

SCHEDULES

SCHEDULE 7

Section 64.

TRANSFER SCHEMES: TAX

Interpretation

- 1 In this Schedule—
- “the 1988 Act” means the Income and Corporation Taxes Act 1988;
 - “the 1990 Act” means the Capital Allowances Act 1990;
 - “the 1992 Act” means the Taxation of Chargeable Gains Act 1992;
 - “relevant transfer” means a transfer of property, rights or liabilities under a transfer scheme;
 - “transferee” in relation to a relevant transfer means the person to whom the property, rights or liabilities are transferred;
 - “transferor” in relation to a relevant transfer means the person from whom the property, rights or liabilities are transferred.

Chargeable gains: general

- 2 (1) For the purposes of the 1992 Act a disposal constituted by a relevant transfer is to be taken (in relation to the transferee as well as the transferor) to be for a consideration such that no gain or loss accrues to the transferor.
- (2) Sub-paragraph (1) has effect subject to the following provisions of this Schedule.
- (3) In section 35(3)(d) of the 1992 Act (list of provisions for transfers treated as made without gain or loss) after sub-paragraph (xii) insert—
- “(xiii) paragraph 2(1) of Schedule 7 to the Transport Act 2000;”.
- (4) Section 171(1) of the 1992 Act (provision in relation to disposal of assets from one member of a group of companies to another member of the group) does not apply if the disposal in question is constituted by a relevant transfer.
- (5) Expressions used in this paragraph and in the 1992 Act have the same meanings in this paragraph as in that Act.

Chargeable gains: securities

- 3 (1) This paragraph applies if—
- (a) assets are transferred to a company under a transfer scheme,
 - (b) in consequence the Secretary of State gives a direction under section 49 above, and
 - (c) the company issues securities in accordance with the direction.
- (2) For the purposes of the 1992 Act the person to whom the securities are issued is to be treated as acquiring them for a consideration—

Status: This is the original version (as it was originally enacted).

- (a) provided by him wholly and exclusively for the securities, and
 - (b) equal to the market value of the assets transferred to the company under the scheme.
- (3) This paragraph applies whether or not the person to whom the securities are issued is the person transferring the assets under the scheme.
- (4) Expressions used in this paragraph and in the 1992 Act have the same meanings in this paragraph as in that Act.
- 4 (1) This paragraph applies if —
- (a) the Secretary of State gives a direction under section 57 above requiring the CAA to release a company from liability in respect of debts,
 - (b) in connection with the direction the Secretary of State gives a direction or directions under section 58 above, and
 - (c) securities are issued in accordance with the direction or directions under section 58.
- (2) Sub-paragraph (3) applies if the direction under section 58 requires securities to be issued to one person only or the directions under that section (taken together) require securities to be issued to one person only; and sub-paragraph (4) applies in any other case.
- (3) For the purposes of the 1992 Act the person to whom the securities are issued is to be treated as acquiring them for a consideration—
- (a) provided by him wholly and exclusively for the securities, and
 - (b) equal to the amount of the liability affected by the release required by the direction under section 57.
- (4) For the purposes of the 1992 Act a person to whom any of the securities are issued is to be treated as acquiring them for a consideration—
- (a) provided by him wholly and exclusively for the securities, and
 - (b) equal to such part as is just and reasonable of the amount of the liability affected by the release required by the direction under section 57.
- (5) This paragraph applies whether or not the person to whom the securities are issued, or any person to whom any of the securities are issued, is a person transferring anything under the transfer scheme in connection with which the direction under section 57 is given.
- (6) Expressions used in this paragraph and in the 1992 Act have the same meanings in this paragraph as in that Act.

Chargeable gains: value shifting

- 5 Nothing in this Chapter and nothing done under it is to be regarded as a scheme or arrangement for the purposes of section 30 of the 1992 Act (tax-free benefits).

