraph (c) and the word "or" immediately preceding that paragraph shall cease to have effect.

Limits on amount of relief

3. In section 403A of that Act (limits on group relief), in subsection (10) (qualifying conditions)—

(a) in paragraph (a), after "are both members of the same group" insert "and the condition specified in section 402(3B) is satisfied in the case of both companies"; and

(b) in paragraph (b), after "the conditions specified in section 402(3) for the making of that claim" insert "and the condition specified in section 402(3B)".

4. After section 403C of that Act insert—

"Relief for or in respect of non-resident companies.

403D.—(1) In determining for the purposes of this Chapter the amounts for any accounting period of the losses and other amounts available for surrender by way of group relief by a non-resident company, no loss or other amount shall be treated

as so available except in so far as—

(a) it is attributable to activities of that company the income and gains from which for that period are, or (were there any) would be, brought into account in computing the company's chargeable profits for that period for corporation tax purposes;

(b) it is not attributable to activities of the company which are made exempt from corporation tax for that period by any double taxation arrangements; and

(c) no part of—

(i) the loss or other amount, or

(ii) any amount brought into account in computing it,

corresponds to, or is represented in, any amount which, for the purposes of any foreign tax, is (in any period) deductible from or otherwise allowable against non-UK profits of the company or any other person.

(2) In determining for the purposes of sections 403A and 403C the total profits for an accounting period of a non-resident company, there shall be disregarded—

(a) amounts not falling to be comprised for corporation tax purposes in the chargeable profits of the company for that accounting period, and

(b) so far as not falling within paragraph (a) above, any amounts arising from activities which are made exempt from corporation tax for that period by any double taxation arrangements.

(3) In this section 'non-UK profits', in relation to any person, means amounts which—

(a) are taken for the purposes of any foreign tax to be the amount of the profits, income or gains on which (after allowing for deductions) that person is charged with that tax, and

(b) are not amounts corresponding to, and are not represented in, the total profits (of that or any other person) for any accounting period,

or amounts taken into account in computing such amounts.

(4) Subsection (2) above applies for the purposes of subsection (3)(b) above as it applies for the purposes of sections 403A and 403C.

(5) For the purposes of this section an amount shall not be taken to be an amount which for the purposes of any foreign tax is deductible from or otherwise allowable against any non-UK profits of any person by reason only that it is—

(a) an amount of profits brought into account for the purpose of being excluded from the profits that are non-UK profits of that person by reference to that foreign tax; or

(b) an amount brought into account in computing the amount of any profits falling to be so excluded.

(6) So much of the law of any territory outside the United Kingdom as for the purposes of any foreign tax makes the

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deductibility of any amount dependent on whether or not it is deductible for tax purposes in the United Kingdom shall be disregarded for the purposes of this section.

(7) For the purposes of this section activities of a company are made exempt from corporation tax for any period by double taxation arrangements if the effect of any such arrangements is that the income and gains (if any) arising for that period from those activities is to be disregarded in computing the company's chargeable profits.

(8) In this section 'double taxation arrangements' means any arrangements having effect by virtue of section 788.

(9) In this section 'foreign tax' means any tax chargeable under the law of any territory outside the United Kingdom which—

(a) is charged on income and corresponds to United Kingdom income tax; or

(b) is charged on income or chargeable gains or both and corresponds to United Kingdom corporation tax;

but for the purposes of this section a tax shall not be treated as failing to correspond to income tax or corporation tax by reason only that it is chargeable under the law of a province, state or other part of a country, or is levied by or on behalf of a municipality or other local body.

(10) In determining for the purposes of this section whether any activities are made exempt from corporation tax for any period by any double taxation arrangements any requirement that a claim is made before effect is given to any provision of the arrangements shall be disregarded.

Relief for overseas losses of UK resident companies.

403E.—(1) In determining, for the purposes of this Chapter, the amounts for any accounting period of the losses and other amounts available for surrender by way of group relief by any company resident in the United Kingdom ('the resident company'), a loss or other amount shall be treated as not so available in so far as it—

(a) is attributable to an overseas branch or agency of that company, and

(b) is a loss or other amount falling within subsection (2) below.

(2) Subject to subsection (3) below, a loss or other amount attributable to an overseas branch or agency falls within this subsection if the whole or any part of it is, or represents, an amount which, for the purposes of foreign tax under the law of the territory where that branch or agency is situated, is (in any period) deductible from or otherwise allowable against non-UK profits of a person other than the resident company.

(3) A loss or other amount does not fall within subsection (2) above if it is referable to life assurance business (within the meaning of Chapter I of Part XII) carried on by the resident company.

(4) The reference in subsections (1) and (2) above to a loss or other amount attributable to an overseas branch or agency of a company is a reference to the loss or other amount (if any) that would be surrenderable by that company by way of group relief if the amount surrenderable by that company were computed—

(a) by reference only to that branch or agency, and

(b) by the application in relation to that branch or agency of principles corresponding in all material respects to those applicable for the purposes of corporation tax to the computation of the equivalent losses or other amounts in the case of the UK branch or agency of a non-resident company.

(5) In subsection (4)(b) above the reference to the UK branch or agency of a non-resident company is a reference to any branch or agency through which a company which is not resident in the United Kingdom carries on a trade in the United Kingdom.

(6) References in this section to an overseas branch or agency of a company are references to any branch or agency through which that company carries on a trade in a territory outside the United Kingdom.

(7) In this section 'foreign tax' and 'non-UK profits' have the same meaning as in section 403D.

(8) Where the deductibility of any amount for the purposes of any foreign tax is dependent on whether or not that amount, or a corresponding amount, is deductible for tax purposes in the United Kingdom, this section shall have effect as if that amount were deductible for the purposes of that foreign tax if, and only if, the resident company is treated for the purposes of that tax as resident in the territory where that tax is charged.".

Amendments of Schedule 18 to the Taxes Act 1988

5.—(1) Schedule 18 to that Act (group relief: equity holders and profits or assets available for distribution) is amended as follows.

(2) In paragraph 1 (meaning of equity holders), in sub-paragraphs (3)(d) and (5)(c), for "in the Official List of the Stock Exchange" substitute "on a recognised stock exchange".

(3) In paragraph 2 (meaning of profits available for distribution), after sub-paragraph (1) insert—

"(1A) The total profits of a non-resident company arising in an accounting period shall be determined for the purposes of sub-paragraph (1)(a) above as if it were resident in the United Kingdom in that accounting period.".

(4) In paragraph 4 (cases where rights to a distribution or assets are limited), after sub-paragraph (4) insert—

"(5) In determining in a case in which paragraph 5F below applies whether any rights in respect of dividend or interest or assets on a winding-up are limited as mentioned in sub-paragraph (1) above, the limitations so mentioned shall be treated as not including so much of any limitation as has effect as mentioned in sub-paragraph (2) of that paragraph.".

(5) After paragraph 5E insert—

"5F.—(1) This paragraph has effect, in the cases specified in sub-paragraphs (2) and (3) below, for the following purposes ('the relevant purposes')—

(a) the determination, in a case where the surrendering company or the claimant company is a non-resident company, of whether that company is a 75 per cent. or a 90 per cent. subsidiary of another company;

(b) the determination of a member's share in a consortium in any case where the surrendering company or the claimant company is a non-resident company owned by the consortium.

(2) The first case in which this paragraph applies is where any of the equity holders—

(a) to whom the profit distribution is made, or

(b) who is entitled to participate in the notional winding-up of that company,

holds, as such an equity holder of the non-resident company, any shares or securities which carry rights in respect of dividend or interest or assets on a winding-up which have effect wholly or partly by reference to whether or not, or to what extent, the profits or assets distributed are referable to the non-resident company's UK trade.

(3) The second case in which this paragraph applies is where—

(a) option arrangements (within the meaning of paragraph 5B above) exist at any time in the relevant accounting period; and

(b) the percentage which, in any of the states of affairs referred to in sub-paragraph (5) of that paragraph, is—

(i) the percentage of profits to which any of the equity holders of the non-resident company would be entitled on the profit distribution, or

(ii) the percentage of assets to which any of the equity holders of that company would be entitled on the notional winding-up,

would differ, at any of the times so referred to, according to whether or not, or to what extent, the profits or assets distributed are referable to the non-resident company's UK trade.

(4) If the percentage of profits to which, on the profit distribution, a particular equity holder would be taken for the relevant purposes to be entitled would be less if the determination under paragraph 2(1) above were made on the basis specified in sub-paragraph (7) below, then that shall be the basis used for the relevant purposes in the case of that equity holder.

(5) If the percentage of assets to which, on the notional winding-up, a particular equity holder would be taken for the relevant purposes to be entitled would be less if the determination under paragraph 3(1) above were made on the basis specified in sub-paragraph (7) below, then that shall be the basis used for the relevant purposes in the case of that equity holder.

(6) If the percentage that falls to be taken for any of the purposes of section 403C or section 413(7) would, under any of paragraphs 4 to 5E above, be the lower or lowest of a number of percentages determined on different bases—

(a) each of the percentages falling to be compared for the purposes of that paragraph shall be determined both—

(i) on the basis specified in sub-paragraph (7) below, and

(ii) without making the assumption required for a determination on that basis;

and

(b) the comparison required by that paragraph, so far as made for the relevant purposes, shall be made using, in the case of each of the percentages to be compared, only the lower of the percentages determined under paragraph (a) above.

(7) That basis is the assumption—

(a) that the profit distribution or the distribution on the notional winding-up is confined to a distribution of profits or assets that are referable to the non-resident company's UK trade; and

(b) that the amount of the distribution does not exceed whichever is the greater of £100 and the following amount—

(i) in the case of a profit distribution, the amount (if any) of so much of the company's chargeable profits for the relevant accounting period as is referable to its UK trade; and

(ii) in the case of a distribution on a notional winding-up, its net UK assets;

and

(c) that none of the ordinary equity holders has an entitlement to a proportion of the profits or assets mentioned in paragraph (a) above that is any greater than the proportion of the distribution to which he would be entitled if—

(i) the assumptions specified in paragraphs (a) and (b) above were disregarded; but

(ii) it were assumed, where it is less, that the distribution is equal to £100.

(8) In sub-paragraph (7) above—

'net UK assets', in relation to a non-resident company, means the excess, if any, of the total amount of the assets of the company that are referable to its UK trade (as shown in the relevant balance sheet), over the total amount of those of its liabilities (as so shown) which are so referable and are not liabilities to equity holders as such; and

'ordinary equity holder' means any equity holder whose entitlement on the profit distribution or the distribution on the notional winding-up does not differ according to whether or not, or the extent to which, the profits or assets distributed are referable to the non-resident company's UK trade.

(9) In sub-paragraph (8) above 'relevant balance sheet', in relation to a company, means any balance sheet relating to its affairs as at the end of the relevant accounting period.

(10) For the purposes of this paragraph profits, assets or liabilities of a non-resident company shall be taken to be referable to its UK trade to the extent only that they—

(a) are attributable to, or used for the purposes of, activities the income and gains from which are, or (were there any) would be, brought into account in computing the company's chargeable profits for any accounting period, and

(b) are not attributable to, or used for the purposes of, any activities which (within the meaning of section 403D) are made exempt from corporation tax for any accounting period by any double taxation arrangements.".

(6) In paragraph 6 (indirect entitlements), for "5E" substitute "5F".

Commencement

6.—(1) Nothing in this Part of this Schedule has effect in relation to any determination whether the qualifying conditions for the purposes of section 403A(9) of the Taxes Act 1988 were met at any time before 1st April 2000.

(2) Nothing in section 403E of the Taxes Act 1988 (inserted by paragraph 4 above) has effect in relation to the determination of the amount available for surrender—

(a) for an accounting period ending before 1st April 2000, or

(b) for an accounting period beginning before 1st April 2000 and ending on or after that date if or to the extent that the loss or other amount is attributable to the part of the period falling before that date.

Any apportionment necessary for the purposes of paragraph (b) shall be made on a time basis except where that would work in an unjust or unreasonable manner in relation to any person, in which case it shall be made in such manner as may be just and reasonable.

(3) Paragraph 5 above has effect in relation to the application of Schedule 18 of the Taxes Act 1988, for any purpose, in relation to times on or after (but not before) 1st April 2000.

(4) Subject to the above provisions of this paragraph, this Part of this Schedule has effect in relation to accounting periods ending on or after 1st April 2000.

PART II

CONSEQUENTIAL AMENDMENTS

Section 76 of the Taxes Act 1988

7. In section 76(1)(aa) of the Taxes Act 1988 (expenses of management: insurance companies), for ", 439B or 441" substitute "or 439B".

Section 434A of the Taxes Act 1988

8. In section 434A(2) of the Taxes Act 1988 (losses on life assurance business)—

(a) after paragraph (a)(ii) insert—

"(iii) any loss for that period under section 441; and";

(b) for ", 439B or 441" substitute "or 439B".

Section 502 of the Taxes Act 1988

9. In section 502 of the Taxes Act 1988 (interpretation of Chapter V of Part XII), for the words in subsection (3) after paragraph (c) substitute—

"(3A) Section 413(6) applies for the purposes of subsection (3)(c) above but as if section 413 were modified as follows—

(a) as if the definition of 'company' in subsection (2) were omitted;

(b) as if at the beginning of subsection (5) there were inserted 'References in this Chapter to a company apply only to bodies corporate resident in the United Kingdom; and'; and

(c) as if in that subsection, after the word 'receipt', in the second place where it occurs, there were inserted '; or

(c) of any share capital which it owns directly or indirectly in a body corporate not resident in the United Kingdom.' ".

Schedule 24 to the Taxes Act 1988

10. In Schedule 24 to the Taxes Act 1988 (assumptions for calculating chargeable profits etc. of foreign companies), make paragraph 5 sub-paragraph (1) of that paragraph; and after that sub-paragraph insert—

"(2) Where, under Chapter IV of Part X, any relief is in fact surrendered by the company and allowed to another company by way of group relief, it shall be assumed that the chargeable profits of the company, apart from this paragraph, are to be increased by an amount of additional profits equal to the amount of the relief so surrendered and allowed.".

Schedule 18 to the Finance Act 1998

11. In paragraph 68 of Schedule 18 to the Finance Act 1998 (contents of claim for group relief), after sub-paragraph (2) insert— 1998 c. 36.

"(3) A claim for group relief must also state whether or not there is a company mentioned in sub-paragraph (4) that was not resident in the United Kingdom in either or both of the following periods—

(a) the accounting period of the surrendering company to which the surrender relates,

(b) the corresponding accounting period of the claimant company.

(4) Those companies are the claimant company, the surrendering company and any other company by reference to which—

(a) the claimant company and the surrendering company are members of the same group, or

(b) the conditions specified in section 402(3) of the Taxes Act 1988 for the making of the claim are satisfied in the case of the claimant company and the surrendering company.".

Commencement

12.—(1) Paragraphs 7, 8, 10 and 11 have effect in relation to accounting periods ending on or after 1st April 2000.

(2) Paragraph 9 has effect wherever the enactment amended by that paragraph falls to be construed, so far as it applies provisions of Chapter IV of Part X of the Taxes Act 1988, as applying those provisions as amended by Part I of this Schedule.

SCHEDULE 28

Section 98.

RECOVERY OF TAX PAYABLE BY NON-RESIDENT COMPANY

Introduction

1. This Schedule applies where—

(a) an amount of corporation tax has been assessed on a company ('the taxpayer company') for an accounting period,

(b) the whole or any part of that amount is unpaid at the end of the period of six months after the time when it became payable, and

(c) that company is not resident in the United Kingdom.

Companies that may be required to pay unpaid tax

2.—(1) The following companies may, by notice under this Schedule, be required to pay the unpaid tax—

(a) any company which was, at any time in the relevant period, a member of the same group of companies as the taxpayer company;

(b) any company which, at any time in the relevant period, was a member of a consortium which at that time owned the taxpayer company;

(c) any company which, at any time in the relevant period, was a member of the same group of companies as a company which at that time was a member of a consortium owning the taxpayer company.

(2) In this Schedule "the relevant period", in relation to an amount of unpaid corporation tax for an accounting period of the taxpayer company, means the period—

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(a) beginning with whichever is the later of—

(i) twelve months before the start of that accounting period, and

(ii) 1st April 2000; and

(b) ending when the unpaid tax first became payable.

(3) Two companies shall be regarded as members of the same group of companies—

(a) for the purposes of sub-paragraph (1)(a), whenever one is the 51% subsidiary of the other or both are 51% subsidiaries of a third company;

(b) for the purposes of sub-paragraph (1)(c), whenever one would be treated as a member of the same group of companies as the other for the purposes of Chapter IV of Part X of the Taxes Act 1988 (group relief).

(4) For the purposes of this Schedule—

(a) a company shall be treated as a member of a consortium at any time when it would fall to be so treated for the purposes of Chapter IV of Part X of the Taxes Act 1988 (group relief); and

(b) references to a company being owned by a consortium shall be construed in the same way as any such references falling for the purposes of that Chapter to be construed in accordance with section 413(6)(b) of the Taxes Act 1988.

Notice requiring payment of unpaid tax

3.—(1) The Board may serve a notice on any company within paragraph 2(1) requiring it, within 30 days of the service of the notice, to pay—

(a) the amount of the unpaid tax, or

(b) in a consortium case, the appropriate proportion of that amount (see paragraph 5).

(2) The notice must state—

(a) the amount of corporation tax assessed on the taxpayer company for the accounting period in question that remains unpaid,

(b) the date when it first became payable, and

(c) the amount required to be paid by the company on which the notice is served.

(3) The notice has effect—

(a) for the purposes of the recovery from that company of the amount required to be paid and of interest on that amount, and

(b) for the purposes of appeals,

as if it were a notice of assessment and that amount were an amount of tax due from that company.

1970 c. 9.

(4) In section 87A(3) of the Taxes Management Act 1970 (date from which interest runs in the case of an assessment of a company's tax on another person)—

(a) after "In relation to corporation tax assessed" insert "or treated as assessed", and

(b) after "Schedule 18 to the Finance Act 1998" insert "or Schedule 28 of the Finance Act 2000".

Time limit for giving notice

4.—(1) Any notice under this Schedule must be served before the end of the period of three years beginning with the date on which the liability of the taxpayer company to corporation tax for the accounting period in question is finally determined.

(2) Where the unpaid tax is charged in consequence of a determination under paragraph 36 or 37 of Schedule 18 to the Finance Act 1998 (determination where no return delivered or return incomplete), that date shall be taken to be the date on which the determination is made. 1998 c. 36.

(3) Where the unpaid tax is charged in a self-assessment, including a self-assessment that supersedes a determination (see paragraph 40 of Schedule 18 to the Finance Act 1998), that date shall be taken to be the latest of—

(a) the last date on which notice of enquiry may be given into the return containing the self-assessment;

(b) if notice of enquiry is given, 30 days after the enquiry is completed;

(c) if more than one notice of enquiry is given, 30 days after the last notice of completion;

(d) if after such an enquiry the Inland Revenue amend the return, 30 days after notice of the amendment is issued;

(e) if an appeal is brought against such an amendment, 30 days after the appeal is finally determined.

(4) If the unpaid tax is charged in a discovery assessment, that date shall be taken to be—

(a) where there is no appeal against the assessment, the date when the tax becomes due and payable;

(b) where there is such an appeal, the date on which the appeal is finally determined.

Limit on amount payable in consortium case

5.—(1) In a consortium case, the amount that the company may be required to pay by notice under this Schedule is limited to the proportion of the unpaid tax corresponding—

(a) in the case of a company falling only within paragraph 2(1)(b), to the share which that company has had in the consortium for the relevant period;

(b) in the case of a company falling only within paragraph 2(1)(c), to the share which companies that have been members of the same group of companies as that company have had in the consortium for the relevant period;

(c) in the case of a company falling within paragraph 2(1)(b) and (c), to whichever is the greater of the amounts given by paragraphs (a) and (b) above.

(2) A "consortium case" means a case where the company falls within paragraph 2(1)(b) or (c) (or both), but does not fall within paragraph 2(1)(a).

(3) A member's share in a consortium, in relation to the relevant period, is whichever is the lowest in that period of the following percentages—

(a) the percentage of the ordinary share capital of the taxpayer company which is beneficially owned by that member;

(b) the percentage to which that member is beneficially entitled of any profits available for distribution to equity holders of the taxpayer company;

(c) the percentage to which that member would be beneficially entitled of any assets of the taxpayer company available for distribution to its equity holders on a winding-up.

If any of those percentages has fluctuated in the relevant period, the average percentage over the period shall be taken.

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(4) Schedule 18 to the Taxes Act 1988 (equity holders and profits or assets available for distribution) applies for the purposes of sub-paragraph (3) above as it applies for the purposes of section 403C of that Act.

Supplementary provisions

6.—(1) In this Schedule "company" means any body corporate.

(2) A company that has paid an amount in pursuance of a notice under this Schedule may recover that amount from the taxpayer company.

(3) A payment in pursuance of a notice under this Schedule is not allowed as a deduction in computing income or profits for any tax purposes.

Section 102.

SCHEDULE 29

CHARGEABLE GAINS: NON-RESIDENT COMPANIES AND GROUPS ETC.

PART I

APPLICATION OF TAXATION OF CHARGEABLE GAINS ACT 1992

Main amendments

1992 c. 12.

1.—(1) In section 170 of the Taxation of Chargeable Gains Act 1992 (groups of companies: interpretation), the following provisions shall cease to have effect—

(a) paragraph (a) of subsection (2) (which provides that references to companies apply only to companies resident in the United Kingdom); and

(b) in subsection (9)(b) the words "(although resident in the United Kingdom)".

(2) The above amendments (referred to in this Schedule as "the main amendments") have effect in accordance with the following provisions of this Schedule.

Transfers within a group

2.—(1) Section 171 of the Taxation of Chargeable Gains Act 1992 (transfers within a group: general provisions) is amended as follows.

(2) For subsection (1) (treatment for corporation tax purposes of transfer of asset within group) substitute—

"(1) Where—

(a) a company ("company A") disposes of an asset to another company ("company B") at a time when both companies are members of the same group, and

(b) the conditions in subsection (1A) below are met,

company A and company B are treated for the purposes of corporation tax on chargeable gains as if the asset were acquired by company B for a consideration of such amount as would secure that neither a gain nor a loss would accrue to company A on the disposal.

(1A) The conditions referred to in subsection (1)(b) above are—

(a) that company A is resident in the United Kingdom at the time of the disposal, or the asset is a chargeable asset in relation to that company immediately before that time, and

(b) that company B is resident in the United Kingdom at the time of the disposal, or the asset is a chargeable asset in relation to that company immediately after that time.

For this purpose an asset is a "chargeable asset" in relation to a company at any time if, were the asset to be disposed of by the company at that time, any gain accruing to the company would be a chargeable gain and would by virtue of section 10(3) form part of its chargeable profits for corporation tax purposes.".

(3) In subsection (2)—

(a) in paragraph (a), for "a member of a group of companies" substitute "company B", and

(b) in the closing words, for "a member of a group of companies" substitute "company A".

(4) In subsection (3) for "the company first mentioned in that subsection" substitute "company A".

(5) After subsection (5) add—

"(6) Subsection (1) above applies notwithstanding any provision in this Act fixing the amount of the consideration deemed to be received on a disposal or given on an acquisition.

But where it is assumed for any purpose that a member of a group of companies has sold or acquired an asset, it shall be assumed also that it was not a sale or acquisition to which this section applies.".

(6) The above amendments, and the main amendments so far as they apply for the purposes of section 171, have effect in relation to disposals on or after 1st April 2000.

Transfer of United Kingdom branch or agency

3.—(1) Section 172 of the Taxation of Chargeable Gains Act 1992 (transfer of United Kingdom branch or agency) shall cease to have effect. 1992 c. 12.

(2) The above amendment has effect in relation to disposals on or after 1st April 2000.

De-grouping charge

4.—(1) Section 179 of the Taxation of Chargeable Gains Act 1992 (company ceasing to be member of group) is amended as follows.

(2) For subsection (1) substitute—

"(1) This section applies where—

(a) a company ("company A") acquires an asset from another company ("company B") at a time when company B is a member of a group,

(b) the conditions in subsection (1A) below are met, and

(c) company A ceases to be a member of that group within the period of six years after the time of the acquisition.

References in this section 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 in consequence of another member of the group ceasing to exist.

(1A) The conditions referred to in subsection (1)(b) above are—

(a) that company A is resident in the United Kingdom at the time it acquires the asset, or the asset is a chargeable asset in relation to that company immediately after that time, and

(b) that company B is resident in the United Kingdom at the time of that acquisition, or the asset is a chargeable asset in relation to that company immediately before that time.

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For this purpose an asset is a "chargeable asset" in relation to a company at any time if, were the asset to be disposed of by the company at that time, any gain accruing to the company would be a chargeable gain and would by virtue of section 10(3) form part of its chargeable profits for corporation tax purposes.".

(3) In subsection (2A)—

(a) in paragraph (a)—

(i) after "a company" insert "("company A")", and

(ii) after "another company" insert "("company B")",

(b) in paragraph (b) for "that company's" substitute "company A's",

(c) in paragraph (c) for "the company that made the acquisition" substitute "company A", and

(d) in the closing words for "the company's" substitute "company A's".

(4) In subsections (2B) (three times), (2C), (2D), (3) (three times), (4) (twice), (10)(c) and (13) for "the chargeable company" substitute "company A".

(5) Subsections (11) and (12) (which are superseded by the provision made by paragraph 9 below) shall cease to have effect.

(6) The amendments made by sub-paragraphs (2) to (4) above, and the main amendments so far as they apply for the purposes of section 179, have effect in relation to assets acquired on or after 1st April 2000.

(7) The amendments made by sub-paragraph (5) above have effect in relation to gains accruing on or after 1st April 2000.

Reconstruction or amalgamation involving transfer of business

1992 c. 12.

5.—(1) Section 139 of the Taxation of Chargeable Gains Act 1992 (reconstruction or amalgamation involving transfer of business) is amended as follows.

(2) In subsection (1) (transfer of business on basis of no gain and no loss) for paragraph (b) (requirement that both companies are resident in the United Kingdom) substitute—

"(b) the conditions in subsection (1A) below are met in relation to the assets included in the transfer, and".

