SCHEDULES

SCHEDULE 29

GAINS AND LOSSES OF A COMPANY FROM INTANGIBLE FIXED ASSETS

PART 9

APPLICATION OF PROVISIONS TO GROUPS OF COMPANIES

Transfers within a group

55 (1) Where—

(a) an intangible fixed asset is transferred from one company ("the transferor") to another company ("the transferee") at a time when both companies are members of the same group, and

(b) the asset is a chargeable intangible asset in relation to the transferor immediately before the transfer and in relation to the transferee immediately after the transfer,

the transfer of the asset is treated for the purposes of this Schedule as tax-neutral (see paragraph 140).

(2) Sub-paragraph (1) does not apply—

(a) if the transferor or transferee is a qualifying society within the meaning of section 461A of the Taxes Act 1988 (incorporated friendly societies entitled to exemption from tax), or

(b) if the transferee is a dual resident investing company within the meaning of section 404 of that Act (limitation of group relief).

Roll-over relief on reinvestment: application to group member

56 (1) The following provisions have effect as regards the application of Part 7 (roll-over relief in case of realisation and reinvestment) in relation to a company that is a member of a group.

(2) That Part applies where—

(a) the realisation of the old asset is by a company that, at the time of the realisation, is a member of a group,

(b) the expenditure on other assets is by another company that, at the time the expenditure is incurred—

(i) is a member of the same group as the company mentioned in paragraph (a), and

(ii) is not a dual resident investing company,

(c) the other assets are chargeable intangible assets in relation to the company mentioned in paragraph (b) immediately after the expenditure is incurred, and

(d) the claim is made by both companies,

as if both companies were the same person.

(3) That Part does not apply if the expenditure on other assets is expenditure on the acquisition of assets acquired from another member of the same group by a tax-neutral transfer.

(4) Expressions used in this paragraph that are defined for the purposes of Part 7 have the same meaning in this paragraph.

Roll-over relief on reinvestment: acquisition of group company treated as equivalent to acquisition of underlying assets

57 (1) Where a company ("company A") acquires a controlling interest in another company ("company B") and intangible fixed assets ("underlying assets") are held—

(a) by company B, or

(b) by one or more other companies that were not in the same group as company A before its acquisition of a controlling interest in company B but as a result of that acquisition are in the same group as company A immediately after the acquisition,

Part 7 (roll-over relief in case of realisation and reinvestment) has effect in accordance with the following provisions.

(2) The expenditure by company A on the acquisition of a controlling interest in company B is treated as expenditure on acquiring the underlying assets.

(3) The amount of expenditure that is treated as incurred by company A on acquiring the underlying assets is taken to be—

(a) the tax written down value of the underlying assets immediately before the acquisition, or

(b) if less, the amount or value of the consideration for the acquisition by company A of the controlling interest in company B.

(4) The requirement that the assets be chargeable intangible assets in relation to company A immediately after the expenditure is incurred on acquiring them is treated as met in relation to the underlying assets if they are chargeable intangible assets in relation to the company by which they are held immediately after the acquisition by company A of a controlling interest in company B.

(5) The tax written down value of the underlying assets in the hands of the company by which they are held shall be reduced by the amount available for relief, and if—

(a) there is more than one underlying asset, and

(b) the amount of expenditure on other assets that is treated as incurred exceeds the amount available for relief,

the company by which the underlying assets are held may decide how the amount available for relief is to be allocated in reducing the tax written down values of the assets.

If there is more than one such company, they may agree between them how that amount is to be allocated.

(6) A claim for relief under Part 7 made by virtue of this paragraph must be made jointly by company A and the company or companies holding the underlying assets concerned.

(7) For the purposes of this paragraph company A acquires a controlling interest in company B if the two companies are not in the same group and there is an acquisition by company A of shares in company B such that those two companies are in the same group immediately after the acquisition.

(8) Expressions used in this paragraph that are defined for the purposes of Part 7 have the same meaning in this paragraph.