Chargeable gains: roll-over relief

- 6 (1) This paragraph applies if—
- (a) but for section 154 of the 1992 Act (depreciating assets) a held-over gain would have been carried forward to a depreciating asset,
 - (b) the asset is the subject of a relevant transfer, and

Status: This is the original version (as it was originally enacted).

- (c) the Secretary of State is not the transferee under the relevant transfer.
- (2) Section 154 is to have effect as if the gain had accrued to, and the claim for it to be held over had been made by, the transferee and as if the transferor's acquisition of the depreciating asset had been the transferee's acquisition of it.
- (3) Expressions used in this paragraph and in section 154 have the same meanings in this paragraph as in that section.

Chargeable gains: restriction of losses

- 7 (1) If there has been a relevant transfer of an asset section 174(1) of the 1992 Act (which applies section 41 to cases where assets have been acquired without gain or loss) is to have effect as if the asset had been transferred to the transferee, and acquired by him, in relevant circumstances.
- (2) This paragraph is not to prejudice paragraph 2.
- (3) Expressions used in this paragraph and in section 174(1) of the 1992 Act have the same meanings in this paragraph as in section 174(1).

Chargeable gains: groups

- 8 (1) Sub-paragraph (2) applies if a company (the degrouped company)—
 - (a) acquired an asset from another company at any time when both were members of the same group of companies (the old group),
 - (b) ceases by virtue of a relevant transfer to be a member of the old group, and
 - (c) becomes by virtue of the transfer a member of another group of companies (the new group).
- (2) Section 179 of the 1992 Act (company ceasing to be member of group) is not to treat the degrouped company as having by virtue of the transfer sold and immediately reacquired the asset.
- (3) Sub-paragraph (4) applies if—
 - (a) sub-paragraph (2) applies to an asset, and
 - (b) the degrouped company ceases to be a member of the new group.
- (4) On the company so ceasing section 179 of the 1992 Act is to have effect as if the degrouped company and the company from which it acquired the asset had been members of the new group at the time of acquisition.
- (5) But sub-paragraph (4) does not apply if—
 - (a) at the time when the degrouped company ceases to be a member of the new group the company from which it acquired the asset also ceases to be a member of the new group,
 - (b) the companies are associated companies immediately before and immediately after that time, and
 - (c) the companies were associated companies at the time of acquisition.
- (6) Expressions used in this paragraph and in section 179 of the 1992 Act have the same meanings in this paragraph as in that section.
- 9 (1) Sub-paragraph (3) applies if—

Status: This is the original version (as it was originally enacted).

- (a) a company (the degrouped company) ceases by virtue of a relevant transfer to be a member of a group of companies (the old group),
 - (b) it becomes by virtue of the transfer a member of another group of companies (the new group),
 - (c) it ceases to be a member of the new group, and
 - (d) the condition in sub-paragraph (2) is satisfied.
- (2) The condition is that—
- (a) the degrouped company acquired an asset under a relevant transfer at a time falling before it ceases to be a member of the new group, and
 - (b) at the time of acquisition the degrouped company and the transferor were not members of the new group.
- (3) On the degrouped company ceasing to be a member of the new group section 179 of the 1992 Act is to have effect as if the degrouped company and the transferor had been members of the new group at the time of acquisition.
- (4) But sub-paragraph (3) does not apply if—
- (a) at the time when the degrouped company ceases to be a member of the new group the transferor also ceases to be a member of the new group,
 - (b) the companies are associated companies immediately before and immediately after that time, and
 - (c) the companies were associated companies at the time of acquisition.
- (5) Paragraph 8(4) and sub-paragraph (3) above may apply on the same occasion; but if paragraph 8(4) applies to an asset on a given occasion sub-paragraph (3) above does not apply to that asset on that occasion.
- (6) Expressions used in this paragraph and in section 179 of the 1992 Act have the same meanings in this paragraph as in that section.
- 10 (1) Sub-paragraph (4) applies if—
- (a) a company ceases by virtue of a relevant transfer to be a member of a group of companies (the old group),
 - (b) it becomes by virtue of the transfer a member of another group of companies (the new group),
 - (c) a company falling within sub-paragraph (2) (the degrouped company) ceases to be a member of the new group, and
 - (d) the condition in sub-paragraph (3) is satisfied.
- (2) A company falls within this sub-paragraph if immediately before it ceases to be a member of the new group it is a subsidiary of—
- (a) the company referred to in sub-paragraph (1)(a), or
 - (b) the principal company of the new group (if that company differs from the company referred to in sub-paragraph (1)(a)).
- (3) The condition is that—
- (a) the degrouped company acquired an asset under a relevant transfer at a time falling before it ceases to be a member of the new group, and
 - (b) at the time of acquisition the degrouped company and the transferor were not members of the new group.