(3) After subsection (1) insert—

"(1A) The conditions referred to in subsection (1)(b) above are—

(a) that the company acquiring the assets is resident in the United Kingdom at the time of the acquisition, or the assets are chargeable assets in relation to that company immediately after that time, and

(b) that the company from which the assets are acquired is resident in the United Kingdom at the time of the acquisition, or the assets are chargeable assets in relation to that company immediately before that time.

For this purpose an asset is a "chargeable asset" in relation to a company at any time if, were the asset to be disposed of by the company at that time, any gain accruing to the company would be a chargeable gain and would by virtue of section 10(3) form part of its chargeable profits for corporation tax purposes.".

(4) The above amendments have effect in relation to disposals made on or after 1st April 2000.

Deemed disposal on non-resident ceasing to carry on trade in United Kingdom through branch or agency

6.—(1) Section 25 of the Taxation of Chargeable Gains Act 1992 (non-residents: deemed disposals) is amended as follows. 1992 c. 12.

(2) After subsection (3) insert—

"(3A) Subsection (3) above shall not apply if—

(a) the person ceasing to carry on the trade is a company, and

(b) the trade is transferred to another company in circumstances in which section 139 or 171 applies in relation to the assets transferred.".

(3) Subsection (4) shall cease to have effect.

(4) The amendment in sub-paragraph (2) above has effect in relation to cases where section 139 or, as the case may be, section 171 has effect as amended by this Schedule.

(5) The amendment in sub-paragraph (3) above has effect in relation to cases where section 139 has effect as amended by this Schedule.

Restriction on set-off of pre-entry losses

7.—(1) In Schedule 7A to the Taxation of Chargeable Gains Act 1992 (restriction on set-off of pre-entry losses), paragraph 1 (application and construction of Schedule) is amended as follows.

(2) In sub-paragraph (3)—

(a) for "it became a member of the relevant group" substitute "the relevant event occurred in relation to it", and

(b) for "that group" substitute "the relevant group".

(3) After sub-paragraph (3) insert—

"(3A) In this paragraph references to the relevant event occurring in relation to a company—

(a) in a case in which—

(i) the company was resident in the United Kingdom at the time when it became a member of the relevant group, or

(ii) the asset was a chargeable asset in relation to the company at that time,

are references to the company becoming a member of that group;

(b) in any other case, are references to whichever is the first of—

(i) the company becoming resident in the United Kingdom, or

(ii) the asset becoming a chargeable asset in relation to the company.

For this purpose an asset is a "chargeable asset" in relation to a company at any time if, were the asset to be disposed of by the company at that time, any gain accruing to the company would be a chargeable gain and would by virtue of section 10(3) form part of its chargeable profits for corporation tax purposes."

(4) In sub-paragraph (4)(a) for "it became a member of the relevant group" substitute "the relevant event occurred in relation to it".

(5) In sub-paragraph (5)—

(a) in the opening words, for the words from "the company" to "the relevant group" substitute "the relevant event occurred in relation to the company by reference to which that asset is a pre-entry asset",

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(b) in paragraph (a), for "a company has become a member of the relevant group" substitute "a relevant event has occurred in relation to a company", and

(c) in paragraph (b), for "a company became a member of the relevant group" substitute "a relevant event occurred in relation to a company".

(6) The above amendments, and the main amendments so far as they apply for the purposes of Schedule 7A, have effect in relation to the amount to be included in respect of chargeable gains in a company's total profits for any accounting period ending on or after 21st March 2000.

(7) Any question whether a company was, in relation to times before 21st March 2000, a member of a group shall be determined by reference to the position under the Taxation of Chargeable Gains Act 1992 as it stood before the main amendments.

1992 c. 12.

(8) Any question whether a company was, in relation to times before 6th April 1992, a member of a group shall be determined by reference to the position under the Capital Gains Tax Act 1979.

1979 c. 14.

(9) Where—

(a) immediately before the time when the main amendments have effect in relation to a company in accordance with sub-paragraph (6), the company was not a member of a group of companies for the purposes of section 170 of the Taxation of Chargeable Gains Act 1992 (as it stood before the main amendments), and

(b) immediately after that time, the company is a member of a group of companies for the purposes of that section (as amended by the main amendments),

Schedule 7A to that Act shall not have effect in relation to any losses accruing to the company before that time or any chargeable assets (within the meaning of paragraph 1(3A) of that Schedule) held by it immediately before that time.

Restrictions on setting losses against pre-entry gains

8.—(1) The main amendments have effect for the purposes of Schedule 7AA to the Taxation of Chargeable Gains Act 1992 (restrictions on setting losses against pre-entry gains) in relation to accounting periods ending on or after 21st March 2000.

(2) Any question whether a company was, in relation to times before 21st March 2000, a member of a group shall be determined by reference to the position under the Taxation of Chargeable Gains Act 1992 as it stood before the main amendments.

Recovery of unpaid tax

9.—(1) For sections 190 and 191 of the Taxation of Chargeable Gains Act 1992 substitute—

"Tax recoverable from another group company or controlling director.

190.—(1) This section applies where—

(a) a chargeable gain has accrued to a company ("the taxpayer company"),

(b) the condition in subsection (2) below is met, and

(c) the whole or part of the corporation tax assessed on the company for the accounting period in which the gain accrued ("the relevant accounting period") is unpaid at the end of the period of six months after it became payable.

(2) The condition referred to in subsection (1)(b) above is—

(a) that the taxpayer company is resident in the United Kingdom at the time when the gain accrued, or

(b) that the gain forms part of the taxpayer company's chargeable profits for corporation tax purposes by virtue of section 10(3).

(3) The following persons may, by notice under this section, be required to pay the unpaid tax—

(a) if the taxpayer company was a member of a group at the time when the gain accrued—

(i) a company which was at that time the principal company of the group, and

(ii) any other company which in any part of the period of twelve months ending with that time was a member of that group and owned the asset disposed of, or any part of it, or where that asset is an interest or right in or over another asset, owned either asset or any part of either asset; and

(b) if the gain forms part of the chargeable profits of the taxpayer company for corporation tax purposes by virtue of section 10(3), any person who is, or during the period of twelve months ending with the time when the gain accrued was, a controlling director of the taxpayer company or of a company which has, or within that period had, control over the taxpayer company.

(4) The Board may serve a notice on a person within subsection (3) above requiring him, within 30 days of the service of the notice, to pay—

(a) the amount which remains unpaid of the corporation tax assessed on the taxpayer company for the relevant accounting period, or

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

(5) The notice must state—

(a) the amount of corporation tax assessed on the taxpayer company for the relevant accounting period that remains unpaid,

(b) the date when it first became payable, and

(c) the amount required to be paid by the person on whom the notice is served.

(6) The notice has effect—

(a) for the purposes of the recovery from that person of the amount required to be paid and of interest on that amount, and

(b) for the purposes of appeals,

as if it were a notice of assessment and that amount were an amount of tax due from that person.

(7) Any notice under this section must be served before the end of the period of three years beginning with the date on which the liability of the taxpayer company to corporation tax for the relevant accounting period is finally determined.

1998 c. 36.

(8) Where the unpaid tax is charged in consequence of a determination under paragraph 36 or 37 of Schedule 18 to the Finance Act 1998 (determination where no return delivered or return incomplete), the date mentioned in subsection (7) above shall be taken to be the date on which the determination was made.

(9) Where the unpaid tax is charged in a self-assessment, including a self-assessment that supersedes a determination (see paragraph 40 of Schedule 18 to the Finance Act 1998), the date mentioned in subsection (7) above shall be taken to be the latest of—

(a) the last date on which notice of enquiry may be given into the return containing the self-assessment;

(b) if notice of enquiry is given, 30 days after the enquiry is completed;

(c) if more than one notice of enquiry is given, 30 days after the last notice of completion;

(d) if after such an enquiry the Inland Revenue amend the return, 30 days after notice of the amendment is issued;

(e) if an appeal is brought against such an amendment, 30 days after the appeal is finally determined.

(10) If the unpaid tax is charged in a discovery assessment, the date mentioned in subsection (7) above shall be taken to be—

(a) where there is no appeal against the assessment, the date when the tax becomes due and payable;

(b) where there is such an appeal, the date on which the appeal is finally determined.

(11) A person who has paid an amount in pursuance of a notice under this section may recover that amount from the taxpayer company.

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

(13) In this section—

"director", in relation to a company, has the meaning given by section 168(8) of the Taxes Act (read with subsection (9) of that section) and includes any person falling within section 417(5) of that Act (read with subsection (6) of that section);

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

"group" and "principal company" have the meaning which would be given by section 170 if in that section for references to 75 per cent. subsidiaries there were substituted references to 51 per cent. subsidiaries.".

1970 c. 9.

(2) In section 87A(3) of the Taxes Management Act 1970 (date from which interest runs in the case of an assessment of a company's tax on another person)—

(a) after "In relation to corporation tax assessed" insert "or treated as assessed", and

(b) after "139(7)" insert "or 190".

(3) The above amendments, and the main amendments so far as they apply for the purposes of section 190 (as substituted by sub-paragraph (1) above), have effect in relation to gains accruing on or after 1st April 2000.

(4) Any question whether a company was a member of a group during the period of twelve months ending when such a gain accrued shall be determined in accordance with section 170 as amended by the main amendments.

Replacement of business assets by members of group

10.—(1) Section 175 of the Taxation of Chargeable Gains Act 1992 is amended as follows. 1992 c. 12.

(2) In subsection (1) after "all the trades" insert "to which this section applies".

(3) After subsection (1) insert—

"(1A) The trades to which this section applies are—

(a) any trade carried on by a company that is resident in the United Kingdom, and

(b) any trade carried on in the United Kingdom through a branch or agency by a company not so resident.".

(4) In subsection (2A), after paragraph (b) insert—

"(ba) the conditions in subsection (2AA) below are met, and".

(5) After subsection (2A) insert—

"(2AA) The conditions referred to in subsection (2A)(ba) above are—

(a) that the company making the disposal is resident in the United Kingdom at the time of the disposal, or the assets are chargeable assets in relation to that company immediately before that time, and

(b) that the acquiring company is resident in the United Kingdom at the time of the acquisition, or the assets are chargeable assets in relation to that company immediately after that time.

For this purpose an asset is a "chargeable asset" in relation to a company at any time if, were the asset to be disposed of by the company at that time, any gain accruing to the company would be a chargeable gain and would by virtue of section 10(3) form part of its chargeable profits for corporation tax purposes.".

(6) For subsection (3) substitute—

"(3) Section 154(2) applies where the company making the claim is a member of a group of companies—

(a) as if all members of the group for the time being carrying on a trade to which this section applies were the same person, and

(b) in accordance with subsection (1) above, as if all those trades were the same trade;

so that the gain accrues to the member of the group holding the asset concerned on the occurrence of the event mentioned in section 154(2).".

(7) The above amendments, and the main amendments so far as they apply for the purposes of section 175, have effect in relation to cases in which—

(a) either the disposal or acquisition is on or after 1st April 2000, or

(b) both the disposal and acquisition are on or after that date.

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(8) In a case falling within paragraph (a) of sub-paragraph (7) above, any question whether a company was, at the time of the acquisition or disposal corresponding to the disposal or acquisition referred to in that paragraph, a member of a group shall be determined in accordance with section 170 of the 1992 c. 12. Taxation of Chargeable Gains Act 1992 as amended by the main amendments.

Transfers of assets within a group: trading stock

11.—(1) For section 173 of the Taxation of Chargeable Gains Act 1992 substitute—

"Transfers within a group: trading stock.

173.—(1) Where—

(a) a company ("company A") acquires an asset as trading stock of a trade to which this section applies,

(b) the acquisition is from a company ("company B") that at the time of the acquisition is a member of the same group of companies, and

(c) the asset did not form part of the trading stock of any such trade carried on by company B,

company A is treated for the purposes of section 161 as having acquired the asset otherwise than as trading stock and immediately appropriated it for the purposes of the trade as trading stock.

(2) Where—

(a) a company ("company C") disposes of an asset forming part of the trading stock of a trade to which this section applies carried on by that company,

(b) the disposal is to another company ("company D") that at the time of the disposal is a member of the same group of companies, and

(c) the asset is acquired by company D otherwise than as trading stock of any such trade carried on by it,

company C is treated for the purposes of section 161 as having appropriated the asset immediately before the disposal for some purpose other than the purpose of use as trading stock.

(3) The trades to which this section applies are—

(a) any trade carried on by a company resident in the United Kingdom, and

(b) any trade carried on in the United Kingdom through a branch or agency by a company not so resident.".

(2) The above amendment, and the main amendments so far as they apply for the purposes of section 173 (as substituted by sub-paragraph (1) above), have effect in relation to acquisitions and disposals on or after 1st April 2000.

Restriction of losses by reference to capital allowances

12.—(1) In section 41 of the Taxation of Chargeable Gains Act 1992, after subsection (7) add—

"(8) Where there is a disposal of an asset acquired in circumstances in which—

(a) section 140A applies, or

(b) section 171 applies or would apply but for subsection (2) of that section,

this section has effect in relation to capital allowances made to the person from which it was acquired (so far as not taken into account in relation to a disposal of the asset by that person), and so on as respects previous transfers of the asset in such circumstances.

This does not affect the consideration for which an asset is deemed under section 140A or 171 to be acquired.".

(2) The above amendment has effect in relation to cases where the disposal first referred to in section 41(8) (as inserted by sub-paragraph (1) above) is on or after 1st April 2000.

Assets held on 6th April 1965: disposal outside group

13.—(1) Section 174 of the Taxation of Chargeable Gains Act 1992 is amended as follows. 1992 c. 12.

(2) In subsection (4) for "at a time when both were members of the group" substitute "in a transfer to which section 171(1) applied".

(3) Subsection (5) shall cease to have effect.

(4) The above amendments, and the main amendments so far as they apply for the purposes of section 174, have effect in relation to acquisitions on or after 1st April 2000.

(5) Any question whether a company was, in relation to times before 1st April 2000, a member of a group shall be determined in accordance with section 170 of the Taxation of Chargeable Gains Act 1992 as it stood before the main amendments.

PART II

MINOR AND CONSEQUENTIAL AMENDMENTS

Section 97 of the Inheritance Tax Act 1984

14. The main amendments have effect for the purposes of section 97 of the Inheritance Tax Act 1984 (transfer of asset within a group of companies) in relation to disposals on or after 1st April 2000. 1984 c. 51.

Section 132 of the Finance Act 1988

15.—(1) In section 132 of the Finance Act 1988 (recovery of tax from another group company or controlling director), in subsection (6), in the definition of "group", the words "references to residence in the United Kingdom were omitted and" shall cease to have effect. 1988 c. 39.

(2) The above amendment, and the main amendments so far as they apply for the purposes of section 132, have effect in relation to cases in which the migrating company ceases to be resident in the United Kingdom on or after 1st April 2000.

(3) Any question whether a company was a member of a group during the period of twelve months ending when the migrating company ceased to be so resident shall be determined in accordance with section 170 of the Taxation of Chargeable Gains Act 1992 as amended by the main amendments.

Section 14 of the Taxation of Chargeable Gains Act 1992

16.—(1) Section 14 of the Taxation of Chargeable Gains Act 1992 (non-resident groups of companies) is amended as follows.

(2) For subsection (2) substitute—

"(2) The following provisions—

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(a) section 41(8),

(b) section 171 (except subsections (1)(b) and (1A)),

(c) section 173 (with the omission of the words "to which this section applies" in subsections (1)(a) and (2)(a) and "such" in subsections (1)(c) and (2)(c) and with the omission of subsection (3)),

(d) section 174(4) (with the substitution of "at a time when both were members of the group" for "in a transfer to which section 171(1) applied"), and

(e) section 175(1) (with the omission of the words "to which this section applies"),

shall apply in relation to non-resident companies which are members of a non-resident group of companies as they apply in relation to companies which are members of a group of companies."

(3) In subsection (3), for "Sections 178 to 180" substitute "Section 179 (except subsections (1)(b) and (1A))".

(4) In subsection (4)(b), the words "without subsections (2)(a), (9) and (12) to (14)" shall cease to have effect.

(5) The above amendments, and the main amendments so far as they apply for the purposes of section 14, have effect in cases in which section 41, 171, 173, 174(4), 175(1) or 179, as the case may be, have effect as amended by this Schedule.

Section 31A of the Taxation of Chargeable Gains Act 1992

1992 c. 12.

17.—(1) Section 31A of the Taxation of Chargeable Gains Act 1992 (asset-holding company leaving a group of companies) is amended as follows.

(2) In subsection (9)(b) for "the principal company of that group" substitute—

"any other company which—

(i) is a member of that group immediately before that event, and

(ii) is designated as the chargeable company for the purposes of this section in a notice served on the company by an officer of the Board."

(3) After subsection (10) add—

"(11) Where a notice is served on a company under subsection (9)(b) above, the Inland Revenue may make an assessment to tax in the amount which in their opinion ought to be charged under this section."

(4) The above amendments, and the main amendments so far as they apply for the purposes of sections 30 to 34 of that Act, have effect in relation to disposals on or after 1st April 2000.

Section 106 of the Taxation of Chargeable Gains Act 1992

18.—(1) Section 106 of the Taxation of Chargeable Gains Act 1992 (disposal of shares and securities within prescribed period of acquisition) is amended as follows.

(2) For subsection (2) substitute—

"(2) Subsections (2A) to (2C) below apply where the company making the disposal is a member of a group.

(2A) Where—

(a) shares of the class in question are held by another member of the group, and

(b) at any time during the prescribed period before the disposal, the condition in subsection (2D) below is met,

those shares shall be treated for the purposes of paragraph (a) of subsection (1) above as held by the company making the disposal.

(2B) Where—

(a) shares of the class in question are acquired by another member of the group, and

(b) at the time of the acquisition, the condition in subsection (2D) below is met,

those shares shall be treated for the purposes of paragraph (b) of subsection (1) above as acquired by the company making the disposal.

(2C) Where—

(a) shares of the class in question are acquired by the company making the disposal from another company which was a member of the group throughout the prescribed period before and after the disposal, and

(b) throughout the part of the prescribed period before or after the disposal for which the other member of the group held the shares, the condition in subsection (2D) below is met,

those shares shall be disregarded for the purposes of paragraph (b) of subsection (1) above.

(2D) The condition referred to in subsections (2A) to (2C) above is—

(a) that the other member of the group is resident in the United Kingdom, or

(b) that the shares are chargeable shares in relation to that other member."

(3) In subsection (10), after the definition of "prescribed period" insert—

"and for the purposes of this section shares are "chargeable shares" in relation to a company at any time if, were the shares to be disposed of by the company at that time, any gain accruing to the company would be a chargeable gain and would by virtue of section 10(3) form part of its chargeable profits for corporation tax purposes."

(4) The above amendments, and the main amendments so far as they apply for the purposes of section 106, have effect in relation to cases in which the prescribed period before the disposal (within the meaning of that section) begins on or after 1st April 2000.

Section 116 of the Taxation of Chargeable Gains Act 1992

19.—(1) In section 116 of the Taxation of Chargeable Gains Act 1992 (reorganisations, conversions and reconstructions), in subsection (11) for "171(1) or 172" substitute "or 171(1)". 1992 c. 12.

(2) The above amendment has effect in accordance with paragraph 3(2).

Section 117A of the Taxation of Chargeable Gains Act 1992

20.—(1) In section 117A of the Taxation of Chargeable Gains Act 1992 (assets that are not qualifying corporate bonds for corporation tax purposes), in subsection (8)(a) for "171 and 172" substitute "and 171".

(2) The above amendment has effect in accordance with paragraph 3(2).

Section 117B of the Taxation of Chargeable Gains Act 1992

1992 c. 12.

21.—(1) In section 117B of the Taxation of Chargeable Gains Act 1992 (holdings in unit trusts etc excluded from treatment as qualifying corporate bonds), in subsection (6)(a) for "171 and 172" substitute "and 171".

(2) The above amendment has effect in accordance with paragraph 3(2).

Section 138A of the Taxation of Chargeable Gains Act 1992

22. The main amendments have effect for the purposes of section 138A of the Taxation of Chargeable Gains Act 1992 (use of earn-out rights for exchange of securities) in relation to rights conferred on or after 1st April 2000.

Section 140 of the Taxation of Chargeable Gains Act 1992

23.—(1) In section 140 of the Taxation of Chargeable Gains Act 1992 (postponement of charge on transfer of assets to non-resident company), in subsection (6)(b) for "apart from section 170(2)(a) and (9)" substitute "if subsections (1)(b) and (1A) of that section and section 170(9) were disregarded".

(2) The above amendment has effect in relation to disposals on or after 1st April 2000.

Section 176 of the Taxation of Chargeable Gains Act 1992

24.—(1) In section 176 of the Taxation of Chargeable Gains Act 1992 (depreciatory transactions within a group), in subsection (7), paragraph (c) and the word "and" immediately preceding it shall cease to have effect.

(2) The above amendment, and the main amendments so far as they apply for the purposes of section 176, have effect in relation to cases in which the depreciatory transaction (within the meaning of that section) is on or after 1st April 2000.

Section 177 of the Taxation of Chargeable Gains Act 1992

25.—(1) In section 177 of the Taxation of Chargeable Gains Act 1992 (dividend stripping), in subsection (2) for "171 or 172" substitute "or 171".

(2) The above amendment, and the main amendments so far as they apply for the purposes of section 177, have effect in relation to disposals on or after 1st April 2000.

Section 178 of the Taxation of Chargeable Gains Act 1992

26. Section 178 of the Taxation of Chargeable Gains Act 1992 (which is spent) shall cease to have effect.

Section 180 of the Taxation of Chargeable Gains Act 1992

27. Section 180 of the Taxation of Chargeable Gains Act 1992 (which is spent) shall cease to have effect.

Section 181 of the Taxation of Chargeable Gains Act 1992

28.—(1) In section 181 of the Taxation of Chargeable Gains Act 1992 (exemption from de-grouping charge in the case of certain mergers)—

(a) in subsection (1), for "neither section 178 nor section 179 shall" substitute "section 179 shall not"; and

(b) subsection (5) shall cease to have effect.

(2) The amendment made by sub-paragraph (1)(b) above, and the main amendments so far as they apply for the purposes of section 181, have effect in relation to cases in which the company ceases to be a member of a group on or after 1st April 2000.

Section 192 of the Taxation of Chargeable Gains Act 1992

29. In section 192 of the Taxation of Chargeable Gains Act 1992 (tax exempt distributions), in subsection (3) for "neither section 178 nor 179 shall" substitute "section 179 shall not". 1992 c. 12.

Section 211 of the Taxation of Chargeable Gains Act 1992

30.—(1) Section 211 of the Taxation of Chargeable Gains Act 1992 (transfer of long term business of an insurance company) shall be amended as follows.

(2) In subsection (2)—

(a) the words "Subject to subsection (3) below" shall cease to have effect,

(b) after paragraph (a) insert "or", and

(c) paragraph (b), and the word "or" immediately following it, shall cease to have effect.

(3) After subsection (2) insert—

"(2A) Where section 139 has effect in relation to an asset by virtue of subsection (2) above, the reference in subsection (1A) of that section to section 10(3) shall be construed as a reference to section 11(2)(b), (c), (d) or (e) of the Taxes Act."

(4) Subsection (3) shall cease to have effect.

(5) The above amendments have effect in accordance with paragraph 5(4).

Section 216 of the Taxation of Chargeable Gains Act 1992

31. The main amendments have effect for the purposes of section 216 of the Taxation of Chargeable Gains Act 1992 (assets transferred from building society to company) in relation to transfers on or after 1st April 2000.

Section 217C of the Taxation of Chargeable Gains Act 1992

32.—(1) In section 217C of the Taxation of Chargeable Gains Act 1992 (disposal of assets by incorporated friendly society), for subsection (2) substitute—

"(2) If the disposal by the incorporated society is in the circumstances mentioned in subsection (8) of section 41, the disposal to which section 217A(3) applies shall for the purposes of that subsection be taken to have been a previous transfer of the asset in such circumstances.".

(2) The above amendment has effect in relation to cases in which the disposal by the incorporated society is on or after 1st April 2000.

Section 228 of the Taxation of Chargeable Gains Act 1992

33. The main amendments have effect for the purposes of section 228 of the Taxation of Chargeable Gains Act 1992 (conditions for roll-over relief: supplementary) in relation to disposals on or after 1st April 2000.

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Section 253 of the Taxation of Chargeable Gains Act 1992

34. The main amendments have effect for the purposes of section 253 of the Taxation of Chargeable Gains Act 1992 (relief for loans to traders)— 1992 c. 12.

(a) in relation to loans made on or after 1st April 2000;

(b) in relation to guarantees given on or after that date.

Section 276 of the Taxation of Chargeable Gains Act 1992

35.—(1) In section 276 of the Taxation of Chargeable Gains Act 1992 (application of the 1992 Act to the territorial sea and the continental shelf), for subsection (8) substitute—

"(8) The provisions specified in subsection (9) below shall apply in relation to a disposal of exploration or exploitation rights or exploration or exploitation assets if (and only if) the disposal is—

(a) by a company resident in a territory outside the United Kingdom to a company resident in the same territory,

(b) by a company resident in the United Kingdom to another company which is so resident, or

(c) by a company which is not resident in the United Kingdom to another company which is resident there.

(9) Those provisions are—

(a) section 41(8),

(b) section 171 (except subsections (1)(b) and (1A)),

(c) section 173 (with the omission of the words "to which this section applies" in subsections (1)(a) and (2)(a) and "such" in subsections (1)(c) and (2)(c) and with the omission of subsection (3)),

(d) section 174(4) (with the substitution of "at a time when both were members of the group" for "in a transfer to which section 171(1) applied"),

(e) section 179 (except subsections (1)(b) and (1A)), and

(f) section 181.

(10) The provisions specified in subsection (9) above shall apply in accordance with subsection (8) above with the following modifications—

(a) for the purposes of paragraph (a) of subsection (9) above, section 41(8) applies as if section 170 applied, for the purposes of section 171, with the omission of subsection (9), and

(b) for the purposes of paragraphs (b) to (f) of subsection (9) above, the provisions specified in those paragraphs apply as if in section 170 subsection (9) were omitted."

(2) The above amendment has effect in cases in which section 41, 171, 173, 174(4), 179 or 181, as the case may be, has effect as amended by this Schedule.

Schedule A1 to the Taxation of Chargeable Gains Act 1992

36. The main amendments have effect for the purposes of paragraph 11 of Schedule A1 to the Taxation of Chargeable Gains Act 1992 (rules for application of taper relief) in relation to any determination whether, at any time on or after 1st April 2000, a company is a 51 per cent subsidiary of another company.