Company ceasing to be member of group ("degrouping")

58 (1) This paragraph applies where—

(a) a company ("the transferor") that is a member of a group ("the group") transfers an intangible fixed asset ("the relevant asset") to another company ("the transferee"),

(b) the relevant asset is a chargeable intangible asset in relation to the transferor immediately before the transfer and in relation to the transferee immediately after the transfer, and

(c) the transferee—

(i) having been a member of the group at the time of the transfer, or

(ii) having subsequently become a member of the group,

ceases to be a member of the group after the transfer and before the end of the period of six years after the date of the transfer.

(2) If, when the transferee ceases to be a member of the group, the relevant asset is held by the transferee or an associated company also leaving the group, this Schedule has effect as if the transferee, immediately after the transfer of the relevant asset to it, had realised the asset for its market value at that time and immediately reacquired the asset at that value.

(3) The adjustments required to be made in consequence of sub-paragraph (2), by the transferee or a company to which the relevant asset has been subsequently transferred, in relation to the period between—

(a) the transfer of the relevant asset to the transferee, and

(b) the transferee ceasing to be a member of the group,

shall be made by bringing the aggregate net credit or debit into account as if it had arisen immediately before the transferee ceased to be a member of the group.

(4) For the purposes of Part 6 (how credits and debits are given effect) credits or debits brought into account by virtue of this paragraph take their character from the purposes for which the relevant asset was held by the transferee immediately after the transfer.

Provided that, in a case where—

(a) the asset was then held by the transferee for the purposes of a trade, business or concern within paragraph 31, 32 or 33, and

(b) the transferee ceased to carry on that trade, business or concern before it ceased to be a member of the group,

any credit or debit brought into account by virtue of this paragraph in respect of the asset shall be treated for the purposes of Part 6 as a non-trading credit or debit.

(5) This paragraph has effect subject to—

paragraph 59 (associated companies leaving group at the same time),
paragraph 60 (principal company becoming member of another group),
paragraph 61 (company ceasing to be member of group by reason of exempt distribution), and
paragraph 62 (merger carried out for bona fide commercial reasons).

Degrouping: associated companies leaving group at the same time

59 (1) Where two or more associated companies cease to be members of a group at the same time, paragraph 58 does not have effect in relation to a transfer from one to another of those companies.

(2) But where—

(a) a company ("the transferee") that has ceased to be a member of a group of companies ("the first group") acquired an asset from another company ("the transferor") which was a member of that group at the time of the transfer,

(b) sub-paragraph (1) applies in relation to the transferee's ceasing to be a member of the first group so that paragraph 58 does not have effect,

(c) the transferee subsequently ceases to be a member of another group of companies ("the second group"), and

(d) there is a relevant connection between the two groups (see sub-paragraph (3)),

paragraph 58 has effect in relation to the transferee's ceasing to be a member of the second group as if it were the second group of which both companies had been members at the time of the transfer.

(3) For the purposes of sub-paragraph (2) there is a relevant connection between the first group and the second group if, at the time when the transferee ceases to be a member of the second group, the company which is the principal company of that group is under the control of—

(a) the company that is the principal company of the first group or, if that group no longer exists, was the principal company of that group when the transferee ceased to be a member of it; or

(b) any person or persons who control the company mentioned in paragraph (a) or who have had it under their control at any time in the period since the transferee ceased to be a member of the first group; or

(c) any person or persons who have, at any time in that period, had under their control either—

(i) a company that would have been a person falling within paragraph (b) if it had continued to exist, or

(ii) a company that would have been a person falling within this paragraph (whether by reference to a company that would have been a person falling within paragraph (b) or by reference to a company or series of companies falling within this provision).

(4) The provisions of section 416(2) to (6) of the Taxes Act 1988 (meaning of control) have effect for the purposes of sub-paragraph (3) as they have effect for the purposes of Part 11 of that Act.