Status: This is the original version (as it was originally enacted).

- (4) On the degrouped company ceasing to be a member of the new group section 179 of the 1992 Act is to have effect as if the degrouped company and the transferor had been members of the new group at the time of acquisition.
- (5) But sub-paragraph (4) does not apply if—
 - (a) at the time when the degrouped company ceases to be a member of the new group the transferor also ceases to be a member of the new group,
 - (b) the companies are associated companies immediately before and immediately after that time, and
 - (c) the companies were associated companies at the time of acquisition.
- (6) Expressions used in this paragraph and in section 179 of the 1992 Act have the same meanings in this paragraph as in that section.

Capital allowances

- 11 (1) This paragraph applies if—
 - (a) property which is plant or machinery is the subject of a relevant transfer,
 - (b) section 343 of the 1988 Act (company reconstructions without a change of ownership) does not apply in relation to the transfer, and
 - (c) the transfer scheme concerned contains provision for the disposal value of the property to be taken for the purposes of the Capital Allowances Acts to be of an amount specified in or determined in accordance with the scheme.
- (2) For the purposes of the Capital Allowances Acts—
 - (a) the provision mentioned in sub-paragraph (1)(c) is to have effect (instead of section 26(1) or 59 of the 1990 Act) for determining an amount as the disposal value of the property or the price at which a fixture is to be treated as sold;
 - (b) the transferee is to be taken to have incurred expenditure of that amount on the provision of the property;
 - (c) in the case of a fixture, the expenditure which falls to be treated as incurred by the transferee is to be taken for the purposes of section 54 of the 1990 Act to be incurred by the giving of a consideration consisting in a capital sum of that amount.
- (3) A provision mentioned in sub-paragraph (1)(c) for the determination of an amount may include provision—
 - (a) for a determination to be made by the Secretary of State in a manner described in the scheme;
 - (b) for a determination to be made by reference to factors so described or to the opinion of a person so described;
 - (c) for a determination to be capable of being modified (on one or more occasions) in a manner and in circumstances so described.
- (4) The Treasury's consent is required for the making or modification of a determination under a provision mentioned in sub-paragraph (1)(c).
- (5) The transferee's consent is also required for such a modification after the relevant transfer takes effect.

Status: This is the original version (as it was originally enacted).

- (6) If there is a determination or a modification of a determination under a provision mentioned in sub-paragraph (1)(c) all necessary adjustments—
- (a) must be made by making assessments or by repayment or discharge of tax, and
 - (b) must be made notwithstanding any limitation on the time within which assessments may be made.
- (7) In this paragraph “the Capital Allowances Acts” has the same meaning as in the Tax Acts and “fixture” has the same meaning as in Chapter VI of Part II of the 1990 Act.