Schedule 2 to the Taxation of Chargeable Gains Act 1992

37. The main amendments have effect for the purposes of paragraph 5 of Schedule 2 to the Taxation of Chargeable Gains Act 1992 (disposals of assets held on 6th April 1965) in relation to any determination whether, at any time on or after 1st April 2000, a company is a member, or the principal company, of a group of companies. 1992 c. 12.

Schedule 3 to the Taxation of Chargeable Gains Act 1992

38. The main amendments have effect for the purposes of paragraphs 8 and 9 of Schedule 3 to the Taxation of Chargeable Gains Act 1992 (disposals of assets held on 31st March 1982: supplementary provisions) in relation to any determination whether, at any time on or after 1st April 2000, a company is a member, or the principal company, of a group of companies.

Schedule 7B to the Taxation of Chargeable Gains Act 1992

39.—(1) Schedule 7B to the Taxation of Chargeable Gains Act 1992 (modification of that Act in relation to overseas life insurance companies) is amended as follows.

(2) After paragraph 6 insert—

"6A. In section 171(1A), the words "section 11(2)(b), (c), (d) or (e) of the Taxes Act" shall be treated as substituted for the words "section 10(3)".

6B. In section 175(2AA), the words "section 11(2)(b), (c), (d) or (e) of the Taxes Act" shall be treated as substituted for the words "section 10(3)".".

(3) In paragraph 9 for "section 191(1)(b)" substitute "section 190(2)(b)".

(4) After paragraph 14 add—

"15.—(1) In Schedule 7A, in sub-paragraph (3A) of paragraph 1, the words "section 11(2)(b), (c), (d) or (e) of the Taxes Act" shall be treated as substituted for the words "section 10(3)".

(2) In that paragraph, the following sub-paragraph shall be treated as inserted after sub-paragraph (4)—

"(4A) Where—

(a) an asset is held by an overseas life insurance company, and

(b) section 440 of the Taxes Act applies at any time in relation to the asset,

the asset shall not be treated for the purposes of sub-paragraph (3A)(b) above as having become a chargeable asset at that time." "

(5) The amendment made by sub-paragraph (2) above has effect in relation to cases where section 171 or, as the case may be, section 175 has effect as amended by this Schedule.

(6) The amendment made by sub-paragraph (3) above has effect in relation to cases where section 190 has effect as amended by this Schedule.

(7) The amendment made by sub-paragraph (4) above has effect in relation to cases where Schedule 7A has effect as amended by this Schedule.

Schedule 7C to the Taxation of Chargeable Gains Act 1992

40. The main amendments have effect for the purposes of Schedule 7C to the Taxation of Chargeable Gains Act 1992 (which is inserted by virtue of section 48 of this Act).

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Section 136 of the Finance Act 1993

1993 c. 34. 41.—(1) In section 136 of the Finance Act 1993 (exchange gains and losses: arm's length test in relation to assets and liabilities), for subsection (12)(d) substitute—

"(d) any question whether companies are members of the same group shall be determined in accordance with section 170 of the
1992 c. 12. Taxation of Chargeable Gains Act 1992."

(2) The above amendment, and the main amendments so far as they apply for the purposes of section 136, have effect in relation to accrual periods beginning on or after 1st April 2000.

Section 136A of the Finance Act 1993

42.—(1) In section 136A of the Finance Act 1993 (exchange gains and losses: arm's length test in relation to debts of varying amounts), for subsection (10)(d) substitute—

"(d) any question whether companies are members of the same group shall be determined in accordance with section 170 of the Taxation of Chargeable Gains Act 1992."

(2) The above amendment, and the main amendments so far as they apply for the purposes of section 136A, have effect in relation to accrual periods beginning on or after 1st April 2000.

Schedule 17 to the Finance Act 1993

43.—(1) In Schedule 17 to the Finance Act 1993 (exchange gains and losses: chargeable gains), in paragraph 7(2)(b) for "171 or 172" substitute "or 171".

(2) The above amendment has effect in accordance with paragraph 3(2) above.

Schedule 9 to the Finance Act 1996

1996 c. 8. 44.—(1) Schedule 9 to the Finance Act 1996 (computational provisions in relation to loan relationships) is amended as follows.

(2) In paragraph 11 (transactions not at arm's length), in sub-paragraph (3) for paragraphs (a) and (b) substitute—

"(a) in the case of any related transaction between two companies that are—

(i) members of the same group, and

(ii) within the charge to corporation tax in respect of that transaction; or

(b) in relation to a member of a group of companies, in the case of any transaction which is part of a series of transactions having the same effect as a transaction falling within paragraph (a) above."

(3) In that paragraph, for sub-paragraph (5) substitute—

"(5) In this paragraph references to a company which is a member of a group of companies shall be construed in accordance with section 170 of the Taxation of Chargeable Gains Act 1992."

(4) In paragraph 12 (continuity of treatment), in sub-paragraph (1), for paragraphs (a) and (b) substitute—

"(a) a related transaction between two companies that are—

(i) members of the same group, and

(ii) within the charge to corporation tax in respect of that transaction,

(b) a series of transactions having the same effect as a related transaction between two companies each of which—

(i) has been a member of the same group at any time in the course of that series of transactions, and

(ii) is within the charge to corporation tax in respect of the related transaction,".

(5) The above amendments, and the main amendments so far as they apply for the purposes of paragraphs 11 and 12 of Schedule 9 to the Finance Act 1996, have effect in relation to transactions entered into, or series of transactions begun, on or after 1st April 2000. 1996 c. 8.

Schedule 15 to the Finance Act 1996

45.—(1) In Schedule 15 to the Finance Act 1996 (loan relationships: savings and transitional provisions), in paragraph 8(2) for "171(1) or 172" substitute "or 171(1)".

(2) The above amendment has effect in accordance with paragraph 3(2) above.

PART III

TRANSITIONAL PROVISIONS

46.—(1) For the purposes of this paragraph—

(a) references to a company which was a member of an old group are references to it being, immediately before the time when the main amendments have effect in accordance with the preceding provisions of this Schedule, a member of a group for the purposes of section 170 of the Taxation of Chargeable Gains Act 1992 (as it stood before the main amendments), and 1992 c. 12.

(b) references to a company which is a member of a new group are references to it being, immediately after that time, a member of a group for the purposes of that section (as amended by the main amendments).

(2) Where the same two or more companies were members of an old group and are members of a new group, those groups shall be regarded as the same group for the purposes of the provisions amended by this Schedule in relation to which the main amendments have effect.

(3) Sub-paragraph (2) above applies irrespective of whether the new group includes companies which were not members of the old group.

(4) Sub-paragraph (5) below applies in relation to a company which—

(a) was a member of an old group, but

(b) is not a member of a new group by reason only that—

(i) the principal company of the old group is not the principal company of the new group, and

(ii) the company in question is not an effective 51 per cent subsidiary of the principal company of the new group.

(5) For the purposes of the provisions amended by this Schedule in relation to which the main amendments have effect, section 170(3)(b) of the Taxation of Chargeable Gains Act 1992 shall not apply in relation to the company for so long as it remains an effective 51 per cent subsidiary of the company which was the principal company of the old group.

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1992 c. 12.

(6) Expressions used in this paragraph and in section 170 of the Taxation of Chargeable Gains Act 1992 shall be construed for the purposes of this paragraph in accordance with that section.

Section 103.

SCHEDULE 30

DOUBLE TAXATION RELIEF

Power to make treaty provision for matching credit for tax spared in foreign country

1.—(1) In section 788 of the Taxes Act 1988 (relief by agreement with other countries) in subsection (5) (matching credit for tax spared in foreign country) in the second sentence, paragraph (b) (power to provide for relief in the arrangements themselves) shall cease to have effect.

(2) This paragraph comes into force on 1st April 2000.

Matching credit for tax spared below immediate overseas subsidiary: treaty relief

2.—(1) In section 788 of the Taxes Act 1988 (relief by agreement with other countries) in subsection (5) (which in certain circumstances treats tax spared under the foreign law as tax payable) after the second sentence insert—

"Relief does not fall to be given in accordance with section 801 by virtue of this subsection unless the arrangements in question make express provision for such relief (but this paragraph is without prejudice to section 790(10B))."

(2) This paragraph has effect in relation to any claim for credit in respect of underlying tax in relation to a dividend paid on or after 21st March 2000 by a company resident outside the United Kingdom to a company resident in the United Kingdom.

Matching credit for tax spared below immediate overseas subsidiary: unilateral relief

3.—(1) Amend section 790 of the Taxes Act 1988 (unilateral relief) as follows.

(2) In subsection (3) (which postulates notional arrangements containing the provisions specified in subsections (4) to (10) of that section) for "(10)" substitute "(10C)".

(3) After subsection (10) (credit for underlying tax under section 801) insert—

"(10A) In any case where—

(a) under the law of the territory outside the United Kingdom, an amount of tax ("the spared tax") would, but for a relief, have been payable by a company resident in that territory ("company A") in respect of any of its profits,

(b) company A pays a dividend out of those profits to another company resident in that territory ("company B"),

(c) company B, out of profits which consist of or include the whole or part of that dividend, pays a dividend to a company resident in the United Kingdom ("company C"), and

(d) the circumstances are such that, had company B been resident in the United Kingdom, it would have been entitled, under arrangements made with the government of the territory outside

the United Kingdom and having effect by virtue of section 788, to a relief to which subsection (5) of that section applies in respect of the spared tax,

subsection (10B) below shall apply.

(10B) In any case falling within subsection (10A) above, the spared tax shall be taken into account for the purposes of—

(a) the other provisions of this section, and

(b) subject to section 795(3), Chapter II of this Part in its application to relief under this section in relation to the dividend paid to company C,

as if it had been payable and paid; and references in this section and that Chapter to double taxation, to tax payable or chargeable, or to tax not chargeable directly or by deduction shall be construed accordingly.

(10C) Except as provided by subsection (10B) above, in relation to any dividend paid—

(a) to a company resident in the United Kingdom,

(b) by a company resident in the territory outside the United Kingdom,

credit by virtue of section 801 does not fall to be given by virtue of this section in respect of tax which would have been payable under the law of that or any other territory outside the United Kingdom but for a relief (notwithstanding any arrangements made with the government of that or any other territory outside the United Kingdom which have effect by virtue of section 788 and provide for a relief to which subsection (5) of that section applies)."

(4) This paragraph has effect in relation to any claim for credit, under any arrangements, in respect of underlying tax in relation to a dividend paid on or after 21st March 2000 by a company resident outside the United Kingdom to a company resident in the United Kingdom.

Relief for persons resident outside the UK who have branches or agencies in the UK

4.—(1) Amend section 790 of the Taxes Act 1988 (unilateral relief) in accordance with sub-paragraphs (2) and (3).

(2) In subsection (6) (dividend paid to company resident in United Kingdom) for "company resident in the United Kingdom" substitute "company falling within subsection (6A) below".

(3) After subsection (6) insert—

"(6A) A company falls within this subsection if—

(a) it is resident in the United Kingdom; or

(b) it is resident outside the United Kingdom but the dividend mentioned in subsection (6) above forms part of the profits of a branch or agency of the company's in the United Kingdom."

(4) Amend section 794 of the Taxes Act 1988 (requirement as to residence) in accordance with sub-paragraphs (5) and (6).

(5) In subsection (2) (cases where credit may be allowed by way of unilateral relief) after paragraph (b) insert—

"(bb) for tax paid under the law of any territory outside the United Kingdom in respect of the income or chargeable gains of a branch or agency in the United Kingdom of a person who is not resident in the United Kingdom, where the following conditions are fulfilled, namely—

(i) that the territory under whose law the tax was paid is not one in which the person is liable to tax by reason of domicile, residence or place of management; and

(ii) that the amount of relief claimed does not exceed (or is by the claim expressly limited to) that which would have been available if the branch or agency had been a person resident in the United Kingdom and the income or gains in question had been income or gains of that person."

(6) Omit subsection (2)(c) (which is superseded by the amendment made by sub-paragraph (5)).

(7) Amend section 801 of the Taxes Act 1988 (dividends paid between related companies: relief for UK and third country taxes) in accordance with sub-paragraphs (8) and (9).

(8) In subsection (1) (dividend paid to company resident in the United Kingdom)—

(a) for "company resident in the United Kingdom ("the United Kingdom company")" substitute "company falling within subsection (1A) below ("the relevant company")"; and

(b) for "to the United Kingdom company" substitute "to the relevant company".

(9) After subsection (1) insert—

"(1A) A company falls within this subsection if—

(a) it is resident in the United Kingdom; or

(b) it is resident outside the United Kingdom but the dividend mentioned in subsection (1) above forms part of the profits of a branch or agency of the company's in the United Kingdom."

(10) Amend section 801A of the Taxes Act 1988 (restriction of relief for underlying tax) in accordance with sub-paragraphs (11) and (12).

(11) In subsection (1)(a) (company resident in United Kingdom making claim for allowance by way of credit) for "a company resident in the United Kingdom ("the United Kingdom company")" substitute "a company ("the claimant company")".

(12) In subsections (2), (7) and (11), for "the United Kingdom company" substitute "the claimant company".

(13) In Schedule 19AC to the Taxes Act 1988 (modification of Act in relation to overseas life insurance companies) amend paragraph 13 (which notionally inserts certain provisions into section 794) as follows—

(a) omit sub-paragraph (1) (which notionally inserts subsection (2)(d));

(b) in sub-paragraph (2) (which notionally inserts subsections (3) and (4)) in the words preceding the notionally inserted subsections, for "subsections shall be treated as inserted after that subsection" substitute "subsection shall be treated as inserted after subsection (2) of section 794";

(c) omit the subsection (3) notionally inserted by sub-paragraph (2);

(d) in the subsection (4) notionally inserted by sub-paragraph (2), for "subsection (2)(d)" substitute "subsection (2)(bb)".

(14) The amendments made by this paragraph have effect in relation to accounting periods ending on or after 21st March 2000.

No double relief etc.

5.—(1) After section 793 of the Taxes Act 1988 insert—

"No double relief etc.

793A.—(1) Where relief in respect of an amount of tax that would otherwise be payable under the law of a territory outside the United Kingdom may be allowed—

(a) under arrangements made with the government of that territory, or

(b) under the law of that territory in consequence of any such arrangements,

credit may not be allowed in respect of that tax, whether the relief has been used or not.

(2) Where, under arrangements having effect by virtue of section 788, credit may be allowed in respect of an amount of tax, credit by way of unilateral relief may not be allowed in respect of that tax.

(3) Where arrangements made with the government of a territory outside the United Kingdom contain express provision to the effect that relief by way of credit shall not be given under the arrangements in cases or circumstances specified or described in the arrangements, then neither shall credit by way of unilateral relief be allowed in those cases or circumstances."

(2) Subsections (1) and (2) of the section inserted by sub-paragraph (1) have effect in relation to claims for credit made on or after 21st March 2000.

(3) Subsection (3) of the section inserted by sub-paragraph (1) has effect in relation to arrangements made on or after 21st March 2000.

Limits on credit: minimisation of the foreign tax

6.—(1) After section 795 of the Taxes Act 1988 insert—

"Limits on credit: minimisation of the foreign tax.

795A.—(1) The amount of credit for foreign tax which, under any arrangements, is to be allowed against tax in respect of any income or chargeable gain shall not exceed the credit which would be allowed had all reasonable steps been taken—

(a) under the law of the territory concerned, and

(b) under any arrangements made with the government of that territory,

to minimise the amount of tax payable in that territory.

(2) The steps mentioned in subsection (1) above include—

(a) claiming, or otherwise securing the benefit of, reliefs, deductions, reductions or allowances; and

(b) making elections for tax purposes.

(3) For the purposes of subsection (1) above, any question as to the steps which it would have been reasonable for a person to take shall be determined on the basis of what the person might reasonably be expected to have done in the absence of relief under this Part against tax in the United Kingdom."

(2) This paragraph has effect in relation to claims for credit made on or after 21st March 2000.

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Foreign tax on amounts underlying non-trading credits

7.—(1) Amend section 797A of the Taxes Act 1988 (foreign tax on interest brought into account as a non-trading credit) as follows.

(2) In subsection (1)—

(a) in paragraph (a) for "amount of interest" substitute "item", and

(b) in paragraph (b) for "that amount" and "that interest" substitute "that item".

(3) In consequence of sub-paragraph (2) above, in the sidenote for "interest brought into account as" substitute "items giving rise to".

(4) The amendments made by this paragraph have effect in relation to accounting periods ending on or after 21st March 2000.

Restriction of relief for underlying tax

8.—(1) Amend section 799 of the Taxes Act 1988 (computation of underlying tax) as follows.

(2) In subsection (1) (underlying tax to be taken into account to be so much of the foreign tax on the relevant profits as is attributable to the proportion represented by the dividend) after "as" insert "(a)" and at the end of the subsection add ", and

(b) does not exceed the amount calculated by applying the formula set out in subsection (1A) below."

(3) After subsection (1) insert—

"(1A) The formula is—

$$\frac{D \times M}{(100 - M)}$$

where—

D is the amount of the dividend; and

M is the maximum relievable rate;

and for the purposes of this subsection the maximum relievable rate is the rate of corporation tax in force when the dividend was paid."

(4) In subsection (3) (profits by reference to which underlying tax to be taken into account is calculated)—

(a) at the end of paragraph (a) insert "and";

(b) omit paragraph (b); and

(c) in paragraph (c), for "paid neither for a specified period nor out of specified profits" substitute "not paid for a specified period".

(5) This paragraph has effect in relation to any claim for an allowance by way of credit made on or after 31st March 2001 in respect of a dividend paid by a company resident outside the United Kingdom to a company resident in the United Kingdom, unless the dividend was paid before that date.

(6) In determining, for the purpose of any such claim made on or after that date, the underlying tax of any such third, fourth or successive company as is mentioned in section 801(2) or (3) of the Taxes Act 1988, this paragraph shall be deemed to have had effect at the time the dividend paid by that company was paid.

Computation of underlying tax: the relevant profits

9.—(1) Amend section 799 of the Taxes Act 1988 as follows.

(2) After subsection (4) add—

"(5) For the purposes of paragraphs (a) and (c) of subsection (3) above, "profits", in the case of any period, means the profits available for distribution.

(6) In subsections (4) and (5) above, "profits available for distribution" means, in the case of any company, the profits available for distribution as shown in accounts relating to the company—

(a) drawn up in accordance with the law of the company's home State, and

(b) making no provision for reserves, bad debts or contingencies other than such as is required to be made under that law.

(7) In this section, "home State", in the case of any company, means the country or territory under whose law the company is incorporated or formed."

(3) This paragraph has effect in relation to any claim for credit, under any arrangements, in respect of underlying tax in relation to a dividend paid on or after 21st March 2000 by a company resident outside the United Kingdom to a company resident in the United Kingdom.

Dividends paid between related companies but not covered by arrangements

10.—(1) Section 800 of the Taxes Act 1988 (dividends paid between related companies but not covered by arrangements) shall cease to have effect.

(2) This paragraph has effect in relation to dividends paid on or after 1st April 2000.

Restriction of relief for underlying tax: dividends paid between related companies

11.—(1) Amend section 801 of the Taxes Act 1988 as follows.

(2) After subsection (2) (cases where the overseas company receives a dividend from a related third company) insert—

"(2A) Section 799(1)(b) applies for the purposes of subsection (2) above only—

(a) if the overseas company and the third company are not resident in the same territory; or

(b) in such other cases as may be prescribed by regulations made by the Treasury."

(3) This paragraph has effect in relation to any claim for an allowance by way of credit made on or after 31st March 2001 in respect of a dividend paid by a company resident outside the United Kingdom to a company resident in the United Kingdom, unless the dividend was paid before that date.

(4) In determining, for the purpose of any such claim made on or after that date, the underlying tax of any such third, fourth or successive company as is mentioned in section 801(2) or (3) of the Taxes Act 1988, this paragraph shall be deemed to have had effect at the time the dividend paid by that company was paid.

Dividends paid out of transferred profits

12.—(1) After section 801A of the Taxes Act 1988 insert—

"Dividends paid out of transferred profits.

801B.—(1) This section applies where—

(a) a company ("company A") resident outside the United Kingdom has paid tax under the law of a territory outside the United Kingdom in respect of any of its profits;

(b) some or all of those profits become profits of another company resident outside the United Kingdom ("company B") otherwise than by virtue of the payment of a dividend to company B; and

(c) company B pays a dividend out of those profits to another company ("company C"), wherever resident.

(2) Where this section applies, this Part shall have effect, so far as relating to the determination of underlying tax in relation to any dividend paid—

(a) by any company resident outside the United Kingdom (whether or not company B),

(b) to a company resident in the United Kingdom,

as if company B had paid the tax paid by company A in respect of those profits of company A which have become profits of company B as mentioned in subsection (1)(b) above.

(3) But the amount of relief under this Part which is allowable to a company resident in the United Kingdom shall not exceed the amount which would have been allowable to that company had those profits become profits of company B by virtue of the payment of a dividend by company A to company B."

(2) This paragraph has effect in relation to any claim for credit, under any arrangements, in respect of underlying tax in relation to a dividend paid on or after 21st March 2000 by a company resident outside the United Kingdom to a company resident in the United Kingdom.

Separate streaming of dividend so far as representing an ADP dividend of a CFC

13.—(1) After section 801B of the Taxes Act 1988 insert—

"Separate streaming of dividend so far as representing an ADP dividend of a CFC.

801C.—(1) This section applies in any case where—

(a) by virtue only of section 748(1)(a), no apportionment under section 747(3) falls to be made as regards an accounting period of a controlled foreign company; and

(b) one or more of the dividends paid by the controlled foreign company by virtue of which the condition in paragraph (a) above is satisfied are dividends falling within subsection (2) below.

(2) A dividend falls within this subsection if, for the purposes of Part I of Schedule 25, the whole or any part of it falls to be treated by virtue of paragraph 4 of that Schedule as paid by the controlled foreign company to a United Kingdom resident.

(3) If, in a case where this section applies,—

(a) an initial dividend is paid to a company resident outside the United Kingdom, and

(b) that company, or any other company which is related to it, pays an intermediate dividend which for the purposes of paragraph 4 of Schedule 25 to any extent represents that initial dividend,

subsection (4) below shall have effect in relation to the UK recipient concerned.

(4) Where this subsection has effect, it shall be assumed for the purposes of allowing credit relief under this Part to that UK recipient—

(a) that, instead of the intermediate dividend, the dividends described in subsection (5) below had been paid and the circumstances had been as described in subsection (6) or (7) below, as the case may be; and

(b) that any tax paid under the law of any territory in respect of the intermediate dividend, or which is underlying tax in relation to that dividend, had instead fallen to be borne accordingly (taking account of any reduction falling to be made under section 799(2)).

(5) The dividends mentioned in subsection (4)(a) above are—

(a) as respects each of the initial dividends which are, for the purposes of paragraph 4 of Schedule 25, to any extent represented by the intermediate dividend, a separate dividend (an "ADP dividend") representing, and of an amount equal to, so much of that initial dividend as is for those purposes represented by the intermediate dividend; and

(b) a further separate dividend (a "residual dividend") representing, and of an amount equal to, the remainder (if any) of the intermediate dividend.

(6) As respects each of the ADP dividends, the intermediate company is to be treated as if it were a separate company whose distributable profits are of a constitution corresponding to, and an amount equal to, that of the ADP dividend.

(7) As respects the residual dividend (if any), the relevant profits out of which it is to be regarded for the purposes of section 799(1) as paid by the intermediate company are, in consequence of subsection (6) above, to be treated as being of such constitution and amount as remains after excluding accordingly so much of those relevant profits as constitute the whole or any part of the distributable profits out of which the ADP dividends are paid.

(8) If, in a case where this section applies, an intermediate company also pays a dividend which is not an intermediate dividend (an "independent dividend") and either—

(a) that dividend is paid to a United Kingdom resident, or

(b) if it is not so paid, a dividend which to any extent represents it is paid by a company which is related to that company and resident outside the United Kingdom to a United Kingdom resident,

subsection (9) below shall have effect in relation to the United Kingdom resident.

(9) Where this subsection has effect, it shall be assumed for the purposes of allowing credit relief under this Part to the United Kingdom resident—

(a) that the relevant profits out of which the independent dividend is to be regarded for the purposes of section 799(1) as paid by the intermediate company are, in consequence of subsection (6) above, to be treated as being of such constitution and amount as remains after excluding so much of those relevant profits as constitute the whole or any part of the distributable profits out of which the ADP dividends are paid; and

(b) that any tax paid under the law of any territory in respect of the independent dividend, or which is underlying tax in relation to that dividend, had instead fallen to be borne accordingly (taking account of any reduction falling to be made under section 799(2)).

(10) For the purposes of this section—

(a) a controlled foreign company is an "ADP controlled foreign company" as respects any of its accounting periods if the condition in paragraph (a) of subsection (1) above is satisfied as respects that accounting period;

(b) an "initial dividend" (subject to subsection (14) below) is any of the dividends mentioned in paragraph (b) of subsection (1) above paid by an ADP controlled foreign company; and

(c) a "subsequent dividend" is any dividend which, in relation to one or more initial dividends, is the subsequent dividend for the purposes of paragraph 4 of Schedule 25.

(11) In this section—

"distributable profits" means a company's profits available for distribution, determined in accordance with section 799(6);

"intermediate company" means any company resident outside the United Kingdom which pays an intermediate dividend;

"intermediate dividend" means any dividend which is paid by a company resident outside the United Kingdom and which—

(a) for the purposes of paragraph 4 of Schedule 25, to any extent represents one or more initial dividends paid by other companies; and

(b) either is the subsequent dividend in the case of those initial dividends or is itself to any extent represented for those purposes by a subsequent dividend;

"the UK recipient" means the United Kingdom resident to whom a subsequent dividend is paid.

(12) Where—

(a) one company pays a dividend ("dividend A") to another company, and

(b) that other company, or a company which is related to it, pays a dividend ("dividend B") to another company,

then, for the purposes of this section, dividend B represents dividend A, and dividend A is represented by dividend B, to the extent that dividend B is paid out of profits which are derived, directly or indirectly, from the whole or part of dividend A.