But a person carrying on a business of banking shall not be regarded for those purposes as having control of a company by reason only of having, or of the consequences of having exercised, any rights in respect of loan capital or debt issued

or incurred by the company for money lent by that person to the company in the ordinary course of that business.

Degrouping: principal company becoming member of another group

60 (1) Paragraph 58 does not apply where a company ceases to be a member of a group by reason only of the fact that the principal company of the group becomes a member of another group ("the second group").

(2) But if, in a case where paragraph 58 would have applied but for sub-paragraph (1) above, after the transfer and before the end of the period of six years after the date of the transfer—

(a) the transferee ceases to satisfy the condition that it is both a 75% subsidiary and an effective 51% subsidiary of one or more members of the second group ("the qualifying condition"), and

(b) at the time at which the transferee ceases to satisfy that condition, the relevant asset is held by the transferee or another company in the same group,

this Schedule has effect as if the transferee, immediately after the transfer to it of the relevant asset, had realised the asset for its market value at that time and immediately reacquired the asset at that value.

(3) The adjustments required to be made in consequence of sub-paragraph (2), by the transferee or a company to which the relevant asset has been subsequently transferred, in relation to the period between—

(a) the transfer of the relevant asset to the transferee, and

(b) the transferee ceasing to satisfy the qualifying condition,

shall be made by bringing the aggregate net credit or debit into account as if it had arisen immediately before the transferee ceased to satisfy the qualifying condition.

(4) For the purposes of Part 6 (how credits and debits are given effect) credits or debits brought into account by virtue of this paragraph take their character from the purposes for which the relevant asset was held by the transferee immediately after the transfer.

Provided that, in a case where—

(a) the asset was then held by the transferee for the purposes of a trade, business or concern within paragraph 31, 32 or 33, and

(b) the transferee ceased to carry on that trade, business or concern before it ceased to satisfy the qualifying condition,

any credit or debit brought into account by virtue of this paragraph in respect of the asset shall be treated for the purposes of Part 6 as a non-trading credit or debit.

(5) This paragraph is subject to paragraph 62 (merger carried out for bona fide commercial reasons).

Degrouping: company ceasing to be member of group by reason of exempt distribution

61 (1) Paragraphs 58 and 60 do not apply in a case where a company ceases to be a member of a group by reason only of an exempt distribution, unless there is a chargeable payment within five years after the making of the exempt distribution.

(2) If within five years after the making of the exempt distribution there is a chargeable payment, all such adjustments as may be required, by way of assessment, amendment

of returns or otherwise, may be made within the period of three years after the making of the chargeable payment.

This applies notwithstanding any time limit on the making of an assessment or the amendment of a return.

(3) In this paragraph—

"exempt distribution" means a distribution that is exempt by virtue of section 213(2) of the Taxes Act 1988; and

"chargeable payment" has the meaning given in section 214(2) of that Act.

(4) In determining for the purposes of this paragraph whether one company is a 75% subsidiary of another, the other company—

(a) shall be treated as not being the owner of any share capital that it owns directly in a body corporate if a profit on a sale of the shares would be treated as a trading receipt of its trade, and

(b) shall be treated as not being the owner of any share capital that it owns indirectly and which is owned directly by a body corporate for which a profit on the sale of the shares would be a trading receipt.

Degrouping: merger carried out for bona fide commercial reasons

62 (1) Paragraphs 58 to 61 do not apply where—

(a) the transferee ceases to be a member of a group of companies ("the group") as part of a merger, and

(b) the merger is carried out for bona fide commercial reasons and the avoidance of liability to tax is not the main or one of the main purposes of the merger.

(2) For this purpose a "merger" means an arrangement (which in this paragraph includes a series of arrangements) whereby—

(a) one or more companies ("the acquiring company" or, as the case may be, "the acquiring companies") none of which is a member of the group acquires or acquire, otherwise than with a view to their disposal, one or more interests in the whole or part of the business which, before the arrangement took effect, was carried on by the transferee, and

(b) one or more members of the group acquires or acquire, otherwise than with a view to their disposal, one or more interests in the whole or part of the business or each of the businesses which, before the arrangement took effect, was carried on either by the acquiring company or acquiring companies or by a company at least 90% of the ordinary share capital of which was then beneficially owned by two or more of the acquiring companies,

and in respect of which the conditions in sub-paragraph (4) below are fulfilled.