Transfers of trading stock

- 12 (1) This paragraph applies if—
- (a) under a relevant transfer trading stock of the transferor is transferred to the transferee, and
 - (b) the stock falls, immediately after the time when the transfer takes effect, to be treated as trading stock of the transferee.
- (2) Sub-paragraphs (3) and (4) have effect in computing the profits or gains of the relevant trades for the purposes of the Corporation Tax Acts; and the relevant trades are—
- (a) the trade in relation to which the stock is trading stock immediately before the time when the transfer takes effect, and
 - (b) the trade in relation to which it is trading stock after that time.
- (3) The stock must be taken—
- (a) to have been disposed of by the transferor in the course of the trade carried on by the transferor,
 - (b) to have been acquired by the transferee in the course of the trade carried on by the transferee, and
 - (c) subject to that, to have been disposed of and acquired at the time when the transfer takes effect.
- (4) The stock must be valued for the purposes of each of the relevant trades as if the disposal and acquisition had been for a consideration which in relation to the transferor would have resulted in neither a profit nor a loss being brought into account in respect of the disposal in the accounting period of the transferor which ends with, or is current at, the time when the transfer takes effect.
- (5) In this paragraph “trading stock” has the same meaning as in section 100 of the 1988 Act.

Trading losses: transfer of trade

- 13 (1) This paragraph applies if a transfer scheme provides for a relevant transfer as a result of which the transferor ceases to carry on a trade and the transferee begins to carry it on.
- (2) A transferor treated as ceasing to carry on a trade for the purposes of section 343 of the 1988 Act (company reconstructions without a change of ownership) is to be so treated for the purposes of this paragraph.

Status: This is the original version (as it was originally enacted).

- (3) A transferee treated as beginning to carry on a trade for the purposes of that section is to be so treated for the purposes of this paragraph.
- (4) Sub-paragraph (5) applies if the transfer will result in the transferee being entitled to relief for an amount in respect of the trade under section 393(1) of the 1988 Act (trading losses) by virtue of section 343(3).
- (5) In such a case the scheme may provide that the amount is to be treated as such amount (the replacement amount) as is specified in or determined in accordance with the scheme.
- (6) Sub-paragraph (7) applies if the trade concerned is in fact part of a trade of the transferor and the transferor is entitled to relief for an amount under section 393(1) in respect of the part retained.
- (7) In such a case the scheme may provide that the amount is to be treated as such amount (the replacement amount) as is specified in or determined in accordance with the scheme.
- (8) A provision under sub-paragraph (5) or (7) must be such that the replacement amount is not greater than the amount it replaces; and the replacement amount may be nil.
- (9) When the scheme comes into force a provision made under sub-paragraph (5) or (7) is to have effect for the purposes of arriving at the amount of relief concerned.

Trading losses: change in ownership

- 14
- (1) This paragraph applies if under a relevant transfer all the issued share capital of a company (the transferred company) is transferred from the CAA to—
 - (a) the Secretary of State, or
 - (b) a company whose shares are all held by the Secretary of State when the transfer takes effect.
 - (2) For the purposes of section 768 of the 1988 Act (disallowance of trading losses on change in company's ownership) the transfer is not to be taken to result in a change in the ownership of—
 - (a) the transferred company, or
 - (b) a company which is a wholly owned subsidiary of the transferred company when the transfer takes effect.

Leased assets

- 15
- (1) This paragraph applies for the purposes of section 781 of the 1988 Act (assets leased to traders and others) if the interest of the lessor or the lessee under a lease, or any other interest in an asset, is transferred to a person under a relevant transfer.
 - (2) The transfer is to be treated as made without any capital sum having been obtained in respect of the interest by the transferor or the transferee; and this is so notwithstanding section 783(4) of that Act.

Securities

- 16
- (1) This paragraph applies if securities are issued by a company in pursuance of a direction of the Secretary of State under section 49 or 58 above.

Status: This is the original version (as it was originally enacted).