(13) Sub-paragraph (2) of paragraph 4 of Schedule 25 (related companies) shall apply for the purposes of this section as it applies for the purposes of that paragraph.

(14) Where an intermediate company which is an ADP controlled foreign company pays a dividend—

(a) by virtue of which (whether taken alone or with other dividends) the condition in subsection (1)(a) above is satisfied as regards an accounting period of the company, but

(b) which also for the purposes of paragraph 4 of Schedule 25 to any extent represents one or more initial dividends paid by other ADP controlled foreign companies,

the dividend shall not be regarded for the purposes of this section as an initial dividend paid by the company, to the extent that it so represents initial dividends paid by other ADP controlled foreign companies."

(2) This paragraph has effect in relation to any claim for an allowance by way of credit made on or after 31st March 2001 in respect of a dividend paid by a company resident outside the United Kingdom to a company resident in the United Kingdom, unless the dividend was paid before that date.

(3) In determining, for the purpose of any such claim made on or after that date, the underlying tax of any such third, fourth or successive company as is mentioned in section 801(2) or (3) of the Taxes Act 1988, this paragraph shall be deemed to have had effect at the time the dividend paid by that company was paid.

UK insurance companies trading overseas: repeal of section 802

14.—(1) Section 802 of the Taxes Act 1988 shall cease to have effect.

(2) This paragraph has effect in relation to accounting periods beginning on or after 1st April 2000.

Underlying tax: foreign taxation of group as a single entity

15.—(1) After section 803 of the Taxes Act 1988 insert—

"Foreign taxation of group as a single entity.

803A.—(1) This section applies in any case where, under the law of a territory outside the United Kingdom, tax is payable by any one company resident in that territory ("the responsible company") in respect of the aggregate profits, or aggregate profits and aggregate gains, of that company and one or more other companies so resident, taken together as a single taxable entity.

(2) Where this section applies, this Part shall have effect, so far as relating to the determination of underlying tax in relation to any dividend paid by any of the companies mentioned in subsection (1) above (the "non-resident companies") to another company ("the recipient company"), as if—

(a) the non-resident companies, taken together, were a single company,

(b) anything done by or in relation to any of the non-resident companies (including the payment of the dividend) were done by or in relation to that single company, and

(c) that single company were related to the recipient company, if that one of the non-resident companies which actually pays the dividend is related to the recipient company,

(so that, in particular, the relevant profits for the purposes of section 799(1) is a single aggregate figure in respect of that single company and the foreign tax paid by the responsible company is foreign tax paid by that single company).

(3) For the purposes of this section a company is related to another company if that other company—

(a) controls directly or indirectly, or

(b) is a subsidiary of a company which controls directly or indirectly,

not less than 10 per cent. of the voting power in the first-mentioned company."

(2) This paragraph has effect in relation to any claim for credit, under any arrangements, in respect of underlying tax in relation to a dividend paid on or after 21st March 2000 by a company resident outside the United Kingdom to a company resident in the United Kingdom.

Life assurance companies with overseas branches etc: restriction of credit

16.—(1) Amend section 804A of the Taxes Act 1988 (overseas life assurance business: restriction of credit) as follows.

(2) For subsection (1) (application of subsection (2)) substitute—

"(1) Subsection (2) below applies where credit for tax—

(a) which is payable under the laws of a territory outside the United Kingdom in respect of insurance business carried on by a company through a branch or agency in that territory, and

(b) which is computed otherwise than wholly by reference to profits arising in that territory,

is to be allowed (in accordance with this Part) against corporation tax charged under Case I or Case VI of Schedule D in respect of the profits, computed in accordance with the provisions applicable to Case I of Schedule D, of life assurance business or any category of life assurance business carried on by the company in an accounting period (in this section referred to as "the relevant profits").

(1A) For the purposes of paragraph (b) of subsection (1) above, the cases where tax payable under the laws of a territory outside the United Kingdom is "computed otherwise than wholly by reference to profits arising in that territory" are those cases where the charge to tax in that territory falls within subsection (1B) below.

(1B) A charge to tax falls within this subsection if it is such a charge made otherwise than by reference to profits as (by disallowing their deduction in computing the amount chargeable) to require sums payable and other liabilities arising under policies to be treated as sums or liabilities falling to be met out of amounts subject to tax in the hands of the company."

(3) In subsection (3) (the shareholders' share of the overseas tax) for the definition of A (the amount of profits chargeable under section 441) substitute—

"A is an amount equal to the amount of the relevant profits before making any deduction authorised by subsection (5) below;".

(4) In subsection (5) (relaxation of rule in section 795(2)(a) against deducting foreign tax in computing the profits of the overseas life assurance business) for "the profits of the overseas life assurance business" substitute "the relevant profits".

(5) In consequence of the amendments made by this paragraph, the sidenote to the section becomes "Life assurance companies with overseas branches etc: restriction of credit."

(6) This paragraph has effect in relation to accounting periods beginning on or after 1st April 2000.

Allocation of foreign tax to different categories of insurance business

17.—(1) After section 804A of the Taxes Act 1988 insert—

"Insurance companies carrying on more than one category of business: restriction of credit.

804B.—(1) Where—

(a) an insurance company carries on more than one category of business in an accounting period, and

(b) there arises to the company in that period any income or gain ("the relevant income") in respect of which credit for foreign tax falls to be allowed under any arrangements,

subsection (2) below shall have effect.

(2) In any such case, the amount of the credit for foreign tax which, under the arrangements, is allowable against corporation tax in respect of so much of the relevant income as is referable (in accordance with the provisions of sections 432ZA to 432E) to a particular category of business must not exceed the fraction of the foreign tax which, in accordance with the following provisions of this section, is attributable to that category of business.

(3) Where the relevant income arises from an asset—

(a) which is linked solely to a category of business (other than overseas life assurance business), or

(b) which is an asset of the company's overseas life assurance fund,

the whole of the foreign tax is attributable to the category mentioned in paragraph (a) above or, as the case may be, to the company's overseas life assurance business, unless the case is one where subsection (7) below applies in relation to the category of business in question.

(4) Where subsection (3) above does not apply and the category of business in question is—

(a) basic life assurance and general annuity business, or

(b) long term business which is not life assurance business,

the fraction of the foreign tax that is attributable to that category of business is the fraction whose numerator is the part of the relevant income which is referable to that category by virtue of any provision of section 432A and whose denominator is the whole of the relevant income.

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(5) Subsections (6) and (7) below apply where the category of business in question is neither—

(a) basic life assurance and general annuity business; nor

(b) long term business which is not life assurance business.

(6) Where—

(a) subsection (3) above does not apply, and

(b) some or all of the relevant income is taken into account in accordance with section 83 of the Finance Act 1989 in an account in relation to which the provisions of section 432C or 432D apply,

1989 c. 26.

the fraction of the foreign tax that is attributable to the category of business in question is the fraction whose numerator is the part of the relevant income which is referable to that category by virtue of any provision of section 432C or 432D and whose denominator is the whole of the relevant income.

(7) Where some or all of the relevant income falls to be taken into account in determining in accordance with section 83(2) of the Finance Act 1989 the amount referred to in section 432E(1) as the net amount, the fraction of the foreign tax that is attributable to the category of business in question is the fraction—

(a) whose numerator is the part of that net amount which is referable by virtue of section 432E to that category; and

(b) whose denominator is the whole of that net amount.

(8) No part of the foreign tax is attributable to any category of business except as provided by subsections (3) to (7) above.

(9) Where for the purposes of this section an amount of foreign tax is attributable to a category of life assurance business other than basic life assurance and general annuity business, credit in respect of the foreign tax so attributable shall be allowed only against corporation tax in respect of profits chargeable under Case VI of Schedule D arising from carrying on that category of business."

(2) This paragraph has effect in relation to accounting periods beginning on or after 1st April 2000.

Allocation of expenses etc in a computation under Case I of Schedule D

18.—(1) After section 804B of the Taxes Act 1988 insert—

"Insurance companies: allocation of expenses etc in computations under Case I of Schedule D.

804C.—(1) Where—

(a) an insurance company carries on any category of insurance business in a period of account,

(b) a computation in accordance with the provisions applicable to Case I of Schedule D falls to be made in relation to that category of business for that period, and

(c) there arises to the company in that period any income or gain in respect of which credit for foreign tax falls to be allowed under any arrangements,

subsection (2) below shall have effect.

(2) In any such case, the amount of the credit for foreign tax which, under the arrangements, is to be allowed against corporation tax in respect of so much of that income or gain as

is referable to the category of business concerned ("the relevant income") shall be limited by treating the amount of the relevant income as reduced in accordance with subsections (3) and (4) below.

(3) The first limitation is to treat the amount of the relevant income as reduced (but not below nil) for the purposes of this Chapter by the amount of expenses (if any) attributable to the relevant income.

(4) If—

(a) the amount of the relevant income after any reduction under subsection (3) above,

exceeds

(b) the relevant fraction of the profits of the category of business concerned for the period of account in question which are chargeable to corporation tax,

the second limitation is to treat the relevant amount as further reduced (but not below nil) for the purposes of this Chapter to an amount equal to that fraction of those profits.

In this subsection any reference to the profits of a category of business is a reference to those profits after the set off of any losses of that category of business which have arisen in any previous accounting period.

(5) In determining the amount of the credit for foreign tax which is to be allowed as mentioned in subsection (2) above, the relevant amount shall not be reduced except in accordance with that subsection.

(6) For the purposes of subsection (3) above, the amount of expenses attributable to the relevant income is the appropriate fraction of the total relevant expenses of the category of business concerned for the period of account in question.

(7) In subsection (6) above, the "appropriate fraction" means the fraction—

(a) whose numerator is the amount of the relevant income before any reduction in accordance with subsection (2) above, and

(b) whose denominator is the total income of the category of business concerned for the period of account in question,

unless the denominator so determined is nil, in which case the denominator shall instead be the amount described in subsection (8) below.

(8) That amount is so much in total of the income and gains—

(a) which arise to the company in the period of account in question, and

(b) in respect of which credit for foreign tax falls to be allowed under any arrangements,

as are referable to the category of business concerned (before any reduction in accordance with subsection (2) above).

(9) In subsection (4) above, the "relevant fraction" means the fraction—

(a) whose numerator is the amount of the relevant income before any reduction in accordance with subsection (2) above; and

(b) whose denominator is the amount described in subsection (8) above.

(10) Where a 75 per cent subsidiary of an insurance company is acting in accordance with a scheme or arrangement and—

(a) the purpose, or one of the main purposes, of that scheme or arrangement is to prevent or restrict the application of subsection (2) above to the insurance company, and

(b) the subsidiary does not carry on insurance business of any description,

the amount of corporation tax attributable (apart from this subsection) to any item of income or gain arising to the subsidiary shall be found by setting off against that item the amount of expenses that would be attributable to it under subsection (3) above if that item had arisen directly to the insurance company.

(11) Where the credit allowed for any tax payable under the laws of a territory outside the United Kingdom is, by virtue of subsection (2) above, less than it would be if the relevant income were not treated as reduced in accordance with that subsection, section 795(2)(a) shall not prevent a deduction being made for the difference in computing the profits of the category of business concerned.

(12) Where, by virtue of subsection (10) above, the credit allowed for any tax payable under the laws of a territory outside the United Kingdom is less than it would be apart from that subsection, section 795(2)(a) shall not prevent a deduction being made for the difference in computing the income of the 75 per cent subsidiary.

(13) Any reference in this section to any income or gain being to any extent referable to a category of insurance business shall, in the case of—

(a) life assurance business or any category of life assurance business, or

(b) long term business which is not life assurance business,

be taken as a reference to the income or gain being to that extent referable to that category of business for the purposes of Chapter I of Part XII.

(14) This section shall be construed—

(a) in accordance with section 804D, where the category of business concerned is life assurance business or a category of life assurance business; and

(b) in accordance with section 804E, where the category of business concerned is not life assurance business or any category of life assurance business.

Interpretation of section 804C in relation to life assurance business etc.

804D.—(1) This section has effect for the interpretation of section 804C where the category of business concerned is life assurance business or a category of life assurance business.

(2) The "total income" of the category of business concerned for the period of account in question is the amount (if any) by

which—

(a) so much of the total income shown in the revenue account in the periodical return of the company concerned for that period as is referable to that category of business,

exceeds

(b) so much of any commissions payable and any expenses of management incurred in connection with the acquisition of the business, as shown in that return, so far as referable to that category of business.

(3) Where any amounts fall to be brought into account in accordance with section 83 of the Finance Act 1989, the amounts that are referable to the category of business concerned shall be determined for the purposes of subsection (2) above in accordance with sections 432B to 432F. 1989 c. 26.

(4) The "total relevant expenses" of the category of business concerned for any period of account is the amount of the claims incurred—

(a) increased by any increase in the liabilities of the company, or

(b) reduced (but not below nil) by any decrease in the liabilities of the company.

(5) For the purposes of subsection (4) above, the amounts to be taken into account in the case of any period of account are the amounts as shown in the company's periodical return for the period so far as referable to the category of business concerned.

Interpretation of section 804C in relation to other insurance business.

804E.—(1) This section has effect for the interpretation of section 804C where the category of business concerned is not life assurance business or any category of life assurance business.

(2) The "total income" of the category of business concerned for any period of account is the amount (if any) by which—

(a) the sum of the amounts specified in subsection (3) below,

exceeds

(b) the sum of the amounts specified in subsection (4) below.

(3) The amounts mentioned in subsection (2)(a) above are—

(a) earned premiums, net of reinsurance;

(b) investment income and gains;

(c) other technical income, net of reinsurance;

(d) any amount treated under section 107(2) of the Finance Act 2000 as a receipt of the company's trade.

(4) The amounts mentioned in subsection (2)(b) above are—

(a) acquisition costs;

(b) the change in deferred acquisition costs;

(c) losses on investments.

(5) The "total relevant expenses" of the category of business concerned for any period of account is the sum of—

(a) the claims incurred, net of reinsurance,

(b) the changes in other technical provisions, net of reinsurance,

(c) the change in the equalisation provision, and

(d) investment management expenses,

unless that sum is a negative amount, in which case the total relevant expenses shall be taken to be nil.

(6) The amounts to be taken into account for the purposes of the paragraphs of subsections (3) to (5) above are the amounts taken into account for the purposes of corporation tax.

(7) Expressions used—

(a) in the paragraphs of subsections (3) to (5) above, and

(b) in the provisions of section B of Schedule 9A to the Companies Act 1985 (form and content of accounts of insurance companies and groups) which relate to the profit and loss account format (within the meaning of paragraph 7(1) of that section),

1985 c. 6.

have the same meaning in those paragraphs as they have in those provisions."

(2) In consequence of the provision made by subsection (11) of the section 804C inserted into the Taxes Act 1988 by sub-paragraph (1), in section 82 of the Finance Act 1989 (calculation of profits of insurance company in respect of its life assurance business) in subsection (1)(a) (amounts to be taken into account as an expense) omit "or foreign tax".

1989 c. 26.

(3) In consequence of the omission of those words by sub-paragraph (2), in sections 436(3)(a), 439B(3)(a) and 441(4)(a) of the Taxes Act 1988 (each of which provides for the omission of the words "tax or" in section 82(1)(a) of the Finance Act 1989 for certain purposes) for ""tax or"" substitute ""and any amounts of tax which are expended on behalf of"".

(4) This paragraph has effect in relation to periods of account beginning on or after 1st April 2000.

Interpretation of sections 804A to 804E

19.—(1) After section 804E of the Taxes Act 1988 insert—

"Interpretation of sections 804A to 804E.

804F. Expressions used in sections 804A to 804E and in Chapter I of Part XII have the same meaning in those sections as in that Chapter."

(2) The section inserted by sub-paragraph (1)—

(a) so far as relating to sections 804A and 804B, has effect in relation to accounting periods beginning on or after 1st April 2000; and

(b) so far as relating to sections 804C to 804E, has effect in relation to periods of account beginning on or after 1st April 2000.

Time limits for claims for credit relief

20.—(1) Amend section 806 of the Taxes Act 1988 as follows.

(2) For subsection (1) substitute—

"(1) Subject to subsection (2) below and section 804(7), any claim for an allowance under any arrangements by way of credit for foreign tax in respect of any income or chargeable gain—

(a) shall, in the case of any income or chargeable gain which falls to be charged to income tax for a year of assessment, be made on or before—

(i) the fifth anniversary of the 31st January next following that year of assessment, or

(ii) if later, the 31st January next following the year of assessment in which the foreign tax is paid;

(b) shall, in the case of any income or chargeable gain which falls to be charged to corporation tax for an accounting period, be made not more than—

(i) six years after the end of that accounting period, or

(ii) if later, one year after the end of the accounting period in which the foreign tax is paid."

(3) This paragraph has effect in relation to claims for credit made on or after 21st March 2000.

Foreign dividends: onshore pooling and utilisation of certain unrelieved foreign tax

21.—(1) After section 806 of the Taxes Act 1988 insert—

"Foreign dividends: onshore pooling and utilisation of eligible unrelieved foreign tax

Eligible unrelieved foreign tax on dividends: introductory.

806A.—(1) This section applies where, in any accounting period of a company resident in the United Kingdom, an amount of eligible unrelieved foreign tax arises in respect of a dividend falling within subsection (2) below paid to the company.

(2) The dividends that fall within this subsection are any dividends chargeable under Case V of Schedule D, other than—

(a) any dividend which is trading income for the purposes of section 393;

(b) any dividend which, in the circumstances described in paragraphs (a) and (b) of subsection (8) of section 393, would by virtue of that subsection fall to be treated as trading income for the purposes of subsection (1) of that section;

(c) in a case where section 801A applies, the dividend mentioned in subsection (1)(b) of that section;

(d) in a case where section 803 applies, the dividend mentioned in subsection (1)(b) of that section;

(e) any dividend the amount of which is, under section 811, treated as reduced.

(3) For the purposes of this section—

(a) the cases where an amount of eligible unrelieved foreign tax arises in respect of a dividend falling within subsection (2) above are the cases set out in subsections (4) and (5) below; and

(b) the amounts of eligible unrelieved foreign tax which arise in any such case are those determined in accordance with section 806B.

(4) Case A is where—

(a) the amount of the credit for foreign tax which under any arrangements would, apart from section 797, be allowable against corporation tax in respect of the dividend,

exceeds

(b) the amount of the credit for foreign tax which under the arrangements is allowed against corporation tax in respect of the dividend.

(5) Case B is where the amount of tax which, by virtue of any provision of any arrangements, falls to be taken into account as mentioned in section 799(1) in the case of the dividend (whether or not by virtue of section 801(2) or (3)) is less than it would be apart from the mixer cap.

(6) In determining whether the circumstances are as set out in subsection (4) or (5) above, sections 806C and 806D shall be disregarded.

The amounts that are eligible unrelieved foreign tax.

806B.—(1) This section has effect for determining the amounts of eligible unrelieved foreign tax which arise in the cases set out in section 806A(4) and (5).

(2) In Case A, the difference between—

(a) the amount of the credit allowed as mentioned in section 806A(4)(b), and

(b) the greater amount of the credit that would have been so allowed if, for the purposes of subsection (2) of section 797, the rate of corporation tax payable as mentioned in that subsection were the upper percentage,

shall be an amount of eligible unrelieved foreign tax.

(3) In Case B, where the mixer cap restricts the amount of tax to be taken into account as mentioned in section 799(1) in the case of the Case V dividend, the difference, in the case of that dividend, between—

(a) the amount of tax to be taken into account as there mentioned, and

(b) the greater amount of tax that would have been taken into account as there mentioned, had M in the formula in section 799(1A) in its application in the case of that dividend (but not any lower level dividend) been the upper percentage,

shall be an amount of eligible unrelieved foreign tax.

(4) In Case B, where the mixer cap—

(a) restricts the amount of underlying tax that is treated as mentioned in subsection (2) or (3) of section 801 in the case of any dividend received as mentioned in that subsection, but

(b) does not restrict the relevant tax in the case of any higher level dividend,

subsection (5) below shall apply.

(5) Where this subsection applies, an amount equal to the appropriate portion of the difference, in the case of the dividend mentioned in subsection (4)(a) above, between—

(a) the amount of underlying tax treated as mentioned in section 801(2) or (3), as the case may be, and

(b) the greater amount of underlying tax that would have been so treated, had M in the formula in section 799(1A) in its application in the case of that dividend (but not any higher or lower level dividend) been the upper percentage,

shall be an amount of eligible unrelieved foreign tax.

(6) For the purposes of subsection (5) above, the "appropriate portion" of the difference there mentioned in the case of any dividend is found by multiplying the amount of that difference by the product of the reducing fractions for each of the higher level dividends.

(7) For the purposes of subsection (6) above, the "reducing fraction" for any dividend is the fraction—

(a) whose numerator is the amount of the dividend; and

(b) whose denominator is the amount of the relevant profits (within the meaning of section 799(1)) out of which the dividend is paid.

(8) Any reference in this section to any tax being restricted by the mixer cap in the case of any dividend is a reference to that tax being so restricted otherwise than by virtue only of the application of the mixer cap in the case of one or more lower level dividends.

(9) For the purpose of determining the amount described in subsection (2)(b), (3)(b) or (5)(b) above, sections 806C and 806D shall be disregarded.

(10) In this section—

"the Case V dividend" means the dividend mentioned in section 806A(1);

"higher level dividend", in relation to another dividend, means any dividend—

(a) by which that other dividend is to any extent represented; and

(b) which either is the Case V dividend or is to any extent represented by the Case V dividend;

"lower level dividend", in relation to another dividend, means any dividend which—

(a) is received as mentioned in section 801(2) or (3); and

(b) is to any extent represented by that other dividend;

"the relevant tax" means—

(a) in the case of the Case V dividend, the foreign tax to be taken into account as mentioned in section 799(1); and

(b) in the case of any other dividend, the amount of underlying tax to be treated as mentioned in section 801(2) or (3) in the case of the dividend.

Onshore pooling.

806C.—(1) In this section "qualifying foreign dividend" means any dividend which falls within section 806A(2), other than—

(a) an ADP dividend paid by a controlled foreign company;

(b) so much of any dividend paid by any company as represents an ADP dividend paid by another company which is a controlled foreign company;

(c) a dividend in respect of which an amount of eligible unrelieved foreign tax arises.

(2) For the purposes of this section—

(a) a "related qualifying foreign dividend" is any qualifying foreign dividend paid to a company resident in the United Kingdom by a company which, at the time of payment of the dividend, is related to that company;

(b) an "unrelated qualifying foreign dividend" is any qualifying foreign dividend which is not a related qualifying foreign dividend.

(3) For the purposes of giving credit relief under this Part to a company resident in the United Kingdom—

(a) the related qualifying foreign dividends that arise to the company in an accounting period shall be aggregated;

(b) the unrelated qualifying foreign dividends that arise to the company in an accounting period shall be aggregated;

(c) the underlying tax in relation to the related qualifying foreign dividends that arise to the company in an accounting period shall be aggregated;

(d) so much of the foreign tax paid in respect of the qualifying foreign dividends that arise to the company in an accounting period as is not underlying tax shall be aggregated.

(4) Credit relief under this Part shall be given as if—

(a) the related qualifying foreign dividends aggregated under paragraph (a) of subsection (3) above in the case of any accounting period instead together constituted a single related qualifying foreign dividend arising in that accounting period ("the single related dividend" arising in that accounting period);

(b) the unrelated qualifying foreign dividends aggregated under paragraph (b) of that subsection in the case of any accounting period instead together constituted a single unrelated qualifying foreign dividend arising in that accounting period ("the single unrelated dividend" arising in that accounting period);

(c) the underlying tax aggregated under paragraph (c) of that subsection for any accounting period were instead underlying tax in relation to the single related dividend arising in that accounting period (the "aggregated underlying tax" in respect of the single related dividend);

(d) the tax aggregated under paragraph (d) of that subsection for any accounting period were instead foreign tax (other than underlying tax) paid in respect of, and computed by reference to,—

(i) the single related dividend arising in that accounting period,

(ii) the single unrelated dividend so arising, or

(iii) partly the one dividend and partly the other,

(that aggregated tax being referred to as the "aggregated withholding tax").

(5) For the purposes of this section, a dividend paid by a controlled foreign company is an "ADP dividend" if it is a dividend by virtue of which (whether in whole or in part and whether taken alone or with one or more other dividends) no apportionment under section 747(3) falls to be made as regards an accounting period of the controlled foreign company in a case where such an apportionment would fall to be made apart from section 748(1)(a).

Utilisation of eligible unrelieved foreign tax.

806D.—(1) For the purposes of this section, where—

(a) any eligible unrelieved foreign tax arises in an accounting period of a company, and

(b) the dividend in relation to which it arises is paid by a company which, at the time of payment of the dividend, is related to that company,

that tax is "eligible underlying tax" to the extent that it consists of or represents underlying tax.

(2) To the extent that any eligible unrelieved foreign tax is not eligible underlying tax it is for the purposes of this section "eligible withholding tax".

(3) For the purposes of giving credit relief under this Part to a company resident in the United Kingdom—

(a) the amounts of eligible underlying tax that arise in an accounting period of the company shall be aggregated (that aggregate being referred to as the "relievable underlying tax" arising in that accounting period); and

(b) the amounts of eligible withholding tax that arise in an accounting period of the company shall be aggregated (that aggregate being referred to as the "relievable withholding tax" arising in that accounting period).

(4) The relievable underlying tax arising in an accounting period of the company shall be treated for the purposes of allowing credit relief under this Part as if it were—

(a) underlying tax in relation to the single related dividend that arises in the same accounting period,

(b) relievable underlying tax arising in the next accounting period (whether or not any related qualifying foreign dividend in fact arises to the company in that accounting period), or

(c) underlying tax in relation to the single related dividend that arises in such one or more preceding accounting periods as result from applying the rules in section 806E,

or partly in one of those ways and partly in each or either of the others.

(5) The relievable withholding tax arising in an accounting period of the company shall be treated for the purposes of allowing credit relief under this Part as if it were—

(a) foreign tax (other than underlying tax) paid in respect of, and computed by reference to, the single related dividend or the single unrelated dividend that arises in the same accounting period,

(b) relievable withholding tax arising in the next accounting period (whether or not any qualifying foreign dividend in fact arises to the company in that accounting period), or

(c) foreign tax (other than underlying tax) paid in respect of, and computed by reference to, the single related dividend or the single unrelated dividend that arises in such one or more preceding accounting periods as result from applying the rules in section 806E,

or partly in one of those ways and partly in any one or more of the others.