(3) For the purposes of sub-paragraph (2) a member of a group of companies shall be treated as carrying on as one business the activities of that group.

(4) The conditions referred to in sub-paragraph (2) are—

(a) that not less than 25% by value of each of the interests acquired as mentioned in sub-paragraph (2)(a) and (b) consists of a holding of ordinary share capital, and the remainder of the interest, or as the case may be of each of the interests, acquired as mentioned in sub-paragraph (2)(b) consists of a holding of share capital (of any description) or debentures or both; and

(b) that the value or, as the case may be, the aggregate value of the interest or interests acquired as mentioned in sub-paragraph (2)(a) is substantially the same as the value or, as the case may be, the aggregate value of the interest or interests acquired as mentioned in sub-paragraph (2)(b); and

(c) that the consideration for the acquisition of the interest or interests acquired by the acquiring company or acquiring companies as mentioned in sub-paragraph (2)(a), disregarding any part of that consideration which is small by comparison with the total, either consists of, or is applied in the acquisition of, or consists partly of and as to the balance is applied in the acquisition of, the interest or interests acquired by members of the group as mentioned in sub-paragraph (2)(b).

(5) For the purposes of sub-paragraph (4) the value of an interest shall be determined as at the date of its acquisition.

Degrouping: group member ceasing to exist

63 References in paragraphs 58 to 61 (degrouping) to a company ceasing to be a member of a group do not include cases where a company ceases to be a member of a group in consequence of another member of the group ceasing to exist.

Degrouping: supplementary provisions

64 For the purposes of paragraphs 58 to 61 (degrouping)—

(a) two or more companies are associated if, by themselves, they would form a group of companies; and

(b) an asset acquired by a company is treated as the same as an asset owned at a later time by that company or an associated company if the value of the second asset is derived in whole or in part from the first asset.

Degrouping: application of roll-over relief in relation to degrouping charge

65 (1) Part 7 (roll-over relief in case of reinvestment) applies with the following modifications where a company is treated as having realised an asset by virtue of paragraph 58 or 60 (degrouping)—

(a) in paragraph 38 (conditions to be met in relation to the old asset), for the references to the old asset being a chargeable intangible asset in relation to the company substitute references to its being a chargeable intangible asset in relation to the transferor;

(b) in paragraph 39(1) (conditions to be met in relation to expenditure on other assets), for the references to the date of realisation of the old asset substitute references to—

(i) in a case within paragraph 58, the date on which the transferee ceased to be a member of the group, and

(ii) in a case within paragraph 60, the date on which the transferee ceased to satisfy the qualifying condition;

(c) references to the proceeds of realisation shall be read as references to the amount for which the transferee is treated as having realised the asset.

(2) A reduction of the deemed realisation proceeds as a result of a claim for relief under Part 7 does not affect the value at which the company is deemed to have reacquired the asset.

(3) In this paragraph "the transferee" and "the transferor" have the same meaning as in paragraph 58.

Reallocation of degrouping charge within group

66 (1) This paragraph applies where a chargeable realisation gain accrues to a company ("company X") under paragraph 58 or 60 in respect of an asset.

(2) For the purposes of this paragraph—

(a) "the relevant time" is—

(i) in a case within paragraph 58, immediately before company X ceases to be a member of the group;

(ii) in a case within paragraph 60, immediately before company X ceases to satisfy the qualifying condition;

(b) "the relevant group" is—

(i) in a case within paragraph 58, the group of which company X was a member at the relevant time;

(ii) in a case within paragraph 60, the second group (within the meaning of that paragraph).

(3) Company X and a company that was a member of the relevant group at the relevant time ("company Y") may jointly elect that the gain, or such part of it as may be specified in the election, shall be treated as accruing to company Y and not to company X.