- (2) A share issued by the company is to be treated for the purposes of the Corporation Tax Acts as if it had been issued wholly in consideration of a subscription paid to the company of an amount equal to the nominal value of the share.
 - (3) A debenture issued by the company is to be treated for the purposes of the Corporation Tax Acts as if it had been issued—
 - (a) wholly in consideration of a loan made to the company of an amount equal to the principal sum payable under the debenture, and
 - (b) wholly and exclusively for the purposes of the trade carried on by the company.
 - (4) If a debenture issued by the company includes provision for the payment of a sum expressed as interest in respect of a period falling wholly or partly before the issue of the debenture, a payment made in pursuance of the provision in respect of the period is to be treated for the purposes of the Corporation Tax Acts as if the debenture had been issued at the commencement of the period and (accordingly) as interest on the principal sum payable under the debenture.
 - (5) This paragraph has effect subject to paragraphs 3, 4 and 17.
- 17 (1) This paragraph applies if—
- (a) securities are issued to a company in pursuance of a direction of the Secretary of State under section 49 or 58 above, and
 - (b) by virtue of any such security the company has a loan relationship for the purposes of the Corporation Tax Acts.
- (2) For the purposes of Chapter II of Part IV of the Finance Act 1996 (loan relationships) the company is to be taken to have acquired its rights under the security wholly in consideration of a loan made by it to the issuing company of an amount equal to the principal sum payable under the security.
 - (3) Expressions used in this paragraph and in Chapter II of Part IV of the Finance Act 1996 have the same meanings in this paragraph as in that Chapter.

Stamp duty

- 18 (1) A relevant transfer is not to give rise to liability to stamp duty.
- (2) Stamp duty is not to be chargeable on a transfer scheme.
 - (3) Stamp duty is not to be chargeable on an instrument which is certified to the Commissioners of Inland Revenue by the Secretary of State as having been made for the purposes of (or for purposes connected with) a transfer scheme.
 - (4) But no instrument which is certified as mentioned in sub-paragraph (3) is to be taken to be duly stamped unless—
 - (a) it is stamped with the duty to which it would be liable but for that sub-paragraph, 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 that duty or that it is duly stamped.
 - (5) Stamp duty is not to be chargeable on an instrument which is made under Schedule 6.

Status: This is the original version (as it was originally enacted).

Stamp duty reserve tax

- 19 An agreement is not to give rise to a charge to stamp duty reserve tax if—
- (a) it is made for the purposes of (or for purposes connected with) a transfer scheme, or
 - (b) it is made under Schedule 6.

Agreements

- 20 (1) Sub-paragraph (2) applies if the effect of—
- (a) an agreement made under paragraph 9 or 11 of Schedule 6,
 - (b) an instrument executed under paragraph 9 of Schedule 6, or
 - (c) an agreement treated as made under paragraph 10 of Schedule 6,
- is to modify the effect of a transfer scheme.
- (2) This Schedule, the 1988 Act, the 1990 Act and the 1992 Act are to have effect as if—
- (a) the scheme had been made as modified, and
 - (b) anything done by or in relation to the preceding holder had (so far as relating to the property, rights or liabilities affected by the modification) been done by or in relation to the subsequent holder.
- (3) Sub-paragraph (4) applies to a disposal of an asset if the disposal—
- (a) is effected in pursuance of an agreement made or treated as made under paragraph 9 or 10 of Schedule 6 or is effected by an instrument executed under paragraph 9 of that Schedule, and
 - (b) is the grant of a lease of land or the creation of other rights and liabilities over land.
- (4) For the purposes of the 1992 Act the disposal is to be taken (in relation to the person to whom it is made as well as the person making it) to be for a consideration such that no gain or loss accrues to the person making it.
- (5) Section 171(1) of the 1992 Act (provision in relation to disposal of assets from one member of a group of companies to another member of the group) does not apply if sub-paragraph (4) applies to the disposal in question.
- (6) References in this paragraph to an agreement or instrument include references to the agreement or instrument as varied in accordance with a direction under paragraph 19(4) of Schedule 6.
- (7) For the purposes of sub-paragraph (2) the preceding holder is the person who without the modification—
- (a) became (under the transfer scheme concerned) entitled or subject to the property, rights or liabilities affected by the modification, or
 - (b) remained (despite the transfer scheme concerned) entitled or subject to the property, rights or liabilities affected by the modification,
- as the case may be.
- (8) For the purposes of sub-paragraph (2) the subsequent holder is the person who (in consequence of the modification) becomes, or resumes being, entitled or subject to the property, rights or liabilities affected by the modification.