(6) The amount of relievable underlying tax or relievable withholding tax arising in an accounting period that is treated—

(a) under subsection (4)(a) or (c) above as underlying tax in relation to the single related dividend arising in the same or any earlier accounting period, or

(b) under subsection (5)(a) or (c) above as foreign tax paid in respect of, and computed by reference to, the single related dividend or the single unrelated dividend arising in the same or any earlier accounting period,

must not be such as would cause an amount of eligible unrelieved foreign tax to arise in respect of that dividend.

Rules for carry back of relievable tax under section 806D.

806E.—(1) Where any relievable tax is to be treated as mentioned in section 806D(4)(c) or (5)(c), the rules for determining the accounting periods in question (and the amount of the relievable tax to be so treated in relation to each of them) are those set out in the following provisions of this section.

(2) Rule 1 is that the accounting periods in question must be accounting periods beginning not more than three years before the accounting period in which the relievable tax arises.

(3) Rule 2 is that the relievable tax must be so treated that—

(a) credit for, or for any remaining balance of, the relievable tax is allowed against corporation tax in respect of the single dividend arising in a later one of the accounting periods beginning as mentioned in rule 1 above,

before

(b) credit for any of the relievable tax is allowed against corporation tax in respect of the single dividend arising in any earlier such accounting period.

(4) Rule 3 is that the relievable tax must be so treated that, before allowing credit for any of the relievable tax against corporation tax in respect of the single dividend arising in any accounting period, credit for foreign tax is allowed—

(a) first for the aggregated foreign tax in respect of the single dividend arising in that accounting period, so far as not consisting of relievable tax arising in another accounting period; and

(b) then for relievable tax arising in any accounting period before that in which the relievable tax in question arises.

(5) The above rules are subject to sections 806D(6) and 806F.

(6) In this section—

"aggregated foreign tax" means aggregated underlying tax or aggregated withholding tax;

"relievable tax" means relievable underlying tax or relievable withholding tax;

"the single dividend" means—

(a) in relation to relievable underlying tax, the single related dividend; and

(b) in relation to relievable withholding tax, the single related dividend or the single unrelated dividend.

Credit to be given for underlying tax before other foreign tax etc.

806F.—(1) For the purposes of this Part, credit in accordance with any arrangements shall, in the case of any dividend, be given so far as possible—

(a) for underlying tax (where allowable) before foreign tax other than underlying tax;

(b) for foreign tax other than underlying tax before amounts treated as underlying tax; and

(c) for amounts treated as underlying tax (where allowable) before amounts treated as foreign tax other than underlying tax.

(2) Accordingly, where the amount of foreign tax to be brought into account for the purposes of allowing credit relief under this Part is subject to any limitation or restriction, the limitation or restriction shall be taken to have the effect of excluding foreign tax other than underlying tax before excluding underlying tax.

Claims for the purposes of section 806D(4) or (5).

806G.—(1) The relievable underlying tax or relievable withholding tax arising in any accounting period shall only be treated as mentioned in subsection (4) or (5) of section 806D on a claim.

(2) Any such claim must specify the amount (if any) of that tax—

(a) which is to be treated as mentioned in paragraph (a) of the subsection in question;

(b) which is to be treated as mentioned in paragraph (b) of that subsection; and

(c) which is to be treated as mentioned in paragraph (c) of that subsection.

(3) A claim under subsection (1) above may only be made before the expiration of the period of—

(a) six years after the end of the accounting period mentioned in that subsection; or

(b) if later, one year after the end of the accounting period in which the foreign tax in question is paid.

Surrender of relievable tax by one company in a group to another.

806H.—(1) The Board may by regulations make provision for, or in connection with, allowing a company which is a member of a group to surrender all or any part of the amount of the relievable tax arising to it in an accounting period to another company which is a member of that group at the time, or throughout the period, prescribed by the regulations.

(2) The provision that may be made under subsection (1) above includes provision—

(a) prescribing the conditions which must be satisfied if a surrender is to be made;

(b) determining the amount of relievable tax which may be surrendered in any accounting period;

(c) prescribing the conditions which must be satisfied if a claim to surrender is to be made;

(d) prescribing the consequences for tax purposes of a surrender having been made;

(e) allowing a claim to be withdrawn and prescribing the effect of such a withdrawal.

(3) Regulations under subsection (1) above—

(a) may make different provision for different cases; and

(b) may contain such supplementary, incidental, consequential or transitional provision as the Board may think fit.

(4) For the purposes of subsection (1) above a company is a member of a group if the conditions prescribed for that purpose in the regulations are satisfied.

Interpretation of foreign dividend provisions of this Chapter.

806J.—(1) This section has effect for the interpretation of the foreign dividend provisions of this Chapter.

(2) In this section, "the foreign dividend provisions of this Chapter" means sections 806A to 806H and this section.

(3) For the purposes of the foreign dividend provisions of this Chapter, where—

(a) one company pays a dividend ("dividend A") to another company, and

(b) that other company, or a company which is related to it, pays a dividend ("dividend B") to another company,

dividend B represents dividend A, and dividend A is represented by dividend B, to the extent that dividend B is paid out of profits which are derived, directly or indirectly, from the whole or part of dividend A.

(4) Where—

(a) one company is related to another, and

(b) that other is related to a third company,

the first company shall be taken for the purposes of paragraph (b) of subsection (3) above to be related to the third, and so on where there is a chain of companies, each of which is related to the next.

(5) In any case where—

(a) a company resident outside the United Kingdom pays a dividend to a company resident in the United Kingdom, and

(b) the circumstances are such that subsection (6)(b) of section 790 has effect in relation to that dividend,

the foreign dividend provisions of this Chapter shall have effect as if the company resident outside the United Kingdom were related to the company resident in the United Kingdom (and subsection (10) of that section shall have effect accordingly).

(6) Subsection (5) of section 801 (related companies) shall apply for the purposes of the foreign dividend provisions of this Chapter as it applies for the purposes of that section.

(7) In the foreign dividend provisions of this Chapter—

"aggregated underlying tax" shall be construed in accordance with section 806C(4)(c);

"aggregated withholding tax" shall be construed in accordance with section 806C(4)(d);

"controlled foreign company" has the same meaning as in Chapter IV of Part XVII;

"eligible unrelieved foreign tax" shall be construed in accordance with sections 806A and 806B;

"the mixer cap" means section 799(1)(b);

"qualifying foreign dividend" has the meaning given by section 806C(1);

"related qualifying foreign dividend" has the meaning given by section 806C(2)(a);

"relievable tax" has the meaning given by section 806E(6);

"relievable underlying tax" shall be construed in accordance with 806D(3)(a);

"relievable withholding tax" shall be construed in accordance with 806D(3)(b);

"single related dividend" shall be construed in accordance with section 806C(4)(a);

"single unrelated dividend" shall be construed in accordance with section 806C(4)(b);

"the upper percentage" is 45 per cent."

(2) The amendments made by sub-paragraph (1) have effect in relation to—

(a) dividends arising on or after 31st March 2001, and

(b) foreign tax in respect of such dividends,

(and accordingly the single related dividend or the single unrelated dividend which falls to be treated under those amendments as arising in any accounting period of a company shall not include any dividend arising on or before 30th March 2001).

Application of foreign dividend provisions to branches or agencies in the UK of persons resident elsewhere

22.—(1) After section 806J of the Taxes Act 1988 insert—

"Application of foreign dividend provisions to branches or agencies in the UK of persons resident elsewhere

Application of foreign dividend provisions to branches or agencies in the

806K.—(1) Sections 806A to 806J shall apply in relation to an amount of eligible unrelieved foreign tax arising in a chargeable period in respect of any of the income of a branch or agency in the United Kingdom of a person resident outside the United Kingdom as they apply in relation to eligible

UK of persons resident elsewhere.

unrelieved foreign tax arising in an accounting period of a company resident in the United Kingdom in respect of any of the company's income, but with the modifications specified in subsection (2) below.

(2) Those modifications are—

(a) take any reference to an accounting period as a reference to a chargeable period;

(b) take any reference to corporation tax as including a reference to income tax;

(c) take the reference in section 806A(4)(a) to section 797 as a reference to sections 796 and 797;

(d) in relation to income tax, for subsection (2) of section 806B substitute the subsection (2) set out in subsection (3) below.

(3) That subsection is—

"(2) In Case A, the difference between—

(a) the amount of the credit allowed as mentioned in section 806A(4)(b), and

(b) the greater amount of credit that would have been so allowed if, for the purposes of section 796, the amount of income tax borne on the dividend as computed under that section were charged at a rate equal to the upper percentage,

shall be an amount of eligible unrelieved foreign tax."."

(2) The amendment made by sub-paragraph (1) has effect in relation to—

(a) dividends arising on or after 31st March 2001, and

(b) foreign tax in respect of such dividends,

(and accordingly the single related dividend or single unrelated dividend which by virtue of that amendment falls to be treated as arising in any chargeable period shall not include any dividend arising on or before 30th March 2001).

Unrelieved foreign tax: profits of overseas branch or agency

23.—(1) After section 806K of the Taxes Act 1988 insert—

"Unrelieved foreign tax: profits of overseas branch or agency

Carry forward or carry back of unrelieved foreign tax.

806L.—(1) This section applies where, in any accounting period of a company resident in the United Kingdom, an amount of unrelieved foreign tax arises in respect of any of the company's qualifying income from an overseas branch or agency of the company.

(2) The amount of the unrelieved foreign tax so arising shall be treated for the purposes of allowing credit relief under this Part as if it were foreign tax paid in respect of, and computed by reference to, the company's qualifying income from the same overseas branch or agency—

(a) in the next accounting period (whether or not the company in fact has any such income from that source in that accounting period), or

(b) in such one or more preceding accounting periods, beginning not more than three years before the accounting period in which the unrelieved foreign tax arises, as result from applying the rules in subsection (3) below,

or partly in the one way and partly in the other.

(3) Where any unrelieved foreign tax is to be treated as mentioned in paragraph (b) of subsection (2) above, the rules for determining the accounting periods in question (and the amount of the unrelieved foreign tax to be so treated in relation to each of them) are that the unrelieved foreign tax must be so treated under that paragraph—

1. that—

(a) credit for, or for any remaining balance of, the unrelieved foreign tax is allowed against corporation tax in respect of income of a later one of the accounting periods beginning as mentioned in that paragraph,

before

(b) credit for any of the unrelieved foreign tax is allowed against corporation tax in respect of income of any earlier such period;

2. that, before allowing credit for any of the unrelieved foreign tax against corporation tax in respect of income of any accounting period, credit for foreign tax is allowed—

(a) first for foreign tax in respect of the income of that accounting period, other than unrelieved foreign tax arising in another accounting period; and

(b) then for unrelieved foreign tax arising in any accounting period before that in which the unrelieved foreign tax in question arises.

(4) For the purposes of this section, the cases where an amount of unrelieved foreign tax arises in respect of any of a company's qualifying income from an overseas branch or agency in an accounting period are those cases where—

(a) the amount of the credit for foreign tax which under any arrangements would, apart from section 797, be allowable against corporation tax in respect of that income,

exceeds

(b) the amount of the credit for foreign tax which under the arrangements is allowed against corporation tax in respect of that income;

and in any such case that excess is the amount of the unrelieved foreign tax in respect of that income.

(5) For the purposes of this section, a company's qualifying income from an overseas branch or agency is the profits of the overseas branch or agency which are—

(a) chargeable under Case I of Schedule D; or

(b) included in the profits of life reinsurance business or overseas life assurance business chargeable under Case VI of Schedule D by virtue of section 439B or 441.

(6) Where (whether by virtue of this subsection or otherwise) an amount of unrelieved foreign tax arising in an accounting period falls to be treated under subsection (2) above for the purposes of allowing credit relief under this Part as foreign tax paid in respect of, and computed by reference to, qualifying income of an earlier accounting period, it shall not be so treated for the purpose of any further application of this section.

(7) In this section "overseas branch or agency", in relation to a company, means a branch or agency through which the company carries on a trade in a territory outside the United Kingdom.

Provisions supplemental to section 806L.

806M.—(1) This section has effect for the purposes of section 806L and shall be construed as one with that section.

(2) If, in any accounting period, a company ceases to have a particular overseas branch or agency, the amount of any unrelieved foreign tax which arises in that accounting period in respect of the company's income from that overseas branch or agency shall, to the extent that it is not treated as mentioned in section 806L(2)(b), be reduced to nil (so that no amount arises which falls to be treated as mentioned in section 806L(2)(a)).

(3) If a company—

(a) at any time ceases to have a particular overseas branch or agency in a particular territory ("the old branch or agency"), but

(b) subsequently again has an overseas branch or agency in that territory ("the new branch or agency"),

the old branch or agency and the new branch or agency shall be regarded as different overseas branches or agencies.

(4) If, under the law of a territory outside the United Kingdom, tax is charged in the case of a company resident in the United Kingdom in respect of the profits of two or more of its overseas branches or agencies in that territory, taken together, then, for the purposes of—

(a) section 806L, and

(b) subsection (3) above,

those overseas branches or agencies shall be treated as if they together constituted a single overseas branch or agency of the company.

(5) Unrelieved foreign tax arising in respect of qualifying income from a particular overseas branch or agency in any accounting period shall only be treated as mentioned in subsection (2) of section 806L on a claim.

(6) Any such claim must specify the amount (if any) of the unrelieved foreign tax—

(a) which is to be treated as mentioned in paragraph (a) of that subsection; and

(b) which is to be treated as mentioned in paragraph (b) of that subsection.

(7) A claim under subsection (5) above may only be made before the expiration of the period of—

(a) six years after the end of the accounting period mentioned in that subsection, or

(b) if later, one year after the end of the accounting period in which the foreign tax in question is paid."

(2) The amendment made by sub-paragraph (1) has effect in relation to unrelieved foreign tax arising in any accounting period ending on or after 1st April 2000.

(3) No such tax shall be treated by virtue of that amendment as foreign tax in respect of income arising in any accounting period ended on or before 31st March 2000.

Foreign tax on amounts underlying non-trading credits

24.—(1) Amend section 807A of the Taxes Act 1988 (disposals and acquisitions of company loan relationships) as follows.

(2) In subsection (2) (tax which is to be treated as if it were to be disregarded for certain purposes) in paragraph (b), after "is attributable, on a just and reasonable apportionment," insert "(i)" and at the end insert "; or

(ii) to so much of a relevant qualifying payment as, on such an apportionment, is attributable to a time when the company is not a party to the interest rate or currency contract concerned".

(3) In subsection (7), insert the following definition at the appropriate place—

""relevant qualifying payment" means a qualifying payment, for the purposes of Chapter II of Part IV of the Finance Act 1994, falling within section 153(1)(a) or (b) of that Act;". 1994 c. 9.

(4) This paragraph has effect in relation to accounting periods ending on or after 21st March 2000.

Royalties: special relationship

25.—(1) After section 808A of the Taxes Act 1988 insert—

"Royalties: special relationship.

808B.—(1) Subsection (2) below applies where any arrangements having effect by virtue of section 788—

(a) make provision, whether for relief or otherwise, in relation to royalties (as defined in the arrangements), and

(b) make provision (the special relationship provision) that where owing to a special relationship the amount of the royalties paid exceeds the amount which would have been paid in the absence of the relationship, the provision mentioned in paragraph (a) above shall apply only to the last-mentioned amount.

(2) The special relationship provision shall be construed as requiring account to be taken of all factors, including—

(a) the question whether the agreement under which the royalties are paid would have been made at all in the absence of the relationship,

(b) the rate or amounts of royalties and other terms which would have been agreed in the absence of the relationship, and

(c) where subsection (3) below applies, the factors specified in subsection (4) below.

(3) This subsection applies if the asset in respect of which the royalties are paid, or any asset which that asset represents or from which it is derived, has previously been in the beneficial ownership of—

(a) the person who is liable to pay the royalties,

(b) a person who is, or has at any time been, an associate of the person who is liable to pay the royalties,

(c) a person who has at any time carried on a business which, at the time when the liability to pay the royalties arises, is being carried on in whole or in part by the person liable to pay those royalties, or

(d) a person who is, or has at any time been, an associate of a person who has at any time carried on such a business as is mentioned in paragraph (c) above.

(4) The factors mentioned in subsection (2)(c) above are—

(a) the amounts which were paid under the transaction, or under each of the transactions in the series of transactions, as a result of which the asset has come to be an asset of the beneficial owner for the time being,

(b) the amounts which would have been so paid in the absence of a special relationship, and

(c) the question whether the transaction or series of transactions would have taken place in the absence of such a relationship.

(5) The special relationship provision shall be construed as requiring the taxpayer to show—

(a) the absence of any special relationship, or

(b) the rate or amount of royalties that would have been payable in the absence of the relationship,

as the case may be.

(6) The requirement on the taxpayer to show in accordance with subsection (5)(a) above the absence of any special relationship includes a requirement—

(a) to show that no person of any of the descriptions in paragraphs (a) to (d) of subsection (3) above has previously been the beneficial owner of the asset in respect of which the royalties are paid, or of any asset which that asset represents or from which it is derived, or

(b) to show the matters specified in subsection (7) below,

as the case may be.

(7) Those matters are—

(a) that the transaction or series of transactions mentioned in subsection (4)(a) above would have taken place in the absence of a special relationship, and

(b) the amounts which would have been paid under the transaction, or under each of the transactions in the series of transactions, in the absence of such a relationship.

(8) Subsection (2) above does not apply where the special relationship provision expressly requires regard to be had to the use, right or information for which royalties are paid in determining the excess royalties (and accordingly expressly limits the factors to be taken into account).

(9) For the purposes of this section one person ("person A") is an associate of another person ("person B") at a given time if—

(a) person A was, within the meaning of Schedule 28AA, directly or indirectly participating in the management, control or capital of person B at that time, or

(b) the same person was or same persons were, within the meaning of Schedule 28AA, directly or indirectly participating in the management, control or capital of person A and person B at that time."

(2) This paragraph has effect in relation to royalties (as defined in the arrangements) payable on or after the day on which this Act is passed.

Postponement of capital allowances to obtain double taxation relief

26.—(1) Section 810 of the Taxes Act 1988 (postponement of capital allowances to obtain double taxation relief) shall cease to have effect.

(2) This paragraph has effect in relation to claims made on or after 1st April 2000.

Time limits where reduction under s.811 rendered excessive or insufficient

27.—(1) Amend section 811 of the Taxes Act 1988 (deduction for foreign tax where no credit allowable) as follows.

(2) After subsection (3) insert—

"(4) Where the amount by which any income is treated under subsection (1) above as reduced is rendered excessive or insufficient by reason of any adjustment of the amount of any tax payable either—

(a) in the United Kingdom, or

(b) under the law of any other territory,

nothing in the Tax Acts limiting the time for the making of assessments or claims for relief shall apply to any assessment or claim to which the adjustment gives rise, being an assessment or claim made not later than six years from the time when all such assessments, adjustments and other determinations have been made, whether in the United Kingdom or elsewhere, as are material in determining whether any and if so what reduction under subsection (1) above falls to be treated as made.

(5) Subject to subsection (7) below, where—

(a) the amount of any income of a person is treated under subsection (1) above as reduced by any sum, and

(b) the amount of that reduction is subsequently rendered excessive by reason of an adjustment of the amount of any tax payable under the law of a territory outside the United Kingdom,

that person shall give notice in writing to an officer of the Board that an adjustment has been made that has rendered the amount of the reduction excessive.

(6) A notice under subsection (5) above must be given within one year from the time of the making of the adjustment.

(7) Subsections (5) and (6) above do not apply where the adjustment is one whose consequences in relation to the reduction fall to be given effect to in accordance with regulations made under—

(a) section 182(1) of the Finance Act 1993 (regulations relating to individual members of Lloyd's); or 1993 c. 34.

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1994 c. 9.

(b) section 229 of the Finance Act 1994 (regulations relating to corporate members of Lloyd's).

(8) A person who fails to comply with the requirements imposed on him by subsections (5) and (6) above in relation to any adjustment shall be liable to a penalty of an amount not exceeding the amount of the difference specified in subsection (9) below.

(9) The difference is that between—

(a) the amount of tax payable by the person in question for the relevant chargeable period, after giving effect to the reduction that ought to be made under subsection (1) above; and

(b) the amount that would have been the tax so payable after giving effect instead to a reduction under that subsection of the amount rendered excessive as mentioned in subsection (5)(b) above.

(10) For the purposes of subsection (9) above "the relevant chargeable period" means the chargeable period as respects which the reduction was treated as made."

(3) This paragraph has effect in relation to adjustments made on or after 21st March 2000.

Mutual agreement procedure

28.—(1) After section 815A of the Taxes Act 1988 insert—

"Mutual agreement procedure and presentation of cases under arrangements.

815AA.—(1) Where, under and for the purposes of arrangements made with the government of a territory outside the United Kingdom and having effect under section 788—

(a) a case is presented to the Board, or to an authority in that territory, by a person concerning his being taxed (whether in the United Kingdom or that territory) otherwise than in accordance with the arrangements; and

(b) the Board arrives at a solution to the case or makes a mutual agreement with an authority in that territory for the resolution of the case,

subsections (2) and (3) below have effect.

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

(3) A claim for relief under any provision of the Tax Acts may be made in pursuance of the solution or mutual agreement at any time before the expiration of the period of 12 months following the notification of the solution or mutual agreement to the person affected, notwithstanding the expiration of the time limited by any other enactment for making the claim.

(4) Where arrangements having effect under section 788 include provision for a person to present a case to the Board concerning his being taxed otherwise than in accordance with the arrangements, subsections (5) and (6) below have effect.

(5) The presentation of any such case under and in accordance with the arrangements—

(a) does not constitute a claim for relief under the Tax Acts; and

(b) is accordingly not subject to section 42 of the Management Act or any other enactment relating to the making of such claims.

(6) Any such case must be presented before the expiration of—

(a) the period of 6 years following the end of the chargeable period to which the case relates; or

(b) such longer period as may be specified in the arrangements."

(2) Subsections (1) to (3) of the section inserted by sub-paragraph (1) have effect where the solution or mutual agreement is reached or made on or after the day on which this Act is passed.

(3) Subsection (6) (and subsection (4) so far as relating to subsection (6)) of that section has effect in relation to the first presentation of a case on or after the day on which this Act is passed.

Restriction of interest on repayment of tax resulting from carry back of relievable tax

29.—(1) Amend section 826 of the Taxes Act 1988 as follows.

(2) After subsection (7B) insert—

"(7BB) Subject to subsection (7BC) below, in any case where—

(a) within the meaning of section 806D, any relievable underlying tax or relievable withholding tax arises in an accounting period of a company ("the later period"),

(b) pursuant to a claim under section 806G, the whole or any part of that tax is treated as mentioned in section 806D(4)(c) or (5)(c) in relation to the single related dividend or the single unrelated dividend arising in an earlier accounting period ("the earlier period"), and

(c) a repayment falls to be made of corporation tax paid for the earlier period or of income tax in respect of a payment received by the company in that period,

then, in determining the amount of interest (if any) payable under this section on the repayment referred to in paragraph (c) above, no account shall be taken of so much of the amount of the repayment as falls to be made as a result of the claim under section 806G, except so far as concerns interest for any time after the date on which any corporation tax for the later period became due and payable (as mentioned in subsection (7D) below).

(7BC) Where, in a case falling within subsection (7A)(a) and (b) above—

(a) as a result of the claim under section 393A(1), an amount or increased amount of eligible unrelieved foreign tax arises for the purposes of section 806A(1), and

(b) pursuant to a claim under section 806G, the whole or any part of an amount of relievable underlying tax or relievable withholding tax is treated as mentioned in section 806D(4)(c) or (5)(c) in relation to the single related dividend or the single unrelated dividend arising in an accounting period before the earlier period,

then subsection (7BB) above shall have effect in relation to the claim under section 806G as if the reference in the words after paragraph (c) to the later period within the meaning of that subsection were a reference to the period which, in relation to the claim under section 393A(1), would be the later period for the purposes of subsection (7A) above."

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(3) In subsection (7D) (date on which corporation tax is due and payable for the purposes of certain provisions) after "(7B)" insert ", (7BB)".

(4) In subsection (7E) (which, for the purposes of certain provisions, restricts the power in section 59A of the Taxes Management Act 1970 to alter the date on which corporation tax is due and payable) after "(7B),", in both places where it occurs, insert "(7BB),".

1970 c. 9.

Time limits where deduction under s.278 of the 1992 Act rendered excessive or insufficient

30.—(1) Amend section 278 of the Taxation of Chargeable Gains Act 1992 as follows.

1992 c. 12.

(2) At the beginning, insert "(1)".

(3) At the end add—

"(2) Where the amount of any deduction allowed under subsection (1) above is rendered excessive or insufficient by reason of any adjustment of the amount of any tax payable either—

(a) in the United Kingdom, or

(b) under the law of any other territory,

nothing in this Act, the Management Act or the Taxes Act limiting the time for the making of assessments or claims for relief shall apply to any assessment or claim to which the adjustment gives rise, being an assessment or claim made not later than six years from the time when all such assessments, adjustments and other determinations have been made, whether in the United Kingdom or elsewhere, as are material in determining whether any and if so what deduction falls to be made under subsection (1) above.

(3) Where—

(a) a deduction has been allowed under subsection (1) above in the case of the person making the disposal, and

(b) the amount of that deduction is subsequently rendered excessive by reason of an adjustment of the amount of any tax payable under the law of a territory outside the United Kingdom,

that person shall give notice in writing to an officer of the Board that an adjustment has been made that has rendered the amount of the deduction excessive.

(4) A notice under subsection (3) above must be given within one year from the time of the making of the adjustment.

(5) A person who fails to comply with the requirements imposed on him by subsections (3) and (4) above in relation to any adjustment shall be liable to a penalty of an amount not exceeding the amount of the difference specified in subsection (6) below.

(6) The difference is that between—

(a) the amount of tax payable by the person in question for the relevant chargeable period, after giving effect to the deduction that ought to be made under subsection (1) above; and

(b) the amount that would have been the tax so payable after giving effect instead to a deduction under that subsection of the amount rendered excessive as mentioned in subsection (3)(b) above.

(7) For the purposes of subsection (6) above "the relevant chargeable period" means the chargeable period as respects which the deduction was treated as made."

(4) This paragraph has effect in relation to adjustments made on or after 21st March 2000.