(4) An election to that effect may be made only if the following two conditions are met.

(5) The first condition is that at the relevant time company Y—

(a) was resident in the United Kingdom, or

(b) carried on a trade in the United Kingdom through a branch or agency and was not by virtue of arrangements under Part 18 of the Taxes Act 1988 (double taxation relief) exempt from corporation tax in respect of the profits or gains of that branch or agency.

(6) The second condition is that company Y was not at the relevant time—

(a) a qualifying society within the meaning of section 461A of the Taxes Act 1988 (incorporated friendly societies entitled to exemption from tax), or

(b) a dual resident investing company within the meaning of section 404 of that Act (limitation of group relief).

(7) An election under this paragraph must be made—

(a) by notice in writing to the Inland Revenue,

(b) not later than two years after the end of the accounting period of company X in which the relevant time falls.

(8) The effect of the election is that the gain, or the part specified in the election, is treated—

(a) as if it had accrued to company Y at the relevant time as a non-trading credit for the purposes of Part 6 (how credits and debits are given effect), and

(b) where company Y is not resident in the United Kingdom at the relevant time, as if it had accrued in respect of an asset held for the purposes of a branch or agency of the company in the United Kingdom.

Application of roll-over relief in relation to reallocated degrouping charge

67 (1) Where an election has been made under paragraph 66, this paragraph applies for the purpose of enabling company Y to make a claim under Part 7 (roll-over relief on reinvestment).

(2) For that purpose—

(a) Part 7 applies as if the deemed realisation of the asset had been by company Y and not company X,

(b) the conditions in paragraph 38 (conditions to be met in relation to the old asset) are treated as met in relation to the asset if they would have been met if there had been no election and company X had made the claim, and

(c) the proceeds of realisation and the cost of the old asset recognised for tax purposes are what they would have been if there had been no election and company X had made the claim.

(3) Where the election relates to part only of the gain on the deemed realisation of an asset, Part 7 and this paragraph apply as if the deemed realisation had been of a separate asset representing a corresponding part of the asset, and any necessary apportionments shall be made accordingly.

Recovery of degrouping charge from another group company or controlling director

68 (1) This paragraph applies where—

(a) a company ("the taxpayer company") is liable to a degrouping charge,

(b) an amount of corporation tax has been assessed on the company for the relevant accounting period, and

(c) the whole or part of that amount is unpaid at the end of the period of six months after the time when it became payable.

(2) The following persons may be required, by notice under paragraph 69, to pay the amount of corporation tax referable to the degrouping charge or, if less, the amount of the unpaid tax—

(a) if the taxpayer company was a member of a group at the relevant time—

(i) a company that was at that time the principal company of the group, and

(ii) any other company that at any time in the period of twelve months ending with the relevant time was a member of that group and owned the relevant asset or any part of it;

(b) if at the relevant time the taxpayer company is not resident in the United Kingdom but carries on a trade in the United Kingdom through a branch or agency, any person who is, or during the period of twelve months ending with that time was, a controlling director of the taxpayer company or of a company that has, or within that period had, control of the taxpayer company.

(3) For the purposes of this paragraph—

(a) the relevant accounting period is the accounting period in which the degrouping charge falls to be brought into account by the taxpayer company;

(b) the relevant time is—

(i) in a case within paragraph 58, when the taxpayer company ceased to be a member of the group;

(ii) in a case within paragraph 60, when the taxpayer company ceased to satisfy the qualifying condition;

(iii) where there has been an election under paragraph 66 (reallocation of degrouping charge within group), the time that would have been the relevant time under sub-paragraph (i) or (ii) if there had been no such election;

(c) the relevant asset is the asset in respect of which the degrouping charge arises.

(4) The amount of corporation tax referable to a degrouping charge is the difference between—

(a) the tax in fact payable for the relevant accounting period, and

(b) the tax that would have been payable for that period in the absence of the degrouping charge.