SCHEDULE 31

Section 104.

CONTROLLED FOREIGN COMPANIES

Introductory

1. Amend Chapter IV of Part XVII of the Taxes Act 1988 as follows.

Conditions for company to be controlled foreign company

2.—(1) Amend section 747 as follows.

(2) After subsection (1) insert—

"(1A) A company which would not, apart from this subsection, fall to be regarded as controlled by persons resident in the United Kingdom shall be taken for the purposes of this Chapter to be so controlled if—

(a) there are two persons who, taken together, control the company;

(b) one of those persons is resident in the United Kingdom and is a person in whose case the 40 per cent test in section 755D(3) is satisfied; and

(c) the other is a person in whose case the 40 per cent test in section 755D(4) is satisfied."

Designer rate tax provisions: deemed lower level of taxation

3. After section 750 insert—

"Deemed lower level of taxation: designer rate tax provisions.

750A.—(1) Where—

(a) in any accounting period a company is to be regarded by virtue of any of subsections (1) to (4) of section 749 as resident in a particular territory outside the United Kingdom, and

(b) within the meaning of section 750(1), the local tax in respect of the profits arising to the company in that accounting period is equal to or greater than three-quarters of the corresponding United Kingdom tax on those profits, but

(c) that local tax is determined under designer rate tax provisions,

the company shall be taken for the purposes of this Chapter to be subject to a lower level of taxation in that territory in that accounting period.

(2) In subsection (1) above "designer rate tax provisions" means provisions—

(a) which appear to the Board to be designed to enable companies to exercise significant control over the amount of tax which they pay; and

(b) which are specified in regulations made by the Board.

(3) Regulations under subsection (2) above—

(a) may make different provision for different cases or with respect to different territories; and

(b) may contain such supplementary, incidental, consequential or transitional provision as the Board may think fit.

(4) The first regulations under subsection (2) above may make provision having effect in relation to accounting periods beginning not more than fifteen months before the date on which the regulations are made."

"Control" and the two "40 per cent" tests

4.—(1) After section 755C insert—

""Control" and the two "40 per cent" tests.

755D.—(1) For the purposes of this Chapter "control", in relation to a company, means the power of a person to secure—

(a) by means of the holding of shares or the possession of voting power in or in relation to the company or any other company, or

(b) by virtue of any powers conferred by the articles of association or other document regulating the company or any other company,

that the affairs of the company are conducted in accordance with his wishes.

(2) Where two or more persons, taken together, have the power mentioned in subsection (1) above, they shall be taken for the purposes of this Chapter to control the company.

(3) The 40 per cent test in this subsection is satisfied in the case of one of two persons who, taken together, control a company if that one of them has interests, rights and powers representing at least 40 per cent of the holdings, rights and powers in respect of which the pair of them fall to be taken as controlling the company.

(4) The 40 per cent test in this subsection is satisfied in the case of one of two persons who, taken together, control a company if that one of them has interests, rights and powers representing—

(a) at least 40 per cent, but

(b) not more than 55 per cent,

of the holdings, rights and powers in respect of which the pair of them fall to be taken as controlling the company.

(5) For the purposes of this Chapter any question—

(a) whether a company is controlled by a person, or by two or more persons taken together, or

(b) whether, in the case of any company, the applicable 40 per cent test is satisfied in the case of each of two persons who, taken together, control the company,

shall be determined after attributing to each of the persons all the rights and powers mentioned in subsection (6) below that are not already attributed to that person for the purposes of subsections (1) to (4) above.

(6) The rights and powers referred to in subsection (5) above are—

(a) rights and powers which the person is entitled to acquire at a future date or which he will, at a future date, become entitled to acquire;

(b) rights and powers of other persons, to the extent that they are rights or powers falling within subsection (7) below;

(c) if the person is resident in the United Kingdom, rights and powers of any person who is resident in the United Kingdom and connected with the person; and

(d) if the person is resident in the United Kingdom, rights and powers which for the purposes of subsection (5) above would be attributed to a person who is resident in the United Kingdom and connected with the person (a "UK connected person") if the UK connected person were himself the person.

(7) Rights and powers fall within this subsection to the extent that they—

(a) are required, or may be required, to be exercised in any one or more of the following ways, that is to say—

(i) on behalf of the person;

(ii) under the direction of the person; or

(iii) for the benefit of the person; and

(b) are not confined, in a case where a loan has been made by one person to another, to rights and powers conferred in relation to property of the borrower by the terms of any security relating to the loan.

(8) In subsections (6)(b) to (d) and (7) above, the references to a person's rights and powers include references to any rights or powers which he either—

(a) is entitled to acquire at a future date, or

(b) will, at a future date, become entitled to acquire.

(9) In paragraph (d) of subsection (6) above, the reference to rights and powers which would be attributed to a UK connected person if he were the person includes a reference to rights and powers which, by applying that paragraph wherever one person resident in the United Kingdom is connected with another person, would be so attributed to him through a number of persons each of whom is resident in the United Kingdom and connected with at least one of the others.

(10) In determining for the purposes of this section whether one person is connected with another in relation to a company, subsection (7) of section 839 shall be disregarded.

(11) References in this section—

(a) to rights and powers of a person, or

(b) to rights and powers which a person is or will become entitled to acquire,

include references to rights or powers which are exercisable by that person, or (when acquired by that person) will be exercisable, only jointly with one or more other persons."

(2) In consequence of sub-paragraph (1), in section 756(3) (application of provisions of Part XI)—

(a) omit paragraph (a); and

(b) omit the words following paragraph (b).

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Exempt activities: wholesale, distributive, financial or service business

5.—(1) In Part II of Schedule 25 (exempt activities) amend paragraph 6 as follows.

(2) In sub-paragraph (2)(b) (company mainly engaged in wholesale, distributive or financial business: percentage of gross trading receipts from connected persons etc)—

(a) for "or financial" substitute "financial or service"; and

(b) for the words from "connected" to the end substitute "persons falling within sub-paragraph (2A) below."

(3) After sub-paragraph (2) insert—

"(2A) Those persons are—

(a) persons who are connected or associated with the company;

(b) persons who have a 25 per cent assessable interest in the company in the case of the accounting period in question; and

(c) if the company is a controlled foreign company in that accounting period by virtue of subsection (1A) of section 747, persons who are connected or associated with either or both of the two persons mentioned in that subsection."

Local holding companies

6.—(1) In Part II of Schedule 25 (exempt activities) amend paragraph 6 as follows.

(2) In sub-paragraph (3) (local holding companies) after "90 per cent of its gross income during the accounting period in question" insert "is received by it in the territory in which it is resident and".

Other holding companies

7.—(1) In Part II of Schedule 25 (exempt activities) amend paragraph 6 as follows.

(2) In sub-paragraph (4) (holding companies other than local holding companies) after "90 per cent of its gross income during the accounting period in question" insert "falls within sub-paragraph (4ZA) below and".

(3) After sub-paragraph (4) insert—

"(4ZA) For the purposes of sub-paragraph (4) above, income of the holding company falls within this sub-paragraph if—

(a) the company from which the holding company directly derives the income is, throughout the accounting period in question, resident in the territory in which the holding company is resident and the income is received by the holding company in that territory; or

(b) the income consists of qualifying dividends."

(4) In sub-paragraph (4A) (superior holding companies) at the end of paragraph (b) add "; and

(c) falls within sub-paragraph (4AA) below."

(5) After sub-paragraph (4A) insert—

"(4AA) For the purposes of sub-paragraph (4A) above, income of the superior holding company falls within this sub-paragraph if—

(a) the company from which the superior holding company directly derives the income is, throughout the accounting period in question, resident in the territory in which the superior holding company is resident and the income is received by the superior holding company in that territory; or

(b) the income consists of qualifying dividends."

(6) In sub-paragraph (4B) (companies from which income of superior holding company is derived) in paragraph (b), at the end of sub-paragraph (ii) add ", and

(iii) falls within sub-paragraph (4BB) below".

(7) After sub-paragraph (4B) insert—

"(4BB) For the purposes of sub-paragraph (4B)(b) above, income of the superior holding company there mentioned falls within this sub-paragraph if—

(a) the company from which that superior holding company directly derives the income is, throughout the accounting period in question, resident in the territory in which that superior holding company is resident and the income is received by that superior holding company in that territory; or

(b) the income consists of qualifying dividends."

(8) In sub-paragraph (5) (interpretation of sub-paragraphs (3) to (4B)) after "a reference to a trading company" insert "to which sub-paragraph (5ZA) or (5ZB) below applies.

(5ZA) This sub-paragraph applies to a trading company".

(9) After sub-paragraph (5ZA) insert—

"(5ZB) This sub-paragraph applies to a trading company if—

(a) it is a controlled foreign company by virtue of subsection (1A) of section 747; and

(b) the person who satisfies the requirement in paragraph (b) of that subsection in relation to the company also controls the holding company or superior holding company."

(10) After sub-paragraph (5A) insert—

"(5B) In this paragraph "qualifying dividend" means any dividend other than one for which the company paying the dividend is entitled to a deduction against its profits for tax purposes under the law of the territory in which it is resident."

(11) In sub-paragraph (6) (application of following provisions of Part II of Schedule 25) for "(4)" substitute "(4BB)".

Businesses to which requirement as to derivation of receipts applies

8.—(1) In Part II of Schedule 25 (exempt activities) amend paragraph 11 as follows.

(2) In sub-paragraph (1) (meaning of "wholesale, distributive or financial business" for purposes of paragraph 6(2)(b))—

(a) in the opening words, for "or financial" substitute "financial or service";

(b) omit the word "and" immediately preceding paragraph (g); and

(c) at the end of paragraph (g) add "; and

(h) the provision of services not falling within any of the preceding paragraphs."

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Commencement

9.—(1) Paragraph 2 has effect on and after 21st March 2000.

(2) Paragraph 3 has effect in relation to any accounting period of a company resident outside the United Kingdom which begins on or after 6th October 1999.

(3) Paragraph 4 has effect—

(a) for the purpose of determining whether at any time on or after 21st March 2000 a company resident outside the United Kingdom is to be regarded for the purposes of Chapter IV of Part XVII of the Taxes Act 1988 as controlled by persons resident in the United Kingdom; and

(b) for any accounting period of a company resident outside the United Kingdom which begins on or after 21st March 2000.

(4) Paragraphs 5 to 8 have effect in relation to any accounting period of a controlled foreign company which begins on or after 21st March 2000.

(5) In this paragraph "accounting period" and "controlled foreign company" have the same meaning as they have in Chapter IV of Part XVII of the Taxes Act 1988.

Section 116(2).

SCHEDULE 32

STAMP DUTY ON SEVEN YEAR LEASES: TRANSITIONAL PROVISIONS

Introductory

1. In this Schedule—

"additional duty", in relation to an instrument, means additional stamp duty chargeable on the instrument as a result of section 116;

"the appropriate amount of duty", in relation to an instrument, means the stamp duty that would have been chargeable on the instrument if section 116 had been in force when it was executed; and

"the commencement date" means 28th March 2000.

Instruments to which this Schedule applies

2. The instruments to which this Schedule applies are—

(a) leases of land for a term of seven years, and

(b) agreements for leases of land for a term of seven years,

executed on or after 1st October 1999 and before the commencement date.

Instruments which remain duly stamped

3. An instrument to which this Schedule applies which is stamped with the appropriate amount of duty is duly stamped, whenever it was executed.

Instruments which cease to be duly stamped

4.—(1) An instrument to which this Schedule applies which—

(a) immediately before the commencement date was duly stamped, but

(b) was stamped with less than the appropriate amount of duty,

ceases to be duly stamped on the commencement date.

(2) Sub-paragraph (1) applies even if the instrument has been stamped in accordance with section 12(5) of the Stamp Act 1891 with a stamp denoting that it is duly stamped.

1891 c. 39.

(3) If an instrument ceases to be duly stamped on the commencement date as a result of sub-paragraph (1)—

(a) section 12(6) of the Stamp Act 1891 (adjudicated instruments admissible in evidence) does not apply to it at any time when it is not duly stamped, and 1891 c. 39.

(b) section 14(1) of that Act (receipt in evidence of insufficiently stamped instruments if unpaid duty paid to court) does not apply to it at any time when it is not duly stamped, unless the unpaid duty and any interest or penalty is paid in accordance with that subsection.

Stamping following earlier adjudication

5. Section 12A(1) of the Stamp Act 1891 (adjudicated instruments not to be stamped other than in accordance with adjudication decision) does not prevent an instrument to which this Schedule applies which is stamped with less than the appropriate amount of duty from being stamped with additional duty.

Use of instruments in evidence, etc.

6. Section 14(4) of the Stamp Act 1891 (instruments not to be used unless duly stamped in accordance with law in force when executed) applies in relation to an instrument to which this Schedule applies as if, as respects any time on or after the commencement date, the reference to the law in force at the time when it was executed were to the law in force on the commencement date.

Adjudication, interest and penalties

7.—(1) This paragraph applies for the purpose of applying sections 12 to 13B and 15 to 15B of the Stamp Act 1891 (adjudication by Commissioners and interest and penalties on late stamping) in relation to any additional duty chargeable on an instrument to which this Schedule applies.

(2) Those sections continue to apply without modification as respects any other stamp duty chargeable on the instrument.

(3) Those sections have effect as respects the additional duty as if—

(a) the additional duty were the only stamp duty chargeable on the instrument;

(b) the instrument had been executed on the commencement date; and

(c) in the case of an instrument executed outside the United Kingdom and first received in the United Kingdom before the commencement date, the instrument had been first received in the United Kingdom on the commencement date.

(4) Accordingly, those sections apply as respects additional duty as if—

(a) references to duty were to additional duty;

(b) references to stamping were to stamping with additional duty;

(c) references to an instrument's being stamped were to its being stamped with additional duty;

(d) references to an instrument's being duly stamped were to its being stamped with all the additional duty chargeable on it;

(e) references to an instrument's being unstamped were to its not being stamped with any additional duty;

(f) references to an instrument's being insufficiently stamped were to its being stamped with insufficient additional duty;

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(g) references to adjudication, or an appeal, under any of those sections were to adjudication or an appeal under the section in question as it has effect as respects additional duty; and

(h) references to the maximum penalty were to the maximum penalty as respects additional duty.

Section 117.

SCHEDULE 33

POWER TO VARY STAMP DUTIES

Power of Treasury to make provision by regulations

1.—(1) The Treasury may if they consider it expedient in the public interest make provision by regulations for the variation of an existing stamp duty.

(2) The power conferred by this paragraph includes, in particular, power to alter the descriptions of document in respect of which an existing stamp duty, or an existing rate or amount of duty, is chargeable.

(3) The power to make regulations under this paragraph is exercisable by statutory instrument.

Power only to be used for cases involving land or shares etc.

2.—(1) The power conferred by paragraph 1 does not include power—

(a) to vary the amount chargeable by way of stamp duty on an excepted instrument, or

(b) to cause stamp duty to become chargeable on an excepted instrument.

(2) For the purposes of this paragraph—

(a) an "excepted instrument" is any document that is not a relevant property instrument, and

(b) a "relevant property instrument" is a document that (whether or not it also relates to any other transaction) relates to a transaction that to any extent involves—

(i) land, stock or marketable securities, or

(ii) any estate or interest in land, stock or marketable securities.

Power not to be used to vary rates or thresholds

3. The power conferred by paragraph 1 does not, except as mentioned in paragraph 1(2), include power to vary—

(a) the rate, or rates, of an existing *ad valorem* stamp duty,

(b) the amount of an existing fixed stamp duty,

1999 c. 16.

(c) any threshold specified in paragraph 4 of Schedule 13 to the Finance Act 1999 (rate bands for conveyance or transfer on sale), or

(d) any threshold specified in paragraph 11 or 12 of that Schedule (duty on leases) in respect of rent or the term of a lease.

Approval of regulations by House of Commons

4.—(1) An instrument containing regulations under paragraph 1 shall be laid before the House of Commons after being made.

(2) If the regulations are not approved by the House of Commons before the end of the period of 28 days beginning with the day on which they are made, they shall cease to have effect at the end of that period if they have not already ceased to have effect under sub-paragraph (3).

(3) If on any day during that period of 28 days the House of Commons, in proceedings on a motion that (or to the effect that) the regulations be approved, comes to a decision rejecting the regulations, they shall cease to have effect at the end of that day.

(4) Where regulations cease to have effect under sub-paragraph (2) or (3), their ceasing to have effect is without prejudice to anything done in reliance on them.

(5) In reckoning any such period of 28 days take no account of any time during which—

(a) Parliament is prorogued or dissolved, or

(b) the House of Commons is adjourned for more than four days.

Claim for repayment if regulations not approved

5.—(1) Where regulations cease to have effect under paragraph 4(2) or (3), any amount paid by way of stamp duty, or interest or penalty on late stamping, that would not have been payable but for the regulations shall, on a claim, be repaid by the Commissioners.

(2) Section 110 of the Finance Act 1999 (interest on repayment of duty overpaid etc.) applies to a repayment under this paragraph of any amount paid by way of stamp duty or penalty on late stamping. 1999 c. 16.

In the case of a repayment under this paragraph, the relevant time for the purposes of that section is 30 days after the day on which the instrument in question was executed or, if later, the date on which the payment of duty or penalty was made.

(3) A claim for repayment must be made within two years after the date of the instrument in question or, if it is not dated, within two years after its execution.

(4) No repayment shall be made on a claim until the instrument in question has been produced to the Commissioners for such cancelling of stamps, and such stamping to denote the making of the repayment or the producing of the instrument under this paragraph, as the Commissioners consider appropriate.

(5) Any repayment shall, subject to any regulations under sub-paragraph (6)(d), be made to such person as the Commissioners consider appropriate.

(6) The Commissioners may make provision by regulations—

(a) for varying the time limit having effect under sub-paragraph (3);

(b) for varying or repealing the condition having effect under sub-paragraph (4);

(c) as to any other conditions that must be met before repayment is made;

(d) as to the person to whom repayment is to be made.

(7) Regulations under this paragraph shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of the House of Commons.

Use in evidence, etc. of instruments affected by regulations ceasing to have effect

6.—(1) Where regulations cease to have effect under paragraph 4(2) or (3), the following provisions apply to an instrument that—

(a) was executed at a time when the regulations were in force, and

(b) was at that time chargeable with any amount of stamp duty with which it would not have been chargeable apart from the regulations.

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(2) If the instrument was stamped while the regulations were in force, nothing done in pursuance of paragraph 5 (repayment of duty etc.) prevents it being treated for any purpose as duly stamped in accordance with the law in force at the time when it was executed.

(3) If the instrument was not stamped while the regulations were in force, the law in force at the time when it was executed shall be deemed to have been what the law would have been apart from the regulations.

Temporary effect of regulations

7.—(1) Regulations under paragraph 1 shall not apply in relation to instruments executed after the end of—

(a) the period of 18 months beginning with the day on which the regulations were made, or

(b) such shorter period as may be specified in the regulations.

(2) This does not affect the power to make further provision by regulations under paragraph 1 to the same or similar effect.

Power to make transitional etc. provision

8. Any power to make regulations under this Schedule includes power to make such transitional, supplementary and incidental provision as appears to the authority making the regulations to be necessary or expedient.

Interpretation

9.—(1) In relation to a bearer instrument (as defined in paragraph 3 of Schedule 15 to the Finance Act 1999), references in this Schedule to the execution of the instrument shall be read as references to its issue.

1999 c. 16.

1891 c. 39.

(2) This Schedule shall be construed as one with the Stamp Act 1891.

Section 129.

SCHEDULE 34

ABOLITION OF STAMP DUTY ON INSTRUMENTS RELATING TO INTELLECTUAL PROPERTY: SUPPLEMENTARY PROVISIONS

Introduction

1. In this Schedule "intellectual property" has the same meaning as in section 129(1).

Stamp duty reduced in certain other cases

2.—(1) This paragraph applies where—

(a) stamp duty under Part I of Schedule 13 to the Finance Act 1999 (conveyance or transfer on sale) is chargeable on an instrument, and

(b) part of the property concerned consists of intellectual property.

(2) In such a case—

(a) the consideration in respect of which duty would otherwise be charged shall be apportioned, on such basis as is just and reasonable, as between the part of the property which consists of intellectual property and the part which does not, and

(b) the instrument shall be charged only in respect of the consideration attributed to such of the property as is not intellectual property.

(3) This paragraph applies to instruments executed on or after 28th March 2000.

Apportionment of consideration for stamp duty purposes

3.—(1) Where part of the property referred to in section 58(1) of the Stamp Act 1891 (consideration to be apportioned between different instruments as parties think fit) consists of intellectual property, that provision shall have effect as if "the parties think fit" read "is just and reasonable". 1891 c. 39.

(2) Where—

(a) part of the property referred to in section 58(2) of the Stamp Act 1891 (property contracted to be purchased by two or more persons etc.) consists of intellectual property, and

(b) both or (as the case may be) all the relevant persons are connected with one another,

that provision shall have effect as if the words from "for distinct parts of the consideration" to the end of the subsection read ", the consideration is to be apportioned in such manner as is just and reasonable, so that a distinct consideration for each separate part or parcel is set forth in the conveyance relating thereto, and such conveyance is to be charged with *ad valorem* duty in respect of such distinct consideration.".

(3) In a case where sub-paragraph (1) or (2) applies and the consideration is apportioned in a manner that is not just and reasonable, the enactments relating to stamp duty shall have effect as if—

(a) the consideration had been apportioned in a manner that is just and reasonable, and

(b) the amount of any distinct consideration set forth in any conveyance relating to a separate part or parcel of property were such amount as is found by a just and reasonable apportionment (and not the amount actually set forth).

(4) For the purposes of sub-paragraph (2)—

(a) a person is a relevant person if he is a person by or for whom the property is contracted to be purchased;

(b) the question whether persons are connected with one another shall be determined in accordance with section 839 of the Taxes Act 1988.

(5) In sub-paragraph (3) "the enactments relating to stamp duty" means the Stamp Act 1891 and any enactment amending or which is to be construed as one with that Act.

(6) This paragraph applies to instruments executed on or after 28th March 2000.

Certification of instruments for stamp duty purposes

4.—(1) Intellectual property shall be disregarded for the purposes of paragraph 6 of Schedule 13 to the Finance Act 1999 (certification of instrument as not forming part of transaction or series of transactions exceeding specified amount). 1999 c. 16.

(2) Any statement as mentioned in paragraph 6(1) of that Schedule shall be construed as leaving out of account any matter which is to be so disregarded.

(3) This paragraph applies to instruments executed on or after 28th March 2000.

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Acquisition under statute

1895 c. 16.

5.—(1) Section 12 of the Finance Act 1895 (property vested by Act or purchased under statutory powers) does not require any person who is authorised to purchase any property as mentioned in that section on or after 28th March 2000 to include any intellectual property in the instrument of conveyance required by that section to be produced to the Commissioners.

(2) If the property consists wholly of intellectual property no instrument of conveyance need be produced to the Commissioners under that section.

(3) This paragraph applies where the Act mentioned in that section, and by virtue of which property is vested or a person is authorised to purchase property, is passed on or after 28th March 2000.

Section 135.

SCHEDULE 35

VALUE ADDED TAX: CHARGE AT REDUCED RATE

1994 c. 23.

1. Schedule A1 to the Value Added Tax Act 1994 (charge at reduced rate) has effect with the following amendments.

2.—(1) Paragraph 1(1) (supplies benefiting from the reduced rate) is amended as follows.

(2) After paragraph (a) insert—

"(aa) supplies of services of installing List A energy-saving materials in residential accommodation or in a building intended for use solely for a relevant charitable purpose;

(ab) supplies of List A energy-saving materials by a person who installs those materials in residential accommodation or a building intended for use solely for a relevant charitable purpose;".

(3) In each of paragraphs (b) and (c), before "energy-saving materials" insert "List B".

(4) After paragraph (c) insert—

"(d) supplies to a qualifying person of services of connecting, or reconnecting, a mains gas supply to the qualifying person's sole or main residence;

(e) supplies of goods made to a qualifying person by a person connecting, or reconnecting, a mains gas supply to the qualifying person's sole or main residence, being goods whose installation is necessary for the connection, or reconnection, of the mains gas supply;

(f) supplies to a qualifying person of services of installing, maintaining or repairing a central heating system in the qualifying person's sole or main residence;

(g) supplies of goods made to a qualifying person by a person installing, maintaining or repairing a central heating system in the qualifying person's sole or main residence, being goods whose installation is necessary for the installation, maintenance or repair of the central heating system;

(h) supplies consisting in the leasing of goods that form the whole or part of a central heating system installed in the sole or main residence of a qualifying person;

(i) supplies of goods that form the whole or part of a central heating system installed in a qualifying person's sole or main residence and that, immediately before being supplied, were goods leased under arrangements such that the consideration for the supplies consisting in the leasing of the goods was, in whole or in part, funded by a grant made under a relevant scheme;

(j) supplies to a qualifying person of services of installing qualifying security goods in the qualifying person's sole or main residence; and

(k) supplies of qualifying security goods made to a qualifying person by a person who installs those goods in the qualifying person's sole or main residence."

3. For paragraph 1(1A) (supplies benefit from reduced rate only if funded by grants) substitute—

"(1A) A supply to which any of paragraphs (b) to (k) of sub-paragraph (1) above applies is a supply falling within this paragraph only to the extent that the consideration for it—

(a) is, or is to be, funded by a grant made under a relevant scheme; or

(b) in the case of a supply to which paragraph (i) of that sub-paragraph applies—

(i) is, or is to be, funded by such a grant, or

(ii) is a payment becoming due only by reason of the termination (whether by the passage of time or otherwise) of the leasing of the goods in question."

4. In paragraph 1(1B) (interpretation of sub-paragraph (1A))—

(a) for "sub-paragraph (1)(b) or (c)" substitute "any of paragraphs (b) to (k) of sub-paragraph (1)", and

(b) for "neither of those sub-paragraphs" substitute "none of those paragraphs".

5. In paragraph 5(3)(c), for "disability working allowance" substitute "disabled person's tax credit".

6. In paragraph 5(3)(d), for "family credit" substitute "working families' tax credit".

7. In paragraph 5 (interpretation), after sub-paragraph (3) insert—

"(3A) For the purposes of paragraph 1(1)(aa) and (ab) above "residential accommodation" means—

(a) a building, or part of a building, that consists of a dwelling or a number of dwellings;

(b) a building, or part of a building, used for a relevant residential purpose;

(c) a caravan used as a place of permanent habitation; or

(d) a houseboat.

(3B) For the purposes of paragraph 1(1)(aa) and (ab) above "use for a relevant charitable purpose" means use by a charity in either or both of the following ways, namely—

(a) otherwise than in the course or furtherance of a business;

(b) as a village hall or similarly in providing social or recreational facilities for a local community."

8.—(1) Paragraph 5(4) (meaning of "energy-saving materials") is amended as follows.

(2) For "For the purposes of paragraph 1(1)(b) and (c) above "energy-saving materials" means" substitute "For the purposes of paragraph 1(1)(aa) and (ab) above "List A energy-saving materials" means".

(3) In paragraph (c), after "central heating system controls" insert "(including thermostatic radiator valves)".

(4) After paragraph (d) insert—

"(e) solar panels;".

(5) After paragraph (e) (which is inserted by sub-paragraph (4) above) insert—

"(f) wind turbines;

(g) water turbines."

9. In paragraph 5, after sub-paragraph (4) insert—

"(4A) For the purposes of paragraph 1(1)(b) and (c) above "List B energy-saving materials" means any of the following—

(a) gas-fired room heaters that are fitted with thermostatic controls;

(b) electric storage heaters;

(c) closed solid fuel fire cassettes;

(d) electric dual immersion water heaters with foam-insulated hot water tanks;

(e) gas-fired boilers;

(f) oil-fired boilers;

(g) radiators.

(4B) For the purposes of paragraph 1(1)(j) and (k) above, "qualifying security goods" means any of the following—

(a) locks or bolts for windows;

(b) locks, bolts or security chains for doors;

(c) spy holes;

(d) smoke alarms."

10. In paragraph 5(5) (meaning of "relevant scheme"), for "paragraph 1(1A) and (1B)" substitute "paragraph 1".

SCHEDULE 36

Section 136(8).

NEW SCHEDULE 3A TO THE VALUE ADDED TAX ACT 1994

The Schedule inserted after Schedule 3 to the Value Added Tax Act 1994 is as follows: 1994 c. 23.

"SCHEDULE 3A

REGISTRATION IN RESPECT OF DISPOSALS OF ASSETS FOR WHICH A VAT REPAYMENT IS CLAIMED

Liability to be registered

1.—(1) A person who is not registered under this Act, and is not liable to be registered under Schedule 1, 2 or 3, becomes liable to be registered under this Schedule at any time—

(a) if he makes relevant supplies; or

(b) if there are reasonable grounds for believing that he will make such supplies in the period of 30 days then beginning.

(2) A person shall be treated as having become liable to be registered under this Schedule at any time when he would have become so liable under sub-paragraph (1) above but for any registration which is subsequently cancelled under paragraph 6(2) below, paragraph 13(3) of Schedule 1, paragraph 6(2) of Schedule 2 or paragraph 6(3) of Schedule 3.

(3) A person shall not cease to be liable to be registered under this Schedule except in accordance with paragraph 2 below.

2. A person who has become liable to be registered under this Schedule shall cease to be so liable at any time if the Commissioners are satisfied that he has ceased to make relevant supplies.

Notification of liability and registration

3.—(1) A person who becomes liable to be registered by virtue of paragraph 1(1)(a) above shall notify the Commissioners of the liability before the end of the period of 30 days beginning with the day on which the liability arises.

(2) The Commissioners shall register any such person (whether or not he so notifies them) with effect from the beginning of the day on which the liability arises.

4.—(1) A person who becomes liable to be registered by virtue of paragraph 1(1)(b) above shall notify the Commissioners of the liability before the end of the period by reference to which the liability arises.

(2) The Commissioners shall register any such person (whether or not he so notifies them) with effect from the beginning of the period by reference to which the liability arises.

Notification of end of liability

5.—(1) Subject to sub-paragraph (2) below, a person registered under paragraph 3 or 4 above who ceases to make or have the intention of making relevant supplies shall notify the Commissioners of that fact within 30 days of the day on which he does so.

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(2) Sub-paragraph (1) above does not apply if the person would, when he so ceases, be otherwise liable or entitled to be registered under this Act if his registration and any enactment preventing a person from being liable to be registered under different provisions at the same time were disregarded.

Cancellation of registration

6.—(1) Subject to sub-paragraph (3) below, where the Commissioners are satisfied that a registered person has ceased to be liable to be registered under this Schedule, they may cancel his registration with effect from the day on which he so ceased or from such later date as may be agreed between them and him.

(2) Where the Commissioners are satisfied that on the day on which a registered person was registered he was not registrable, they may cancel his registration with effect from that day.

(3) The Commissioners shall not under sub-paragraph (1) above cancel a person's registration with effect from any time unless they are satisfied that it is not a time when that person would be subject to a requirement, or entitled, to be registered under this Act.

(4) In determining for the purposes of sub-paragraph (3) above whether a person would be subject to a requirement, or entitled, to be registered at any time, so much of any provision of this Act as prevents a person from becoming liable or entitled to be registered when he is already registered or when he is so liable under any other provision shall be disregarded.

Exemption from registration

7.—(1) Notwithstanding the preceding provisions of this Schedule, where a person who makes or intends to make relevant supplies satisfies the Commissioners that any such supply is zero-rated or would be zero-rated if he were a taxable person, they may, if he so requests and they think fit, exempt him from registration under this Schedule.

(2) Where there is a material change in the nature of the supplies made by a person exempted under this paragraph from registration under this Schedule, he shall notify the Commissioners of the change—

(a) within 30 days of the date on which the change occurred; or

(b) if no particular date is identifiable as the day on which it occurred, within 30 days of the end of the quarter in which it occurred.

(3) Where there is a material alteration in any quarter in the proportion of relevant supplies of such a person that are zero-rated, he shall notify the Commissioners of the alteration within 30 days of the end of the quarter.

(4) If it appears to the Commissioners that a request under sub-paragraph (1) above should no longer have been acted upon on or after any day, or has been withdrawn on any day, they shall register the person who made the request with effect from that day.

Supplementary

8. Any notification required under this Schedule shall be made in such form and shall contain such particulars as the Commissioners may by regulations prescribe.

9.—(1) For the purposes of this Schedule a supply of goods is a relevant supply where—

(a) the supply is a taxable supply;

(b) the goods are assets of the business in the course or furtherance of which they are supplied; and

(c) the person by whom they are supplied, or a predecessor of his, has received or claimed, or is intending to claim, a repayment of VAT on the supply to him, or the importation by him, of the goods or of anything comprised in them.

(2) In relation to any goods, a person is the predecessor of another for the purposes of this paragraph if—

(a) that other person is a person to whom he has transferred assets of his business by a transfer of that business, or part of it, as a going concern;

(b) those assets consisted of or included those goods; and

(c) the transfer of the assets is one falling by virtue of an order under section 5(3) (or under an enactment re-enacted in section 5(3)) to be treated as neither a supply of goods nor a supply of services;

and the reference in this paragraph to a person's predecessor includes references to the predecessors of his predecessor through any number of transfers.

(3) The reference in this paragraph to a repayment of VAT is a reference to such a repayment under a scheme embodied in regulations made under section 39."

SCHEDULE 37

Section 142.

LANDFILL TAX: NEW PART VIII OF SCHEDULE 5 TO THE FINANCE ACT 1996

"PART VIII

SECONDARY LIABILITY: CONTROLLERS OF LANDFILL SITES

Meaning of controller

48.—(1) For the purposes of this Part of this Schedule a person is the controller of the whole, or a part, of a landfill site at a given time if he determines, or is entitled to determine, what disposals of material, if any, may be made—

(a) at every part of the site at that time, or

(b) at that part of the site at that time,

as the case may be.

(2) But a person who, because he is an employee or agent of another, determines or is entitled to determine what disposals may be made at a landfill site or any part of a landfill site is not the controller of that site or, as the case may be, that part of that site.

(3) Where a person is the controller of the whole or a part of a landfill site, that site or, as the case may be, that part of the site is referred to in this Part of this Schedule as being under his control.

(4) Any reference in this Part of this Schedule to a controller (without more) is a reference to a controller of the whole or a part of a landfill site.

Secondary liability

49.—(1) Where—

(a) a taxable disposal is made at a landfill site,

(b) at the time when that disposal is made a person is the operator of the landfill site by virtue of section 67(a), (c) or (e) of this Act, and

(c) at that time a person other than the operator mentioned in paragraph (b) above is the controller of the whole or a part of the landfill site,

the controller shall be liable to pay to the Commissioners an amount of the landfill tax chargeable on the disposal.

(2) The amount which the controller is liable to pay shall be determined in accordance with the following provisions of this paragraph.

(3) In a case where the whole of the landfill site is under the control of the controller, he shall be liable to pay the whole of the landfill tax chargeable.

(4) In a case where a part of the landfill site is under the control of the controller, he shall be liable to pay an amount of the landfill tax calculated in accordance with sub-paragraphs (5) and (6) below.

(5) The amount of landfill tax which the controller is liable to pay is the amount which would have been chargeable had a separate taxable disposal consisting of the amount of material referred to in sub-paragraph (6) below been made at the time of the disposal mentioned in sub-paragraph (1)(a) above.

(6) That amount of material is the amount by weight of the material comprised in the disposal mentioned in sub-paragraph (1)(a) above which was disposed of on the part of the landfill site under the control of the controller.

(7) If the amount mentioned in sub-paragraph (6) above is nil, the controller shall have no liability under sub-paragraph (1) above in relation to landfill tax chargeable on the disposal.

(8) For the purposes of sub-paragraph (1)(b) and (c) above—

(a) section 61 of this Act, and

(b) any regulations made under section 62 of this Act,

shall not apply for determining the time when the disposal in question is made.

Operator entitled to credit

50.—(1) This paragraph applies where—

(a) the operator of a landfill site is liable to pay landfill tax on a taxable disposal by reference to a particular accounting period,

(b) a controller of the whole or a part of that site is (apart from this paragraph) liable under paragraph 49 above to pay an amount of that tax, and

(c) for the accounting period in question the operator is entitled to credit under regulations made under section 51 of this Act.

(2) The amount of the tax which the controller is (apart from this sub-paragraph) liable to pay shall be reduced by the amount calculated in accordance with the following formula—

$$\frac{A \times C}{G}$$

where—

A is the amount of tax mentioned in sub-paragraph (1)(b) above;

C is the amount of credit mentioned in sub-paragraph (1)(c) above; and

G is the operator's gross tax liability for the accounting period in question.

(3) For the purposes of sub-paragraph (2) above, the operator's gross tax liability for the accounting period in question is the gross amount of landfill tax—

(a) which is chargeable on disposals made at all landfill sites of which he is the operator, and

(b) for which he is required to account by reference to that accounting period.

(4) In sub-paragraph (3) above, the gross amount of landfill tax means the amount of tax before any credit or any other adjustment is taken into account in the period in question.

(5) If the amount calculated in accordance with the formula in sub-paragraph (2) above is greater than the amount of tax mentioned in sub-paragraph (1)(b) above, the amount of the tax which the controller is liable to pay shall be reduced to nil.

Payment of secondary liability

51.—(1) This paragraph applies where a controller is liable under paragraph 49 above (after taking account of any reduction under paragraph 50 above) to pay an amount of landfill tax ("the relevant amount").

(2) The controller is required to pay the relevant amount to the Commissioners only if—

(a) a notice containing the required information is served on him, or

(b) other reasonable steps are taken with a view to bringing the required information to his attention,

before the end of the period of two years beginning with the day immediately following the relevant accounting day.

(3) The relevant accounting day is the last day of the accounting period by reference to which the landfill site operator liable to pay the landfill tax in question is required to account for that tax.

(4) If the controller is required to pay the relevant amount by virtue of this paragraph, the amount shall be paid before the end of the period of thirty days beginning with the day immediately following the notification day.

(5) The notification day is—

(a) in a case where notice is served on a controller as mentioned in sub-paragraph (2)(a) above, the day on which the notice is served, or

(b) in a case where other reasonable steps are taken as mentioned in sub-paragraph (2)(b) above, the day on which the last of those steps is taken.

(6) For the purposes of sub-paragraph (2) above the required information is the relevant amount and, if that amount is one reduced in accordance with paragraph 50 above, also—

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(a) the amount of the controller's liability under paragraph 49 above apart from the reduction,

(b) the amount of credit to which the operator is entitled, and

(c) the operator's gross tax liability.

Assessments

52.—(1) Where an amount of landfill tax is—

(a) assessed under section 50 of this Act, and

(b) notified to a licensed operator,

the Commissioners may also determine that a controller of the whole or a part of any landfill site operated by the licensed operator shall be liable to pay so much of the amount assessed as they consider just and equitable.

(2) A controller is required to pay an amount determined under sub-paragraph (1) above only if—

(a) a notice stating the amount is served on him, or

(b) other reasonable steps are taken with a view to bringing the amount of the liability to his attention,

before the expiry of the period of two years beginning with the day immediately following the assessment day.

(3) The assessment day is the day on which the assessment in question is notified to the licensed operator.

(4) If a controller is required to pay an amount by virtue of this paragraph, it shall be paid before the end of the period of thirty days beginning with the day immediately following the notification day.

(5) The notification day is—

(a) in a case where notice is served on a controller as mentioned in sub-paragraph (2)(a) above, the day on which the notice is served, or

(b) in a case where other reasonable steps are taken as mentioned in sub-paragraph (2)(b) above, the day on which the last of those steps is taken.

(6) For the purposes of this paragraph a licensed operator is a person who is the operator of a landfill site by virtue of section 67(a), (c) or (e) of this Act.

Assessment withdrawn or reduced

53.—(1) Where—

(a) a controller is liable to pay an amount determined under paragraph 52 above, and

(b) the assessment notified to the licensed operator is withdrawn or reduced,

the Commissioners may determine that the controller's liability is to be cancelled or to be reduced to such an amount as they consider just and equitable.

(2) Sub-paragraphs (3) to (5) below apply where the Commissioners make a determination under sub-paragraph (1) above that the controller's liability is to be reduced (but not cancelled).

(3) In such a case they shall—

(a) serve the controller with notice stating the amount of the reduced liability, or

(b) take other reasonable steps with a view to bringing the reduced amount to the controller's attention.

(4) If the controller has already been served with notice of the amount determined under paragraph 52 above, or if other steps have already been taken to bring that amount to his attention—

(a) the Commissioners shall serve the notice mentioned in sub-paragraph (3)(a) above, or take the steps mentioned in sub-paragraph (3)(b) above, before the end of the period of thirty days beginning with the day immediately following that on which they make the determination under sub-paragraph (1) above, and

(b) the reduced amount shall be payable, or treated as having been payable, on or before the day on which the amount referred to in sub-paragraph (1)(a) above would have been payable apart from this paragraph.

(5) In a case where the controller has not been served with notice of the amount determined under paragraph 52 above, or no other steps have been taken to bring that amount to his attention, he shall be liable to pay the reduced amount only if—

(a) the notice mentioned in sub-paragraph (3)(a) above is served, or

(b) the other steps mentioned in sub-paragraph (3)(b) above are taken,

before the expiry of the period of two years beginning with the day immediately following that on which the Commissioners make the determination under sub-paragraph (1) above.

(6) Sub-paragraph (7) below applies where—

(a) the Commissioners make a determination under sub-paragraph (1) above that the controller's liability is to be cancelled, and

(b) the controller has already been served with notice of the amount determined under paragraph 52 above, or other steps have already been taken to bring that amount to his attention.

(7) In such a case the Commissioners shall—

(a) serve the controller with notice stating that the liability has been cancelled, or

(b) take other reasonable steps with a view to bringing the cancellation to the controller's attention,

before the end of the period of thirty days beginning with the day immediately following that on which they make the determination that the liability is to be cancelled.

Adjustments

54.—(1) This paragraph applies in any case where the liability of a licensed operator to pay landfill tax is adjusted otherwise than by—

(a) his being entitled to credit under regulations made under section 51 of this Act,

(b) his being notified of an amount assessed under section 50 of this Act, or

(c) the withdrawal or reduction of an assessment under section 50 of this Act which was notified to him.

(2) In such a case the Commissioners may determine that a controller of the whole or any part of a landfill site operated by the licensed operator—

(a) shall be liable to pay to the Commissioners such an amount as they consider just and equitable, or

(b) shall be entitled to an allowance of such an amount as they consider just and equitable.

(3) A controller is required to pay an amount determined under sub-paragraph (2)(a) above only if—

(a) a notice stating the amount is served on him, or

(b) other reasonable steps are taken with a view to bringing the amount of the liability to his attention,

before the end of the period of two years beginning with the day immediately following the relevant accounting day.

(4) The relevant accounting day is the last day of the accounting period of the operator within which the adjustment in question was taken into account.

(5) If a controller is required to pay an amount by virtue of sub-paragraph (3) above, it shall be paid before the end of the period of thirty days beginning with the day immediately following the notification day.

(6) The notification day is—

(a) in a case where notice is served on a controller as mentioned in sub-paragraph (3)(a) above, the day on which the notice is served, or

(b) in a case where other reasonable steps are taken as mentioned in sub-paragraph (3)(b) above, the day on which the last of those steps is taken.

(7) The Commissioners may determine in what manner a controller is to benefit from an allowance determined under sub-paragraph (2)(b) above.

(8) For the purposes of this paragraph a licensed operator is a person who is the operator of a landfill site by virtue of section 67(a), (c) or (e) of this Act.

Amounts payable to be treated as tax

55. An amount which a controller is required to pay under paragraph 52, 53 or 54(2)(a) above or under paragraph 58 below shall be deemed to be an amount of tax due from him and shall be recoverable accordingly.

Controller not carrying out taxable activity

56. A controller is not to be treated for the purposes of this Act as carrying out a taxable activity by reason only of any liability under this Part of this Schedule.

Joint and several liability

57.—(1) In any case where the condition in sub-paragraph (4), (5) or (6) below is satisfied, the controller and the operator shall be jointly and severally liable for the principal liability.

(2) But the amount which may be recovered from the controller in consequence of such liability shall not exceed the amount of the secondary liability.

(3) For the purposes of this paragraph—

(a) the principal liability is the amount referred to in sub-paragraph (4)(a), (5)(a) or (6)(a) below, as the case may be, and

(b) the secondary liability is the amount referred to in sub-paragraph (4)(b), (5)(b) or (6)(b) below, as the case may be.

(4) The condition in this sub-paragraph is satisfied if—

(a) the operator of a landfill site is liable under section 41 of this Act for landfill tax, and

(b) a controller is liable under paragraph 49 above, after taking account of any reduction under paragraph 50 above, to pay an amount of that tax.

(5) The condition in this sub-paragraph is satisfied if—

(a) the operator of a landfill site is notified of the amount of an assessment made under section 50 of this Act, and

(b) in consequence of a determination made under paragraph 52 above by the Commissioners in connection with the assessment, a controller is liable to pay an amount (after taking account of any reduction under paragraph 53 above).

(6) The condition in this sub-paragraph is satisfied if—

(a) the liability of the operator of a landfill site to pay landfill tax is adjusted in such a way that paragraph 54 above applies, and

(b) in consequence of a determination made under paragraph 54(2)(a) above by the Commissioners in connection with the adjustment, a controller is liable to pay an amount.

Interest payable by a controller

58.—(1) This paragraph applies where—

(a) the operator of a landfill site and the controller of the whole or a part of that site are by virtue of paragraph 57 above jointly and severally liable for an amount, and

(b) that amount carries interest by virtue of any provision of this Schedule.

(2) The controller and the operator shall be jointly and severally liable to pay the interest.

(3) But the amount which may be recovered from the controller in consequence of such liability shall not exceed the amount calculated in accordance with the following formula—

$$\frac{(I - [A + B]) \times S}{P}$$

where—

I is the total amount of interest in question;

A is the amount of interest carried for the period which—

(a) begins with the first day of the period for which interest is carried, and

(b) ends with the day on which the controller becomes liable to pay the secondary liability;

B is the amount of interest carried for any day falling after that on which the secondary liability is met in full;

S is the amount of the secondary liability;

P is the amount of the principal liability.

In this paragraph secondary liability and principal liability have the same meaning as in paragraph 57 above.

(4) The controller is liable for an amount of interest only if—

(a) a notice stating the amount is served on him, or

(b) other reasonable steps are taken with a view to bringing the amount of the liability to his attention,

before the end of the period of two years beginning with the day immediately following the final day.

(5) The final day is the last day of the period for which the interest in question is carried.

(6) If the controller is required to pay an amount in accordance with this paragraph, it shall be paid before the end of the period of thirty days beginning with the day immediately following the notification day.

(7) The notification day is—

(a) in a case where notice is served on a controller as mentioned in sub-paragraph (4)(a) above, the day on which the notice is served, or

(b) in a case where other reasonable steps are taken as mentioned in sub-paragraph (4)(b) above, the day on which the last of those steps is taken.

(8) Where by virtue of sub-paragraph (2) above a controller is liable to pay interest which arises under paragraph 27 above, paragraph 28 above shall apply in relation to that interest as it applies to interest which a person is liable under paragraph 27 above to pay.

Reviews

59. Section 54 of this Act shall apply to a decision of the Commissioners under this Part of this Schedule—

(a) that a person is a controller,

(b) that a person is liable under this Part of this Schedule to pay any amount (including a penalty under paragraph 60 below),

(c) that a person is not entitled under this Part of this Schedule to an allowance, or

(d) as to the amount of any liability or any allowance under this Part of this Schedule,

as it applies to the other decisions of the Commissioners specified in subsection (1) of that section.

Notice that person is, or is no longer, a controller

60.—(1) This paragraph applies where—

(a) on the date when this paragraph comes into force, a person is a controller of the whole or a part of a landfill site, or

(b) after that date, a person becomes or ceases to be a controller of the whole or a part of a landfill site.

(2) The controller, and the operator of the landfill site in question, shall be under a duty to secure that notice which complies with the requirements of sub-paragraph (3) below appropriate to the case in question is given to the Commissioners.

(3) The requirements of this sub-paragraph are that the notice—

(a) states that a person is, has become or has ceased to be a controller,

(b) identifies that person and the site under his control or formerly under his control,

(c) states the date when he became or ceased to be the controller, and

(d) is given within the period of thirty days beginning with the day immediately following—

(i) the day when this paragraph comes into force, in a case falling within sub-paragraph (1)(a) above, or

(ii) the day when the person in question becomes or ceases to be the controller, in a case falling within sub-paragraph (1)(b) above.

(4) If a person fails to comply with sub-paragraph (2) above, he is liable to a penalty of £250.

(5) Paragraph 25 above applies to a penalty under sub-paragraph (4) above as it applies to a penalty under Part V of this Schedule.

Extension of time limits where notice not served

61.—(1) This paragraph applies where—

(a) a person is liable under paragraph 49 above to pay an amount of landfill tax or liable under paragraph 58 above to pay interest, or

(b) the Commissioners are entitled under paragraph 52, 53 or 54 above to determine an amount which a person is liable to pay.

(2) The reference to two years in paragraph 51(2), 52(2), 53(5), 54(3) or 58(4) above (as the case may be) shall be treated as a reference to twenty years if the requirement of paragraph 60(2) above to give notice to the Commissioners in relation to the person mentioned in sub-paragraph (1) above being or becoming a controller has not been complied with."

SCHEDULE 38

Section 143(1).

REGULATIONS FOR PROVIDING INCENTIVES FOR ELECTRONIC COMMUNICATIONS

Introduction

1.—(1) Regulations may be made in accordance with this Schedule for providing incentives to use electronic communications—

(a) for the purposes mentioned in section 132(1) of the Finance Act 1999 (power to provide for use of electronic communications for delivery of information and making of payments), or 1999 c. 16.

(b) for any other communications with the tax authorities or in connection with taxation matters.

(2) The power to make regulations under this Schedule is conferred—

(a) on the Commissioners of Inland Revenue in relation to matters which are under their care and management, and

(b) on the Commissioners of Customs and Excise in relation to matters which are under their care and management.

Kinds of incentive

2.—(1) The incentives shall be of such description as may be provided for in the regulations.

(2) They may, in particular, take the form of—

(a) discounts;

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(b) the allowing of additional time to comply with any obligations under tax legislation (including obligations relating to the payment of tax or other amounts); or

(c) the facility to deliver information or make payments at more convenient intervals.

Conditions of entitlement

3.—(1) The regulations may make provision as to the conditions of entitlement to an incentive.

(2) They may, in particular, make entitlement conditional—

(a) on the use of electronic communications for all communications or payments (or all communications and payments of a specified description) with, to or from the tax authority concerned, and

(b) on the use of specified means of electronic communication or payment acceptable to the tax authority concerned.

(3) The regulations may make provision for an appeal against a decision that the conditions of entitlement are not met.

Withdrawal of entitlement

4.—(1) The regulations may make provision for the withdrawal of an incentive in specified circumstances.

(2) If they do, they may make provision—

(a) for giving notice of the withdrawal,

(b) for an appeal, and

(c) for the recovery of an amount not exceeding the value of the incentive.

(3) The regulations may provide that specified enactments relating to assessments, appeals and recovery of tax are to apply, with such adaptations as may be specified, in relation to the withdrawal of an incentive.

Power to authorise provision by directions

5. The regulations may authorise the making of any such provision as is mentioned in paragraph 3 or 4 by means of a specific or general direction given by the Commissioners of Inland Revenue or the Commissioners of Customs and Excise.

Power to provide for penalties

6.—(1) The regulations may provide for contravention of, or failure to comply with, a specified provision of any such regulations to attract a penalty of a specified amount not exceeding £1,000.

(2) If they do, they may provide that specified enactments relating to penalties imposed in relation to any taxation matter (including enactments relating to assessments, review and appeals) are to apply, with or without modifications, in relation to penalties under the regulations.

General supplementary provisions

7.—(1) Power to make provision by regulations under this Schedule includes power—

(a) to make different provision for different cases; and

(b) to make such incidental, supplemental, consequential and transitional provision in connection with any provision contained in any such regulations as the persons exercising the power think fit.

(2) The power to make regulations under this Schedule is exercisable by statutory instrument subject to annulment in pursuance of a resolution of the House of Commons.

Interpretation

8.—(1) In this Schedule—

"discount" includes payment;

"electronic communications" includes any communications by means of a telecommunication system (within the meaning of the Telecommunications Act 1984); 1984 c. 12.