(5) References in this paragraph to a degrouping charge are to—

(a) a credit required to be brought into account under paragraph 58(3) or 60(3), or

(b) where there has been an election under paragraph 66 (reallocation of degrouping charge within group), a credit required to be brought into account as a result of the election.

(6) In this paragraph—

"director", in relation to a company, has the meaning given by section 168(8) of the Taxes Act 1988 (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 1988); and

"group" and "principal company" have the meaning that would be given by Part 8 of this Schedule if in that Part for references to 75% subsidiaries there were substituted references to 51% subsidiaries.

Recovery of degrouping charge from another group company or controlling director: procedure etc

69 (1) The Inland Revenue may serve a notice on a person within paragraph 68(2) requiring him, within 30 days of the service of the notice, to pay—

(a) the amount of the tax referable to the degrouping charge, or

(b) if less, the amount that remains unpaid of the corporation tax payable by the taxpayer company for the relevant accounting period.

(2) The notice must state—

(a) the amount of the tax referable to the degrouping charge,

(b) the amount of corporation tax assessed on the taxpayer company for the relevant accounting period that remains unpaid and the date when it first became payable, and

(c) the amount required to be paid by the person on whom the notice is served.

(3) 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.

(4) In section 87A(3) of the Taxes Management Act 1970 (c. 9) (date from which interest runs in the case of an assessment of a company's tax on another person), for "or Schedule 28 to the Finance Act 2000" substitute ", Schedule 28 to the Finance Act 2000 or paragraph 69 of Schedule 29 to the Finance Act 2002".

(5) A person who has paid an amount in pursuance of a notice under this paragraph may recover that amount from the taxpayer company.

(6) A payment in pursuance of a notice under this paragraph is not allowed as a deduction in computing any income, profits or losses for any tax purposes.

Recovery of degrouping charge from another group company or controlling director: time limit

70 (1) Any notice under paragraph 69 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.

(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 (c. 36) (determination where no return delivered or return incomplete), the date mentioned in sub-paragraph (1) shall be taken to be the date on which the determination was made.

(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), the date mentioned in sub-paragraph (1) 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 (see paragraph 41 of Schedule 18 to the Finance Act 1998 (c. 36)), the date mentioned in sub-paragraph (1) 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.

Payments between group members in respect of reliefs

71 (1) This paragraph applies to payments—

(a) for group roll-over relief, or

(b) for the reallocation of a degrouping charge.

(2) A payment for group roll-over relief means a payment made—

(a) in connection with a claim for relief under Part 7 (roll-over relief in case of realisation and reinvestment) made by virtue of—

(i) paragraph 56 (realisation by one group company and reinvestment by another), or

(ii) paragraph 57 (acquisition of group company treated as equivalent to acquisition of underlying assets),

(b) by the company whose proceeds of realisation are reduced as a result of the claim,

(c) to a company whose acquisition costs are reduced (in a case within paragraph 56) or the tax written-down value of whose assets is reduced (in a case within paragraph 57) as a result of the claim,

(d) in pursuance of an agreement between those companies in connection with the claim.

(3) A payment for the reallocation of a degrouping charge means a payment made—

(a) in connection with an election under paragraph 66 (reallocation of degrouping charge within group),

(b) by the company to which the chargeable realisation gain accrues to the company to which as a result of the election the whole or part of that gain is treated as accruing,

(c) in pursuance of an agreement between those companies in connection with the election.

(4) A payment to which this paragraph applies—

(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 of the 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 relief.

(5) For this purpose the amount of the relief is—

(a) in the case of a payment in connection with a claim for relief under paragraph 56, the amount of the reduction as a result of the claim in the acquisition costs of the company to which the payment is made;

(b) in the case of a payment in connection with a claim for relief under paragraph 57, the amount of the reduction as a result of the claim in the tax-written down value of the assets of the company to which the payment is made;

(c) in the case of a payment in connection with an election under paragraph 66, the amount treated as a result of the election as accruing to the company to which the payment is made.