"legislation" means any enactment, Community legislation or subordinate legislation;

"payment" includes a repayment;

"subordinate legislation" has the same meaning as in the Interpretation Act 1978; 1978 c. 30.

"taxation matter" means any of the matters under the care and management of the Commissioners of Inland Revenue or the Commissioners of Customs and Excise;

"tax authorities" means—

(a) the Commissioners of Inland Revenue or the Commissioners of Customs and Excise,

(b) any officer of either body of Commissioners; or

(c) any other person who for the purposes of electronic communications is acting under the authority of either body of Commissioners;

"tax legislation" means legislation relating to any taxation matter.

(2) References in this Schedule to the delivery of information have the same meaning as in section 132 of the Finance Act 1999. 1999 c. 16.

SCHEDULE 39

Section 149(2).

NEW SCHEDULE 1AA TO THE TAXES MANAGEMENT ACT 1970

The Schedule inserted after Schedule 1 to the Taxes Management Act 1970 is as follows: 1970 c. 9.

"SCHEDULE 1AA

ORDERS FOR PRODUCTION OF DOCUMENTS

Introduction

1. The provisions of this Schedule supplement section 20BA.

Authorised officer of the Board

2.—(1) In section 20BA(1) an 'authorised officer of the Board' means an officer of the Board authorised by the Board for the purposes of that section.

(2) The Board may make provision by regulations as to—

(a) the procedures for approving in any particular case the decision to apply for an order under that section, and

(b) the descriptions of officer by whom such approval may be given.

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Notice of application for order

3.—(1) A person is entitled—

(a) to notice of the intention to apply for an order against him under section 20BA, and

(b) to appear and be heard at the hearing of the application,

unless the appropriate judicial authority is satisfied that this would seriously prejudice the investigation of the offence.

(2) The Board may make provision by regulations as to the notice to be given, the contents of the notice and the manner of giving it.

Obligations of person given notice of application

4.—(1) A person who has been given notice of intention to apply for an order under section 20BA(4) shall not—

(a) conceal, destroy, alter or dispose of any document to which the application relates, or

(b) disclose to any other person information or any other matter likely to prejudice the investigation of the offence to which the application relates.

This is subject to the following qualifications.

(2) Sub-paragraph (1)(a) does not prevent anything being done—

(a) with the leave of the appropriate judicial authority,

(b) with the written permission of an officer of the Board,

(c) after the application has been dismissed or abandoned, or

(d) after any order made on the application has been complied with.

(3) Sub-paragraph (1)(b) does not prevent a professional legal adviser from disclosing any information or other matter—

(a) to, or to a representative of, a client of his in connection with the giving by the adviser of legal advice to the client; or

(b) to any person—

(i) in contemplation of, or in connection with, legal proceedings; and

(ii) for the purpose of those proceedings.

This sub-paragraph does not apply in relation to any information or other matter which is disclosed with a view to furthering a criminal purpose.

(4) A person who fails to comply with the obligation in sub-paragraph (1)(a) or (b) above may be dealt with as if he had failed to comply with an order under section 20BA.

Exception of items subject to legal privilege

5.—(1) Section 20BA does not apply to items subject to legal privilege.

(2) For this purpose "items subject to legal privilege" means—

(a) communications between a professional legal adviser and his client or any person representing his client made in connection with the giving of legal advice to the client;

(b) communications between a professional legal adviser and his client or any person representing his client or between such an adviser or his client or any such representative and any other person made in connection with or in contemplation of legal proceedings and for the purposes of such proceedings; and

(c) items enclosed with or referred to in such communications and made—

(i) in connection with the giving of legal advice; or

(ii) in connection with or in contemplation of legal proceedings and for the purposes of such proceedings,

when they are in the possession of a person who is entitled to possession of them.

(3) Items held with the intention of furthering a criminal purpose are not subject to legal privilege.

Resolution of disputes as to legal privilege

6.—(1) The Board may make provision by regulations for the resolution of disputes as to whether a document, or part of a document, is an item subject to legal privilege.

(2) The regulations may, in particular, make provision as to—

(a) the custody of the document whilst its status is being decided;

(b) the appointment of an independent, legally qualified person to decide the matter;

(c) the procedures to be followed; and

(d) who is to meet the costs of the proceedings.

Complying with an order

7.—(1) The Board may make provision by regulations as to how a person is to comply with an order under section 20BA.

(2) The regulations may, in particular, make provision as to—

(a) the officer of the Board to whom the documents are to be produced,

(b) the address to which the documents are to be taken or sent, and

(c) the circumstances in which sending the documents by post complies with the order.

(3) Where an order under section 20BA applies to a document in electronic or magnetic form, the order shall be taken to require the person to deliver the information recorded in the document in a form in which it is visible and legible.

Procedure where documents are delivered

8.—(1) The provisions of section 20CC(3) to (9) apply in relation to a document delivered to an officer of the Board in accordance with an order under section 20BA as they apply to a thing removed by an officer of the Board as mentioned in subsection (1) of section 20CC.

(2) In section 20CC(9) as applied by sub-paragraph (1) above the reference to the warrant concerned shall be read as a reference to the order concerned.

Sanction for failure to comply with order

9.—(1) If a person fails to comply with an order made under section 20BA, he may be dealt with as if he had committed a contempt of the court.

(2) For this purpose 'the court' means—

(a) in relation to an order made by a Circuit judge, the Crown Court;

(b) in relation to an order made by a sheriff, a sheriff court;

(c) in relation to an order made by a county court judge, a county court in Northern Ireland.

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Notice of order etc.

10. The Board may make provision by regulations as to the circumstances in which notice of an order under section 20BA, or of an application for such an order, is to be treated as having been given.

General provisions about regulations

11. Regulations under this Schedule—

(a) may contain such incidental, supplementary and transitional provision as appears to the Board to be appropriate, and

(b) shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.".

Section 156.

SCHEDULE 40

REPEALS

PART I

EXCISE DUTIES

(1) HYDROCARBON OILS

Chapter	Short title	Extent of repeal
1979 c. 5.	The Hydrocarbon Oil Duties Act 1979.	In section 13(1) the words from "; and the Commissioners" to the end. Section 13A(1B), (1C) and (2). In Schedule 1, paragraph 2(1)(b) and the word "or" immediately preceding it, and paragraph 2(4). In Schedule 2A— (a) paragraph 8(4); (b) in paragraph 11(1), the definitions of "leaded" and "unleaded" petrol.
1997 c. 16.	The Finance Act 1997.	Section 7(3) and (9)(e). In Schedule 6, paragraph 6(2).

1. The repeals in section 13A of and Schedule 2A to the Hydrocarbon Oil Duties Act 1979 and section 7 of the Finance Act 1997 come into force on the day appointed under section 5(6) of this Act.

2. The repeals in section 13 of the Hydrocarbon Oil Duties Act 1979 and Schedule 6 to the Finance Act 1997 have effect in accordance with section 8 of this Act.

3. The repeals in Schedule 1 to the Hydrocarbon Oil Duties Act 1979 have effect in relation to the use of rebated heavy oil as fuel on or after 1st May 2000.

(2) TOBACCO

Chapter	Short title	Extent of repeal
1979 c. 7.	The Tobacco Products Duty Act 1979.	Section 7(1)(c)(i).

(3) AMUSEMENT MACHINE LICENCE DUTY

Chapter	Short title	Extent of repeal
1981 c. 63.	The Betting and Gaming Duties Act 1981.	In section 25(1B)(b), the words ", other than one consisting only in a blank surface onto which light is projected". In section 25(7), the word "or" at the end of paragraph (c).

These repeals have effect in accordance with paragraph 7 of Schedule 2 to this Act.

(4) AIR PASSENGER DUTY

Chapter	Short title	Extent of repeal
1994 c. 9.	The Finance Act 1994.	In section 31, subsections (1), (2) and (6). In section 43, in subsection (2), the words "Subject to subsection (3) below" and subsection (3).
1997 c. 16.	The Finance Act 1997.	Section 9.

1. The repeals in the Finance Act 1994 have effect in accordance with section 19(6) of this Act.

2. The repeal in the Finance Act 1997 has effect in accordance with section 18(8) of this Act.

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PART II

INCOME TAX, CORPORATION TAX AND CAPITAL GAINS TAX

(1) GIVING TO CHARITY

Chapter	Short title	Extent of repeal
1988 c. 1.	The Income and Corporation Taxes Act 1988.	In section 202, in subsection (6), the words "must not be paid by the employee under a covenant", and subsection (7). In section 339, subsections (2), (3), (3A), (3F), (6), (7) and (8) and, in subsection (9), the words "in subsections (1) to (4) above includes". In section 347A, subsections (2)(b), (7) and (8). In section 505(6), the words "and, for this purpose, all covenanted payments to charity (within the meaning of section 347A(7)) shall be treated as a single item".
1989 c. 26.	The Finance Act 1989.	Section 59.
1990 c. 29.	The Finance Act 1990.	In section 25, in subsection (2), paragraphs (c) and (g) and, in subsection (12), paragraphs (b) and (e) and the word "and" immediately preceding paragraph (e).
1998 c. 36.	The Finance Act 1998.	In section 48, subsections (3), (6) and (7).

1. The repeals in section 202 of the Taxes Act 1988 have effect in accordance with section 38(7) of this Act.

2. The repeals in section 339 of the Taxes Act 1988 have effect in accordance with section 40(11) of this Act.

3. The repeals in sections 347A and 505 of the Taxes Act 1988 and the repeal of section 59 of the Finance Act 1989 have effect in accordance with section 41(9) of this Act.

4. The repeals in section 25 of the Finance Act 1990 have effect in accordance with section 39(10) of this Act.

(2) BENEFITS IN KINDS: DEREGULATORY AMENDMENTS

Chapter	Short title	Extent of repeal
1988 c. 1.	The Income and Corporation Taxes Act 1988.	Section 155(2). Section 160(1C). Section 161(1A) and (1B).
1994 c. 9.	The Finance Act 1994.	Section 88(5).

These repeals have effect in accordance with section 57(2) of this Act.

(3) CARS AVAILABLE FOR PRIVATE USE

Chapter	Short title	Extent of repeal
1996 c. 8.	The Finance Act 1996.	In Schedule 20, paragraph 40.
1999 c. 16.	The Finance Act 1999.	Section 47.

These repeals have effect in accordance with section 59 of this Act.

(4) OCCUPATIONAL AND PERSONAL PENSION SCHEMES

Chapter	Short title	Extent of repeal
1988 c. 1.	The Income and Corporation Taxes Act 1988.	In section 611(3), the words "retirement benefits" in both places where they occur. Section 630(3). Section 633(2). In section 638(4), the words "the aggregate of", paragraph (b) and the word "and" immediately preceding it. Section 641. Section 642. In section 645(3), the word "and" immediately preceding paragraph (c). Section 646(7). Section 660A(7).
1996 c. 8.	The Finance Act 1996.	In Schedule 21, paragraph 18.

1. The repeal of section 633(2) of the Taxes Act 1988 has effect in accordance with paragraph 9 of Schedule 13 to this Act.

2. The repeals in section 638(4) of that Act have effect in relation to contributions paid in the year 2001-02 and subsequent years of assessment.

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3. The repeals of section 641 of that Act and paragraph 18 of Schedule 21 to the Finance Act 1996 have effect in accordance with paragraph 17 of Schedule 13 to this Act.

4. The repeal of section 642 of the Taxes Act 1988 has effect in accordance with paragraph 19 of Schedule 13 to this Act.

5. The repeal of section 646(7) of that Act has effect for the year 2001-02 and subsequent years of assessment.

6. The repeal of section 660A(7) of that Act has effect for the year 2001-02 and subsequent years of assessment.

(5) ENTERPRISE INVESTMENT SCHEME AND VENTURE CAPITAL TRUSTS

Chapter	Short title	Extent of repeal
1988 c. 1.	The Income and Corporation Taxes Act 1988.	Section 293(6)(b) and the word "and" immediately preceding it. Section 299B(7). In section 312(1), the definition of "the seven year period".
1992 c. 12.	The Taxation of Chargeable Gains Act 1992.	In Schedule 5B, in paragraph 19(1)— (a) the definition of "the five year period"; (b) the definition of "the seven year period".
1994 c. 9.	The Finance Act 1994.	In Schedule 15, paragraph 10(c).

1. The repeal in section 293(6) of the Taxes Act 1988 has effect in accordance with paragraph 12 of Schedule 17 to this Act.

2. The repeal in the Finance Act 1994 has effect in accordance with paragraph 13(2) of that Schedule.

3. The repeal in section 299B of the Taxes Act 1988 has effect in accordance with paragraph 14 of that Schedule.

4. The other repeals have effect in accordance with paragraph 8 of that Schedule.

(6) TAPER RELIEF FOR BUSINESS ASSETS

Chapter	Short title	Extent of repeal
1992 c. 12.	The Taxation of Chargeable Gains Act 1992.	In Schedule A1, in paragraph 22(1), the definitions of "full-time working officer or employee" and "qualifying office or employment.

These repeals have effect in accordance with section 67(7) of this Act.

(7) MEANING OF "RESEARCH AND DEVELOPMENT"

Chapter	Short title	Extent of repeal
1990 c. 1.	The Capital Allowances Act 1990.	Section 136. In section 139(1)(d)— (a) in the opening words, the words "or a class of trades"; (b) in sub-paragraphs (i) and (ii), the words "or, as the case may be, of trades of that class". Section 139(3).

These repeals have effect in accordance with section 68(2) of this Act.

(8) CAPITAL ALLOWANCES

Chapter	Short title	Extent of repeal
1990 c. 1.	The Capital Allowances Act 1990.	In section 41, in subsection (1), paragraphs (b) and (c) and the word "or" at the end of paragraph (a) and, in subsection (4), paragraph (a) and, in paragraph (b), the words from "or within (1)(b) or (c)" to "subsection (1)(c)" and the words "or subsection (1)(b) and (c)". Section 53(1)(bb).
1994 c. 9.	The Finance Act 1994.	In section 118, subsections (1) to (5) and (7) to (9).

1. The repeals in section 41 of the Capital Allowances Act 1990 have effect in accordance with section 74(1) of this Act.

2. The repeal in section 53 of that Act has effect in accordance with section 75(6)(a) of this Act.

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3. The repeals in section 118 of the Finance Act 1994 have effect in accordance with section 73(2) of this Act.

(9) CONTRIBUTIONS TO LOCAL ENTERPRISE AGENCIES, ETC.

Chapter	Short title	Extent of repeal
1988 c. 1.	The Income and Corporation Taxes Act 1988.	In section 79(11), the words "and before 1st April 2000". In section 79A— (a) in subsection (5)(b), the references to the Scottish Development Agency and the Highlands and Islands Development Board; (b) in subsection (7), the words "and before 1st April 2000".
1994 c. 9.	The Finance Act 1994.	Section 145(1).

(10) CAPITAL GAINS TAX: GIFTS AND TRUSTS

Chapter	Short title	Extent of repeal
1992 c. 12.	The Taxation of Chargeable Gains Act 1992.	In Schedule 10, paragraph 14(42).
1996 c. 8.	The Finance Act 1996.	In Schedule 38, paragraph 10(2)(c) and (f).

1. The repeal in Schedule 10 to the Taxation of Chargeable Gains Act 1992 has effect in accordance with section 92(5) of this Act.

2. The repeals in Schedule 38 to the Finance Act 1996 have effect in relation to disposals made on or after 9th November 1999.

(11) GROUPS AND GROUP RELIEF

Chapter	Short title	Extent of repeal
1970 c. 9.	The Taxes Management Act 1970.	In section 87A(3), the word "or" preceding "paragraph 75A(2)".
1988 c. 1.	The Income and Corporation Taxes Act 1988.	In section 402(4), the words from "if the share in the consortium" to "is nil or". In section 413— (a) in subsection (5), the words from the beginning to "Kingdom; and", paragraph (c) and the word "or" immediately preceding it; (b) subsections (8) and (9).

Chapter	Short title	Extent of repeal
1992 c. 12.	The Taxation of Chargeable Gains Act 1992.	In section 170(8), the words ", or subsections (7) to (9),". In section 228(10)(b), the words "to (9)".
1992 c. 48.	The Finance (No.2) Act 1992.	In Schedule 6, paragraph 3.
1998 c. 36.	The Finance Act 1998.	Section 81.

1. The repeal in section 87A(3) of the Taxes Management Act 1970 has effect in accordance with section 98(2) of this Act.

2. The repeal in section 402(4) of the Taxes Act 1988, the repeal of section 413(8) and (9) of that Act, the repeals in the Taxation of Chargeable Gains Act 1992 and the repeal of section 81 of the Finance Act 1998 have effect in accordance with section 100(5) of this Act.

3. The repeals in section 413(5) of the Taxes Act 1988 and the repeal in Schedule 6 to the Finance (No.2) Act 1992 have effect in accordance with paragraph 6 of Schedule 27 to this Act.

(12) GROUPS OF COMPANIES: CHARGEABLE GAINS

Chapter	Short title	Extent of repeal
1970 c. 9.	The Taxes Management Act 1970.	In section 87A(3), the words "or 179(11)".
1988 c. 39.	The Finance Act 1988.	In section 132(6), in the definition of group, the words "references to residence in the United Kingdom were omitted and".
1992 c. 12.	The Taxation of Chargeable Gains Act 1992.	In section 14(4)(b), the words "without subsections (2)(a), (9) and (12) to (14)". Section 25(4). In section 30(2)(b), the words "178 or". In section 31(7)(b), the words "178 or". In section 35(3)(d)(i), the words "172,". In section 170— (a) subsection (2)(a); (b) in subsection (9)(b), the words "(although resident in the United Kingdom)". Section 172. Section 174(1) to (3) and (5).

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Chapter	Short title	Extent of repeal
1992 c. 12.—*Contd.*	The Taxation of Chargeable Gains Act 1992.—*Contd.*	In section 176(7), paragraph (c) and the word "and" immediately preceding it. Section 178. Section 179(11) and (12). Section 180. Section 181(5). In section 192(4), the words "178 or". In section 197(2)(b), the words "178(3) or". In section 211— (a) in subsection (2), the words "Subject to subsection (3) below" and paragraph (b) and the word "or" immediately following it; (b) subsection (3). In section 216(2)(b), (3) and (4), the words "178 or". In Schedule 4— (a) in paragraph 4(2), the words "178(3), 179(3)"; (b) paragraph 4(3); (c) paragraph 9(1)(a). In Schedule 7B, paragraph 7.
1992 c. 48.	The Finance (No.2) Act 1992.	Section 25(1).
1993 c. 34.	The Finance Act 1993.	Section 90.

1. The repeal in the Finance Act 1988 has effect in accordance with paragraph 15 of Schedule 29 to this Act.

2. The repeal in section 14 of the Taxation of Chargeable Gains Act 1992 has effect in accordance with paragraph 16 of that Schedule.

3. The repeal in section 25 of that Act has effect in accordance with paragraph 6(5) of that Schedule.

4. The repeals in section 170 of that Act have effect in accordance with paragraph 1 of that Schedule.

5. The repeal of section 172 of that Act, and the repeals in section 35 of and Schedule 7B to that Act, have effect in accordance with paragraph 3 of Schedule 29 to this Act.

6. In section 174 of that Act—

(a) the repeal of subsections (1) to (3) has effect in accordance with paragraph 12 of that Schedule; and

(b) the repeal of subsection (5) has effect in accordance with paragraph 13 of that Schedule.

7. The repeals in section 176 of that Act have effect in accordance with paragraph 24 of that Schedule.

8. The repeals in section 87A(3) of the Taxes Management Act 1970 and in section 179 of the Taxation of Chargeable Gains Act 1992 have effect in accordance with paragraph 4(7) of that Schedule.

9. The repeal in section 181 of the Taxation of Chargeable Gains Act 1992 has effect in accordance with paragraph 28 of that Schedule.

10. The repeals in section 211 of that Act, and the repeal of section 90 of the Finance Act 1993, have effect in accordance with paragraph 30 of that Schedule.

11. The repeal in section 25 of the Finance (No.2) Act 1992 has effect in accordance with paragraph 4(6) of that Schedule.

(13) DOUBLE TAXATION RELIEF

Chapter	Short title	Extent of repeal
1970 c. 9.	The Taxes Management Act 1970.	In section 42(7)(a), the words ",810".
1988 c. 1.	The Income and Corporation Taxes Act 1988.	In section 750(3)(b), the words "other than section 810". In section 788(5), in the second sentence, paragraph (b) and the word "and" preceding it. Section 794(2)(c). Section 799(3)(b). Section 800. Section 802. Section 810. In Schedule 19AC, in paragraph 13, sub-paragraph (1) and, in sub-paragraph (2), the subsection (3) which is treated as inserted into section 794 of the Act.
1989 c. 26.	The Finance Act 1989.	In section 82(1)(a), the words "or foreign tax".

These repeals have effect in accordance with Schedule 30 to this Act.

(14) CONTROLLED FOREIGN COMPANIES

Chapter	Short title	Extent of repeal
1988 c. 1.	The Income and Corporation Taxes Act 1988.	In section 756(3), paragraph (a) and the words following paragraph (b). In Schedule 25, in paragraph 11(1), the word "and" immediately preceding paragraph (g).

These repeals have effect in accordance with paragraph 9 of Schedule 31 to this Act.

(15) INTERNATIONAL MATTERS

Chapter	Short title	Extent of repeal
1993 c. 34.	The Finance Act 1993.	In section 149, in subsections (4) and (5), the words "the asset or contract was held, or the liability was owed, by the company solely for trading purposes and". Section 164(6) and (7).

These repeals have effect in accordance with section 106(17) of this Act.

(16) INSURANCE

Chapter	Short title	Extent of repeal
1988 c. 1.	The Income and Corporation Taxes Act 1988.	In section 431(2), the definition of "investment reserve". In Schedule 19AC, paragraph 7(3)(c).
1993 c. 34.	The Finance Act 1993.	Section 177.
1994 c. 9.	The Finance Act 1994.	Section 224.

1. The repeals in the Taxes Act 1988 have effect in accordance with section 109(10) of this Act.

2. The other repeals have effect in accordance with section 107(12)(c) of this Act.

(17) PAYMENTS UNDER DEDUCTION OF TAX

Chapter	Short title	Extent of repeal
1970 c. 9.	The Taxes Management Act 1970.	In columns 1 and 2 of the Table in section 98— (a) the words "regulations under section 118D, 118F, 118G, 118H or 118I"; and (b) the words "regulations under section 124(3)".
1988 c. 1.	The Income and Corporation Taxes Act 1988.	In Part IV, Chapter VIIA. Section 124. In section 348(3), the words "or to any payment which is a relevant payment for the purposes of Chapter VIIA of Part IV". In section 349— (a) in subsection (1), the words "or to any payment which is a relevant payment for the purposes of Chapter VIIA of Part IV"; (b) in subsection (3), paragraph (e). Section 468M(4)(b). Section 482(11)(a). In section 582A(1), the words "and section 118B(4)". Section 841A. In Schedule 23A— (a) in paragraph 1(1), in the definition of "overseas securities", paragraph (b) and the word "and" preceding it; (b) in paragraph 1(1), in the definition of "UK securities", the words "quoted Eurobonds (as defined by section 124) held in a recognised clearing system or"; (c) paragraph 4(8).
1989 c. 26.	The Finance Act 1989.	In section 178(2)(m), the reference to section 118F of the Taxes Act 1988.
1996 c. 8.	The Finance Act 1996.	In Schedule 7, paragraph 28. Schedule 29. In Schedule 38, paragraph 6(2)(a) and (3).
1997 c. 58.	The Finance (No.2) Act 1997.	Section 38.

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1. The repeal of Chapter VIIA of Part IV of the Taxes Act 1988, and related repeals, have effect in accordance with section 111(6)(a) of this Act.

2. The repeal of section 124 of that Act, and related appeals, have effect in accordance with section 111(6)(b) of this Act.

3. The repeal of section 482(11)(a) of that Act has effect in accordance with section 111(6)(c) of this Act.

(18) TAX TREATMENT OF EXPENDITURE ON PRODUCTION OR ACQUISITION OF FILMS

Chapter	Short title	Extent of repeal
1992 c. 48.	The Finance (No.2) Act 1992.	In section 43(3), paragraph (b) and the word "or" preceding it.

This repeal has effect in accordance with section 113(6) of this Act.

PART III

STAMP DUTY AND STAMP DUTY RESERVE TAX

Chapter	Short title	Extent of repeal
1949 c. 15 (N.I.).	The Finance Act (Northern Ireland) 1949.	Section 8.
1977 c. 37.	The Patents Act 1977.	Section 126.
1986 c. 41.	The Finance Act 1986.	In sections 67(9), 70(9), 95(1) and 97(1), the words "and is resident in the United Kingdom" and "and is so resident".
1993 c. 34.	The Finance Act 1993.	In section 204(3), the word "first" (in each place where it occurs).
1994 c. 26.	The Trade Marks Act 1994.	Section 61.
2000 c. 17.	The Finance Act 2000.	Section 133. Section 134. In Schedule 33, paragraph 9(1).

1. The repeals in the Patents Act 1977 and the Trade Marks Act 1994 have effect in accordance with section 129(5) of this Act.

2. The repeals in the Finance Act 1986 have effect in accordance with section 134(5) of this Act.

3. The repeals of sections 133 and 134 of this Act have effect—

(a) so far as relating to stamp duty on bearer instruments, in accordance with section 107 of the Finance Act 1990;

(b) so far as relating to stamp duty on instruments other than bearer instruments, in accordance with section 108 of that Act; and

(c) so far as relating to stamp duty reserve tax, in accordance with section 110 of that Act.

4. The repeal in Schedule 33 to this Act has effect in accordance with section 107 of the Finance Act 1990.

PART IV

VALUE ADDED TAX

Chapter	Short title	Extent of repeal
1994 c. 23.	The Value Added Tax Act 1994.	In Schedule A1, in paragraph 1(1), the word "and" at the end of paragraph (b).

PART V

INFORMATION POWERS

Chapter	Short title	Extent of repeal
1970 c. 9.	The Taxes Management Act 1970.	In section 17, subsections (4B) and (4C). In section 18, subsections (3) and (3AA).
1988 c. 1.	The Income and Corporation Taxes Act 1988.	Section 482A.

These repeals have effect in relation to amounts paid, credited or received on or after 6th April 2001.

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